STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-22-054

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

JAMES BILLINGS, in his official capacity as Executive Director of the Maine Commission on Public Defense Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Public Defense Services; DONALD ALEXANDER, RANDALL BATES, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN, and DAVID SOUCY, in their official capacities as Commissioners of the Maine Commission on Public Defense Services; and the STATE OF MAINE,

Defendants.

COMBINED ORDER ON ALL PENDING MOTIONS

Background

Pending before the Court are four motions, three of which were filed by the parties after the Court issued its last order on March 7, 2025. The MCPDS Defendants and the State of Maine appealed that Order on March 27, 2025.

In this combined order, the Court will rule on: The MCPDS Defendants' Motion for M.R. Civ. P. 54(b)(1) Certification of the Phase One Litigation; the State of Maine as Party-in-Interest's Motion for Clarification of Procedural Schedule or in the Alternative to Stay all Matters Related to Count III Pending Appeal; the Plaintiffs' Motion to Continue Action on Count III; and the State of Maine's Motion for Summary Judgment on Count V.

In November of 2024, the parties requested that Counts I, II, III, and V be resolved via motions for summary judgment.[1] The Plaintiffs filed a Motion for Partial Summary Judgment as to liability only on Counts I, II, III, and V. The MCPDS Defendants filed a Motion for Summary Judgment on Counts I and II. And the State of Maine filed a Motion for Summary Judgment on Count V. On January 3, 2025, the Court issued a combined order (the "January 3rd Order") addressing these motions, a Jury Demand by the MCPDS Defendants as to Count I, and the State of Maine's Motion to Continue on Count V.

On Count I, the Court ruled that a jury trial was not available to the MCPDS Defendants, and granted Plaintiffs' motion for partial summary judgment on the issue of liability only. On Count II, the Court granted full summary judgment in favor of the MCPDS Defendants. On the habeas corpus action brought in Count III, the Court granted the Plaintiffs' motion for partial summary judgment on the issue of liability only, as the Plaintiffs had prevailed in Count I under the Sixth Amendment, but left the legal issue of the right to counsel under Article I, Section 6 of the Maine Constitution unresolved so that the parties could make arguments in a later proceeding. On Count V, the Court deferred ruling on the State of Maine's motion for summary judgment until the State could conduct a limited period of discovery, thus granting in part the State's motion to continue.

On January 22–24, 2025, the Court conducted a bench trial (the "January 2025 trial") on the remaining issues of remedies after granting partial summary judgment in favor of Plaintiffs on Counts I and III. With respect to Count I, the Court heard testimony from witnesses pertinent to the claim for permanent injunctive relief sought by Plaintiffs. As to Count III, the Court received a legal stipulation of the Plaintiffs and the State of Maine as Party-in-Interest that the right to

[1] The Court had previously dismissed Count IV on August 13, 2024.

counsel rooted in the Maine Constitution was at least co-extensive with the right to counsel guaranteed under the Sixth Amendment. With respect to the habeas relief sought by Plaintiffs in Count III, the State of Maine as Party-in-Interest repeatedly objected to the Court's consideration of any facts on the issue.

After this bench trial on remedies, the Court heard argument and permitted further briefing. On March 7, 2025, the Court issued an Order After Phase One Trial on Counts I, III, and V (the "March 7th Order"). The Order established standards for how habeas relief would be made available under Count III at individual habeas hearings that the Court planned to conduct in April and May of 2025, and also resolved the legal issue left unaddressed in the Plaintiffs' Motion for Partial Summary Judgment on Count III, the role of Article I, Section 6. Mar. 7th Order 24.

With respect to Count V, the Court again deferred ruling on the State's Motion for Summary Judgment. The State had earlier requested a continuance to enable it to obtain discovery, which the Court agreed to so long as it was completed on an expedited basis. In the March 7th Order, the Court made an inquiry of the State with respect to Count V and asked that the State respond within 10 days. The State timely responded, but the response was not presented to the Court for review until just a few days before the April 7, 2025 conference of counsel (the "April 7th conference") that was also ordered in the March 7th Order.

The April 7th conference was held to establish the course of future proceedings in light of the plan that the Court ordered the MCPDS Defendants to file with the Court by April 3, 2025 on how they proposed to comply with the permanent injunