STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. SJC-23-2

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

v.

Peter A. Johnson, et al.

RESPONSE OF RESPONDENTS HON. SARAH GILBERT, in her official capacity AND HON. CARRIE LINTHICUM, in her official capacity TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents in the above-captioned matter, Hon. Sarah Gilbert, in her official capacity, and Hon Carrie Linthicum, in her official capacity (collectively "State Respondents"), by and through undersigned counsel, pursuant to this Court's Procedural Order of September 22, 2023, hereby respond to Petitioner's Petition for Writ of Habeas Corpus ("Petition") as follows:

I. FACTS

Petitioner seeks relief in connection with two (2) criminal dockets: *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2022-20116 and *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2023-20234. Petition, p.3.

A. *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2022-20116

In connection with her May 4, 2022 initial appearance on a Complaint for Violation of Conditions of Release (Class C), Complaint [DUBE000123][1], Petitioner executed a Motion and

[1] References to Bates Numbered documents are to those documents attached to Plaintiffs' Response as Exhibit A (DUBE000001-154) and Exhibit B (DUBE000155-161). In consideration of the Court's Procedural Order of September 22, 2023 with respect to filings via e-mail and directing the Parties to refrain from conveying paper copies of electronic exhibits, Respondents have provided a Bates Stamped copy of the complete docket record of the

Affidavit for Assignment of Counsel, [DUBE000120] and the District Court (Linthicum, J.) assigned Petitioner counsel. Order on Motion for Appointment [DUBE000119] (assigning Jefferson T. Ashby, Esq. as defense counsel); *see also* Notice of Appointment [DUBE000118]. Attorney Ashby represented Petitioner with respect to the May 12, 2022 indictment and a subsequent Motion for Revocation and Forfeiture of Pre-Conviction Bail, [DUBE00080] filed on or about December 30, 2022 in the same matter. Petitioner, represented by Attorney Ashby, reached a plea agreement on all pending matters in this Docket. Judgment and Commitment (Feb. 2, 2023) [DUBE000042]; Conditions of Probation (Feb. 2, 2023) [DUBE000070]; *see also* Rule 11 Checklist [DUBE000072 – 74].

On or about February 27, 2023, the State of Maine filed a Motion for Probation Revocation (Class C). [DUBE000061]. The Court (Nelson, J.) issued an Order Granting Petitioner's Motion for Court Appointed Counsel on March 2, 2023, appointing Attorney Mark Perry, Esq. to represent Petitioner. Order on Motion for Court Appointed Counsel (Mar. 2, 2023) [DUBE000049]; *see also* Notice of Appointment (Mar. 10, 2023) [DUBE000048]. Following appointment of counsel, on or about April 5, 2023, Petitioner admitted to violating conditions of her release, resulting in a partial revocation of thirty-five (35) days. Revocation of Probation (Apr. 5, 2023) [DUBE000040].

On or about July 5, 2023, the State of Maine filed a Second Motion for Probation Revocation based on a seven-count Complaint arising out of allegations that Petitioner engaged in new criminal activity on or about June 27, 2023. Second Motion for Probation Revocation (Jul. 5, 2023) [DUBE000028]; *see also* Complaint [DUBE000032-34]. Petitioner appeared

---

underlying criminal proceedings (Exhibit A). Respondents are in possession of, and able to file upon request, a certified (non Bates-Stamped) copy of the same.

before the Unified Criminal Docket (Linthicum, J.) on the Second Motion for Probation revocation on or about July 10, 2023 and was ordered held without bail. Commitment Order with Conditions of Release (Jul. 10, 2023) [DUBE000023-24]. Petitioner was represented by a Lawyer of the Day at her initial appearance. Transcript of Hearing (Jul. 11, 2023), *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2022-20116, 2:10-14 (attached hereto as **Exhibit C**).[2] Petitioner executed a Motion and Affidavit for Assignment of Counsel. Motion and Affidavit for Assignment of Counsel (Jul. 10, 2023). The Court granted Petitioner's Motion on or about July 12, 2023. Order on Motion for Court Appointed Counsel (Jul, 12, 2023) [DUBE000020].

Following that Order of July 12, 2023, after being unable to identify available, rostered counsel to represent Petitioner, consistent with instructions from the Trial Chiefs of the District and Superior Courts, Petitioner's pending matters were communicated to the Maine Commission on Indigent Legal Services ("MCILS"). Petitioner's matter was included among the matters referenced in the eighteen (18) e-mails sent by MCILS to individual, rostered defense counsel between July 20, 2023 and August 23, 2023 requesting assistance of defense counsel for criminal matters pending throughout the state for which specific counsel had not been assigned. Following a September 18, 2023 request from the Clerk of the Houlton District Court, defense counsel available to represent Petitioner was identified. Sept. 18, 2023 E-mail from Amanda Overchuck to Elizabeth Maddus, Esq., Hon. Robert E. Mullen, and Maine Commission on Indigent Legal Services [DUBE000017]. Attorney Jeffrey Langholtz was assigned as

[2] The transcription incorrectly identifies the presiding judge as Respondent Hon. Sarah Gilbert. *Cf.* Commitment Order with Conditions of Release (Jul. 10, 2023) [DUBE000023-24]; Docket Record [DUBE000013] ("Hearing – PV Initial Appearance Held on 7/10/23 Carrie Linthicum, Judge").

Petitioner's counsel on or about September 21, 2023. Order on Motion for Court Appointed Counsel (Sept. 21, 2023) [DUBE000016]. Petitioner appeared before the Unified Criminal Docket (Nelson, J.) on or about September 22, 2023 and obtained a revised Commitment Order with Conditions of Release, concurrent with bail established in *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2023-20234. Commitment Order with Conditions of Release (Sept. 22, 2023) [DUBE000003-4]. Petitioner was released on bail on September 23, 2023. [DUBE000155-161]. Petitioner's bail conditions include no use or possession of alcohol or illegal drugs and consent to searches of Petitioner's person, vehicle, and residence and testing for use or possession of alcohol or illegal drugs. [DUBE000159].

B. *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2023-20234

Petitioner was arrested on or about June 27, 2023 in connection with seven (7) charges of criminal conduct. Complaint (Jun. 28, 2023) [DUBE000149-151]. Petitioner appeared before the District Court (Gilbert, J.) on or about June 28, 2023. Commitment Order with Conditions of Release (Jun. 28, 2023) [DUBE000145]. Petitioner was represented by a Lawyer of the Day at her initial appearance. Transcript of Hearing (Jun. 28, 2023), *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2022-20116, 5:8 – 6:11 (attached hereto as **Exhibit D**). The Court entered an Order Appointing Counsel for Petitioner, Order on Motion for Court Appointed Counsel (Jun. 28, 2023) [DUBE000142], pending Petitioner's establishment of indigency by completing an Affidavit for Assignment of Counsel. 15 M.R.S.A. § 810 (requiring appointment of "competent defense counsel" when, "it appears to the court that the accused has not sufficient means to employ counsel."); M. R. U. Crim. P. 44 ("*If the defendant is without sufficient means to employ counsel*, the court shall make an initial assignment of counsel.") (emphasis added); *see also State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996). (M. R. U. Crim. P. 44 "implements the

constitutional right to counsel in a criminal proceeding . . . ."). Petitioner did not execute a Motion and Affidavit for Assignment of Counsel until July 10, 2023. Motion and Affidavit for Assignment of Counsel (Jul. 10, 2023) [DUBE000143-144]. Following Petitioner's execution of an affidavit with respect to indigency and the efforts described, *supra*., Attorney Jeffrey Langholtz was assigned as Petitioner's counsel on or about September 21, 2023. Order on Motion for Court Appointed Counsel (Sept. 21, 2023) [DUBE000134]. Petitioner, subsequently indicted on the seven (7) charges on or about September 7, 2023, Indictment [DUBE000138-140], was scheduled to be arraigned on September 21, 2023, Notice of Arraignment [DUBE000132]. Petitioner obtained an Amended Commitment Order with Conditions of Release on or about September 22, 2023. Amended Commitment Order with Conditions of Release [DUBE000125-127]. Petitioner was released on bail on September 23, 2023, subject to bail conditions enumerated in Section II(A), *supra*. [DUBE000158].

II. STANDARD OF REVIEW

A writ of habeas corpus is available to "[e]very person unlawfully deprived of his personal liberty by the act of another, except in the cases mentioned . . . ." 14 M.R.S.A. § 5501. Among the exceptions to the availability of the writ, as addressed in 14 M.R.S.A. § 5501, et seq., are writs sought by "[p]ersons committed or confined in prison or jail on suspicion of treason, felony or accessories before the fact to a felony, when the same is plainly and specifically expressed in the warrant of commitment." 5 M.R.S.A. §5512(1). The purpose of the writ of habeas corpus is to compel the production of the allegedly illegally imprisoned person before the court so that the reason for their imprisonment may be examined by the court. *Snyder on Behalf of Snyder v. Talbot*, 652 A.2d 100, 101 (Me. 1995) ("The general object of a writ of habeas corpus is to provide a speedy and effective method of securing the release of a person from an

illegal restraint." (citing *Hughes v. State*, 161 Me. 424, 428, 213 A.2d 435, 437 (1965))). As established by statute, in response to a petition seeking a writ of habeas corpus, "The court or justice may, in a summary way, examine the cause of imprisonment or restraint, hear evidence produced on either side, and if no legal cause is shown for such imprisonment or restraint, the court or justice shall discharge him, except as provided in section 5516." 14 M.R.S.A. § 5523; *see also* 14 M.R.S.A. § 5516 (permitting setting of "reasonable bail" if "the court or justice thinks that excessive bail is demanded."). Once the court has examined the cause of the restraint, it may either find it legal or, if not, order that the petitioner be released. *Id.*; *see also State v. Smith*, 6 Me. 462, 466 (1830) ("The object of the writ of habeas corpus is to remove illegal or improper restraint, and when that is done, the power of the court in the premises is completely exhausted.").

III. ARGUMENT AND MEMORANDUM OF LAW

Petitioner was represented by counsel at her initial appearances in both underlying criminal prosecutions. Those initial appearances resulted in commitments to the Aroostook County Jail by judges of the Maine Unified Criminal Docket. Petitioner completed her affidavit, attesting to information necessary to determine her indigency, on July 10, 2023. Petitioner is currently awaiting trial on a Class C felony (Violation of Conditions of Release) and seven (7) felony counts ranging from Class A to Class C. Petitioner is not currently incarcerated. Pending trial or future amendment of bail conditions, Petitioner is currently obligated to refrain from using alcohol, illegal drugs, and subject to searches to determine her compliance with those obligations.

The Petition before this Court should be denied. Petitioner has been released from incarceration, rendering her Petition moot. With respect to procedural deficiencies, the Petition

should be denied because it names or attempts to name improper parties: both unidentified "Petitioners" in addition to Ms. Dube Peterson and Judges of the Maine District Court as Petitioner's "custodian". With respect to the substantive claim underlying Petitioner's assertion that she is or has been subject to "an illegal restraint," the procedural history of both of Petitioner's underlying criminal matters do not support Petitioner's claims.

A. Petitioner's request for a Writ of Habeas Corpus is moot.

Petitioner asserts that she has been unlawfully deprived of her liberty because, "she remains imprisoned without counsel," in two pending criminal prosecutions pursuant to commitment orders separately entered in both of those prosecutions. 14 M.R.S.A. § 5501. Petitioner was assigned specific defense counsel in both criminal matters on September 21, 2023. Order on Motion for Court Appointed Counsel (Sept. 21, 2023) [DUBE000134]; Order on Motion for Court Appointed Counsel (Sept. 21, 2023) [DUBE000016]. Petitioner was released from incarceration on September 23, 2023.

"An issue is moot when there remains no 'real and substantial controversy, admitting of specific relief through a judgment of conclusive character.'" *Mainers for Fair Bear Hunting v. Dep't of Inland Fisheries & Wildlife*, 2016 ME 57, ¶ 5. A claim seeking a declaration of rights, "upon a state of facts that may or may not arise in the future is not justiciable." *Id.* (quoting *Doe I v. Williams*, 2013 ME 24, ¶ 15, 61 A.3d 718) (internal quotation marks omitted); *see also Maine Sugar Indus., Inc. v. Maine Indus. Bldg. Auth.*, 264 A.2d 1, 4–5 (Me. 1970) ("The line between a set of facts which lead only to an advisory opinion or a moot question and those which lead to a justiciable issue is not clearly fixed, but it may be said that when a complainant makes a claim of right buttressed [sic] by a sufficiently substantial interest to warrant judicial protection

and asserts it against a defendant having an adverse interest in contesting it, a justiciable controversy exists.").

The Petition is moot because the factual predicate for Petitioner's claim, that she "remains imprisoned without counsel" in the two underlying criminal prosecutions is not correct. Petitioner has been appointed specific counsel – counsel who has appeared in both of the underlying prosecutions. Petitioner has also been released from incarceration on bail and will remain on bail, pending compliance with her bail conditions, through trial in the underlying criminal prosecutions. There is, accordingly, no "real and substantial controversy" to adjudicate.

Mootness is subject to limited exceptions. However, the Petition does not include support for a finding that any of the factors traditionally considered by this Court as exceptions to the mootness bar apply here. In the context of matters appearing before the Law Court on appeal, the court has observed, "Generally, we decline to hear an appeal when the issues are moot, but, "we will address the merits where: (1) [s]ufficient collateral consequences will result from the determination of the questions presented so as to justify relief; (2) there exist 'questions of great public concern' that we address in order to provide future guidance; or (3) the issues are capable of repetition but evade review because of their fleeting or determinate nature." *A.S. v. LincolnHealth*, 2021 ME 6, ¶ 8 (quoting *In re Christopher H.*, 2011 ME 13, ¶11) (internal citation omitted). Notwithstanding Petitioner's contentions with respect to unidentified non-parties, the condition Petitioner asserts requires court examination – her imprisonment – is no longer in effect. There is, accordingly, no restraint, the legality of which remains to be examined and evaluated by this Court. *See Snyder*, 652 A.2d at 101 ("The general object of a writ of habeas corpus is to provide a speedy and effective method of securing the release of a person

from an illegal restraint." (citing *Hughes*, 161 Me. at 428). The Petition should, accordingly, be dismissed as moot.

B. The State Respondents should be dismissed.

1. Because Petitioner failed to execute an affidavit of indigency evidencing her entitlement to appointment of counsel, Respondent Hon. Sarah Gilbert should be dismissed.

Respondent Hon. Sarah Gilbert granted Petitioner bail on June 28, 2023 and provisionally appointed Petitioner counsel, pending Petitioner's execution of a financial affidavit establishing indigency:

> THE COURT: . . . I am going to provisionally appoint somebody for you because these are very serious charges. Nonetheless --
> MS. DUBE PETERSON: Thank you, Your Honor.
> THE COURT: Yep. Nonetheless, you're going to fill out a financial affidavit under oath and so that will ensure your continued eligibility for a lawyer.

Transcript of Hearing (Jun. 28, 2023), *State of Maine v. Angelina M. Dube Peterson*, AROCD-CR-2022-20116, 3:15-21. The right to appointment of counsel at state expense is triggered by a determination of indigency. 15 M.R.S.A. § 810 (requiring appointment of "competent defense counsel" when, "it appears to the court that the accused has not sufficient means to employ counsel."); M. R. U. Crim. P. 44 ("*If the defendant is without sufficient means to employ counsel*, the court shall make an initial assignment of counsel.") (emphasis added). Respondent Hon. Sarah Gilbert could not assess Petitioner's indigency until Petitioner submitted her motion and affidavit. Respondent Hon. Sarah Gilbert did not preside over any additional matters involving Petitioner other than Petitioner's initial appearance on June 28, 2023.

At the time Petitioner was before Respondent Hon. Sarah Gilbert, Petitioner had not provided evidence supporting her entitlement to appointment of counsel. There can be no argument that Respondent Hon. Sarah Gilbert exercised improper or illegal restraint of the

Petitioner at any point. Respondent, Hon. Sarah Gilbert's Order admitting the Petitioner to bail on June 28, 2023 was rendered moot and/or superseded by the Court's later action to revoke Petitioner's bail on Jul 10, 2023. That subsequent court action occurred on the same date the Court, following Petitioner's execution of her affidavit evidencing indigency, was able to act upon Petitioner's motion for assignment of counsel. Respondent Hon. Sarah Gilbert is not a proper Respondent to Petitioner's claim that her right to appointment of counsel rendered her incarceration constitutionally deficient. Respondent Hon. Sarah Gilbert should, accordingly, be dismissed from this action.

2. Because an individual judge of the Maine District Court is not Petitioner's "custodian," the State Respondents should be dismissed.

Petitioner names, as respondents, two judges of the Maine District Court and "Unknown Judges and Justices of the Maine Unified Criminal Docket." The statutes governing the writ of habeas corpus provide, "The person *having custody of the prisoner* may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name." 14 M.R.S.A. § 5527 (emphasis added); *see also* 14 M.R.S.A. §5515 ("The application shall be in writing, signed and sworn to by the person making it, stating the place where and *the person by whom the restraint is made*.") (emphasis added); 14 M.R.S.A. § 5525 (providing for alternate form of writ, "[i]n cases of imprisonment or restraint of personal liberty by any person *not a sheriff, deputy sheriff, constable, jailer or marshal, deputy marshal or other officer of the courts of the United States*," commanding, "the sheriffs of our several counties and their respective deputies," to bring petitioner before the Supreme Judicial Court) (emphasis added). The procedures established in 14 M.R.S.A. § 5501, et seq. are consistent with the nature of the writ, the federal counterpart to which has been held to,

"contemplate a proceeding *against some person who has the immediate custody of the party detained*, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)) (emphasis added).

Neither of the State Respondents have custody of Petitioner. Petitioner was committed to the Aroostook County Jail and, upon information and belief, subsequently transferred to the York County Jail. Petitioner, since released from incarceration, is subject to bail conditions. To the extent that restrictions on Petitioner's liberty persist, and merit examination pursuant to 14 M.R.S.A. §5501, those restrictions are imposed by the judicial power of the State of Maine. *See Dep't of Corr. v. Superior Court*, 622 A.2d 1131, 1135 ("The exercise of [judicial] power is not vested in judges, it is vested in courts . . . ."); *see also Braden v. 30th Jud. Cir. Ct. of Kentucky*, 410 U.S. 484, 494–95, (1973) ("The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody." (citing *Wales*, 114 U.S. at 574)). "[A] habeas petitioner who challenges a form of 'custody' other than present physical confinement may name as the respondent the entity or person who exercises legal control with respect to the challenged 'custody.'" *Rumsfeld*, 542 U.S. at 438 (construing proper respondent pursuant to 28 U.S.C.A. § 2242). Here, as illustrated by the successive orders by various jurists in the underlying criminal prosecutions, to the extent Petitioner remains under any cognizable restraint, the proper respondent is not those individual jurists but the State of Maine.

3. Petitioner's naming of "Unknown or Uncertain Persons" as additional Petitioners is improper and of no effect.

Petitioner seeks to maintain the Petition on her own behalf and on behalf of "persons, both named and unnamed, who would be entitled to relief on their own application." Petition, p.2 (citing 14 M.R.S.A. §§ 5511, 5528; M. R. Civ. P. 17(a)).

A petition for the writ of habeas corpus is a civil action. *See Beaulieu v. State*, 161 Me. 248, 250, 211 A.2d 290, 291 (1965) ("[P]ost conviction habeas corpus is taken in the same mode and scope of review as any civil action.") (internal quotations omitted). Rule 81 of the Maine Rules of Civil Procedure addresses the relationship of statutory causes of action, including the writ of habeas corpus, and the civil rules, providing, "These rules do not alter the practice prescribed by the statutes of the State of Maine or the Maine Rules of Criminal Procedure or the Maine Bar Rules for beginning and conducting the following proceedings in the Superior Court or *before a single justice of the Supreme Judicial Court*." Me. R. Civ. P. 81(b) (including among enumerated causes of action, "[p]roceedings for post-conviction relief in criminal actions or *under the writ of habeas corpus*.") (emphasis added).[3]

"Every action shall be prosecuted in the name of the real party in interest," and "a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of

[3] Rule 81 further provides, "In respects not specifically covered by statute or other court rules, the practice in these proceedings shall follow the course of the common law, but shall otherwise conform to these rules . . . ." Id. Rule 81 then both directs the court to procedures contained in statute, M. R. Civ. P. 81(e) ("In applying these rules to any proceeding to which they are applicable, the terminology of any statute which is also applicable, where inconsistent with that in these rules or inappropriate under these rules, shall be taken to mean the device or procedure proper under these rules."), and provides the Court with discretion to determine the applicable procedure. M. R. Civ. P. 81(f) ("When no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the State of Maine, these rules or any applicable statutes.").

another shall be brought in the name of the State of Maine." M. R. Civ. P. 17(a). This Court has observed, "The purpose of the Rule 17(a) provision that '[e]very action shall be prosecuted in the name of the real party in interest' is 'to protect the defendant against a subsequent action by the party actually entitled to recover, and to ensure generally that the judgment will have its proper effect as res judicata.'" *Poulos v. Mendelson*, 491 A.2d 1172, 1175 (Me. 1985) (quoting advisory committee note to 1966 Amendment to Fed. R. Civ. P. 17(a)). Petitioner's designation of unnamed additional Plaintiffs, and attempt to assert the claims of those unknown additional Plaintiffs is inconsistent with the Maine Rules of Civil Procedure.

In addition to failing to properly identify and additional Petitioners or state allegations on behalf of those parties entitling them to relief, Petitioner's attempt to assert the claims of unknown parties is not justiciable. "Justiciability requires that there be a real and substantial controversy, admitting of specific relief through a judgment of conclusive character as distinguished from a judgment merely advising what the law would be" if certain events should occur in the future." *Hatfield v. Comm'r of Inland Fisheries & Wildlife*, 566 A.2d 737, 739 (Me. 1989) (quoting *Connors v. Int'l Harvester Credit Corp.*, 447 A.2d 822, 824 (Me.1982)). Consistent with the Law Court's refusal to issue advisory opinions, the claim(s) represented by Petitioner's reference to additional "unknown" petitioners does not assert a claim upon which relief can be granted, and must be dismissed. *Id*. (declining to "issue an advisory opinion on the constitutionality," of a potential procedure and, instead, "review[ing] the constitutionality of the [challenged] procedures as they were actually carried out [], not as they might be carried out."); *see also* M. R. Civ. P. 12(b)(6) (addressing dismissal upon, "failure to state a claim upon which relief can be granted").

4. Petitioner's naming of "Unknown Judges and Justices of the Maine Unified Criminal Docket" as Respondents is a nullity and should be stricken.

Petitioner has included, in the caption of her Petition, "Unknown Judges and Justices of the Maine Unified Criminal Docket." Petition at p.1. Petitioner has not, pursuant to her representations within the petition, served any respondents other than the State Respondents. Id. at p.11-12. Where the party pursuing a civil action names defendants who are unknown and have not been served, that designation is properly disregarded for the purpose of adjudicating the action. *See Perron v. Peterson*, 593 A.2d 1057, 1057 n.1 (Me. 1991) (addressing claim alleging "wrongful death against an unknown defendant, John Doe."). Affirming judgment entered by the Superior Court, the Law Court held, "Because no party has been served under this count and neither the [Plaintiffs] nor [Defendant] sought its dismissal, we disregard this count for purposes of determining the finality of the court's judgment under M.R.Civ.P. 54(b)." *Id*. Because the Petition's designation of additional defendants beyond the State Defendants is immaterial, Petitioner's designation of "Unknown Judges and Justices of the Maine Unified Criminal Docket" should be stricken. M. R. Civ. P. 12(f) (permitting the court to "order stricken from any pleading any . . . immaterial . . . matter.").

C. Petitioner is not subject to unlawful detention based on a violation of her Sixth Amendment rights.

The record of proceedings in Petitioner's underlying criminal prosecutions support a conclusion that, after establishing her entitlement to court-appointed counsel on July 10, 2023, the Unified Criminal Docket ordered that Petitioner be provided counsel. Petitioner was not assigned a specific attorney until September 21, 2023. Petitioner was represented by counsel at her initial appearances in both underlying criminal prosecutions, consistent with her right to

counsel under the Sixth Amendment to the United States Constitution, including the opportunity to be heard on bail. *State v. Galarneau*, 2011 ME 60, ¶ 7 ("[Appellant]'s appeal presents the issue whether a defendant who is represented solely by a lawyer for the day has been denied the constitutional right to counsel. The unequivocal answer is 'no.'"). Petitioner's pretrial incarceration resulted from court proceedings at which Petitioner was represented by counsel. *Cf. Betschart, et al. v. Garrett, et al.*, 2023 WL 5288098, at *2 (D. Or. Aug. 17, 2023) ("[Petitioner] Joshua Shane Bartlett was housed at the Washington County Detention Center for 48 days and represented himself in five separate hearings without an attorney. On August 13, 2023, Mr. Bartlett pled guilty to one count of Assault in the Fourth Degree — the Court assumes without the advice of counsel — and has since been released.").[4] The Petition, accordingly, relies on speculation regarding the positions of "similarly situated Mainers," Petition at p.9, defining them as, "individuals [who] have not been provided counsel to represent them." Id. at p.1.[5]

[4] The Court in *Betschart* described the circumstances of additional petitioners, including individual petitioners who: (i) was required by the court "to waive counsel at that hearing in order for the court to consider releasing him," (ii) appeared at three hearings and "testified under oath without the benefit of counsel to discuss a choice to testify or not," (iii) participated in "a preventative detention hearing without a lawyer assisting [him]," (iv) "made at least 16 court appearances on his own," and (v) "appeared in court four times without counsel." *Id*. at *2 (internal quotations omitted).

[5] Petitioner cites, but does not address the applicability of 4 M.R.S.A. §7. Petition, p.2, 7 ("[T]his Court . . . nonetheless retains jurisdiction to grant the writ of habeas corpus as it existed at common law."). That provision, authorizing the Supreme Judicial Court to exercise superintendence over the Superior and District Courts for the correction of errors, authorizes an action naming the relevant court as respondent: not an individual jurist. *Dep't of Corr.*, 622 A.2d at 1134 (Me. 1993) ("[T]he appropriate defendant should be the Superior Court, rather than the individual justice."). Moreover, the scope of Section 7 addresses the relief sought by Petitioner. 4 M.R.S.A. § 7 ("[The Supreme Judicial Court] has general superintendence of all inferior courts for the prevention and correction of errors and abuses where the law does not expressly provide a remedy and has control of all records and documents in the custody of its clerks.").

Petitioner's claim under the Sixth Amendment requires that Petitioner have been denied counsel at a "critical stage" of the prosecution. Petitioner has not alleged any fact supporting a conclusion that the delay in identifying a specific attorney to represent her occurred at a "critical stage" of her prosecution. Petitioner cannot maintain a claim that her incarceration was "illegal" based on a violation of her Sixth Amendment rights.

"The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel *at a critical stage of his trial*." *United States v. Cronic*, 466 U.S. 648, 659 (1984) (emphasis added). "A criminal defendant who is entitled to counsel but goes unrepresented *at a critical stage of prosecution* suffers an actual denial of counsel and is entitled to a presumption of prejudice. *Tucker v. State*, 162 Idaho 11, 20, 394 P.3d 54, 63 (2017) (citing *Cronic*, 466 U.S. at 658–60) (emphasis added). Maine courts have recognized that prerequisite. *State v. Bavouset*, 2001 ME 141, ¶ 4, 784 A.2d 27, 29 ("The Sixth Amendment right to counsel does not attach until the defendant has reached a 'critical stage' in the proceedings.") (citing *United States v. Wade*, 388 U.S. 218, 227–28 (1967)). Courts addressing a litigant's rights under the Sixth Amendment have further held that a criminal defendant's right to counsel "attaches" at the point when adversarial proceedings in a prosecution begin. *See Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 211–12 (2008) ("Attachment occurs when the government has used the judicial machinery to signal a commitment to prosecute as spelled out in *Brewer* [v. Williams, 430 U.S. 387 (1977)] and [*Michigan v.*] *Jackson* [475 U.S. 625 (1986)]."). "[C]ounsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Rothgery*, 554 U.S. at 212.

As first addressed by the United States Supreme Court, a "critical stage" in a criminal prosecution is a stage at which "counsel's absence at such stages might derogate from [defendant's] right to a fair trial." *Wade*, 388 U.S.at 227–28 (counsel's absence at forensic analyses did not violate the Sixth Amendment right to counsel at "critical stages" because, "they are not critical stages since there is minimal risk that [defendant's] counsel's absence at such stages might derogate from his right to a fair trial."). The guiding principal behind the "critical stage" analysis is the effect of the absence of counsel on, "the reliability of the trial process." *Cronic*, 466 U.S. at 658 ("Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated."). Courts addressing what constitutes a "critical stage" in the context of the Sixth Amendment right to counsel consistently ground their analysis whether denial prejudices a criminal defendant's rights at trial. *See, e.g., McNeil v. Wisconsin*, 501 U.S. 171, 177–78, 111 S. Ct. 2204, 2208–09, 115 L. Ed. 2d 158 (1991) ("The purpose of the Sixth Amendment counsel guarantee—and hence the purpose of invoking it—is to 'protec[t] the unaided layman at critical confrontations' with his 'expert adversary,' the government, after 'the adverse positions of government and defendant have solidified' with respect to a particular alleged crime." (quoting *United States v. Gouveia*, 467 U.S. 180, 189, (1984)); *Coleman v. Alabama*, 399 U.S. 1, 9, 90 S. Ct. 1999, 2003, 26 L. Ed. 2d 387 (1970) ("The determination whether the hearing is a 'critical stage' requiring the provision of counsel depends, as noted, upon an analysis 'whether potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice.'" (quoting *Wade*, 388 U.S. at 227)). The United States Supreme Court noted that established caselaw, "defined critical stages as proceedings between an individual and agents of the State (whether "formal or informal, in court or out," that amount to "trial-like confrontations," at

which counsel would help the accused "in coping with legal problems or . . . meeting his adversary." *Rothgery*, 554 U.S. at 212 n.16 (quoting *United States v. Ash*, 413 U.S. 300, 312–313 (1973)) (internal citations omitted).

While Petitioner identifies potential consequences of a delay in appointing defense counsel, Petition at p.8-9, Petitioner does not allege actual prejudice. "[T]he [Supreme] Court has clarified that not every 'critical' pretrial event comes with Sixth Amendment protection: the possibility that [such an event] may have important consequences at trial, standing alone, is insufficient to trigger the Sixth Amendment right to counsel." *United States v. Boskic*, 545 F.3d 69, 82 (1st Cir. 2008) (quoting *Moran v. Burbine*, 475 U.S. 412, 432 (1986)) (internal quotations omitted). Petitioner's claim that the delay in appointing her counsel, after her initial appearance, violates her Sixth Amendment rights and renders her subsequent incarceration "illegal," without any assertion of actual prejudice, fails to address the controlling standard. "[W]hat makes a stage critical is what shows the need for counsel's presence." *Rothgery*, 554 U.S. at 212. The Petition fails to address whether Petitioner was appointed counsel "within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Id*. at 212; *see also id.* at 218 ("Texas counties need only appoint counsel as far in advance of trial, and as far in advance of any pretrial 'critical stage,' as necessary to guarantee effective assistance at trial.") (Alito, J. concurring).

"A reasonable time," in the context of Petitioner's claimed constitutional deficiency, is defined by reference to the "adequacy of representation at [a] critical stage." *Id.* at 212. Petitioner has not identified, nor does the record of her underlying criminal matters reflect any proceeding in her underlying criminal matters, following her initial appearance, which qualify as "trial-like confrontations, at which counsel would help the accused in coping with legal problems

or ... meeting his adversary." *Id*. (internal quotations omitted). Petitioner has, accordingly, failed to assert a cognizable claim that her right to counsel under the Sixth Amendment was violated, rendering her incarceration "illegal" and justifying relief under the writ of habeas corpus. *Snyder*, 652 A.2d at 101.

D. The Petition should be dismissed because Petitioner retains remedies for alleged violations of her constitutional rights in her criminal matters.

The statutory procedures applicable to a writ of habeas corpus, 14 M.R.S.A. § 5501, unlike the procedures for post-conviction review, do not include an express exhaustion requirement. 15 M.R.S.A. § 2126 ("A person under restraint or impediment specified in section 2124 must also demonstrate that the person has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies."). However, given the pendency of the underlying criminal matters, the same principal which requires preservation of objections at the trial level for those objections to be considered on appeal should govern here. *See, e.g., Beaulieu*, 161 Me. at 253, 211 A.2d at 293 ("Whether the rights of the petitioner were violated, and hence whether the larceny conviction should be upset, with a new trial thereon, are questions not for a jailer or prisoner to decide, but for the Court *in a proceeding directed to the larceny* . . . .") (emphasis added). Asserted following conviction, petitioner in *Beaulieu* challenged the legality of his imprisonment in the context of a subsequent charge of escape: an offense requiring that the defendant be "lawfully detained" at the time of the alleged escape. *Id.* at 253. Here, the Unified Criminal Docket retains jurisdiction of the two underlying criminal matters from which Petitioner's claim of constitutional deficiency arise. Especially where the controlling standard for Petitioner's Sixth Amendment rights relies upon the "adequacy of representation at [a] critical stage," *Rothgery*, 554 U.S. at 212, the trial court is in the best position to identify and address a deficiency. *Cf. Betschart*, 2023 WL 5288098, at *2 ("I told the

court that this was 'unconstitutional.' Judge Summer responded, 'I know .... you won't get a disagreement from me or from the prosecutor that you should have a lawyer. It is an unfortunate circumstance that we are in with the state.' *The court then proceeded with a preventative detention hearing without a lawyer assisting me.*") (emphasis added). Similarly, the "the long–established rule," recognized by the Law Court that constitutional questions "should not be passed upon, unless strictly necessary to a decision of the cause under consideration," counsels against taking up Petitioner's invitation to adjudicate her claim of constitutional deficiency at this stage in her underlying criminal proceeding. *Payne v. Graham*, 118 Me. 251, 107 A. 709, 710 (1919).

"An application for the writ of habeas corpus is addressed to the sound discretion of the Court; and the writ will not be granted unless the real and substantial justice of the case demands it. *Dwyer v. State*, 151 Me. 382, 388, 120 A.2d 276, 280 (1956) (citing *O'Malia v. Wentworth*, 65 Me. 129, 132 (1876)). Given the continued jurisdiction over Petitioner's underlying criminal matters in the Unified Criminal Docket – including the ability to identify allegedly constitutional deficiencies when brought to the trial court's attention – this Court should decline Petitioner's invitation to adjudicate her claim that her Sixth Amendment Rights have been violated.

E. An appeal of the denial of a September 3, 2023 records request by Petitioner's counsel, a separate cause of action concerning non-parties exclusively venued in the Superior Court, should be dismissed.

Petitioner alleges that Petitioner's counsel requested information from non-party representatives of the Judicial Branch to identify indigent criminal defendants whose motion to had been appoint counsel had been granted by a court but for whom no counsel had been assigned. Petition at p.4. Petitioner alleges, and documents attached to the Petition indicate, that the Judicial Branch denied Petitioner's counsel's request based on Administrative Order JB-05-

20 (A.4-21). Id. at PX 7; *see also* Administrative Order JB-05-20 (A.4-21) ("This order governs the release of public information and the protection of confidential and other sensitive information within the Judicial Branch.").

"Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office." 1 M.R.S.A. § 409(1); *see also* M. R. Civ. P. 80B (prescribing procedures applicable to appeal pursuant to Section 409(1) in the Superior Court, including requirement that, "[t]he complaint shall include a concise statement of the grounds upon which the plaintiff contends the plaintiff is entitled to relief, and shall demand the relief sought."). The alleged denial of Petitioner's counsel's request for public records to a non-party, and the basis for that denial, are not properly before the Supreme Judicial Court in this action. *Cf.* Petition at p. 5, 10.

IV. CONCLUSION

For the aforementioned reasons, this Court should deny the Petition and dismiss this proceeding with prejudice.

Dated: October 11, 2023

Respectfully submitted,

/s/ Sean D. Magenis
SEAN D. MAGENIS
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8830
sean.d.magenis@maine.gov
Attorney for Respondents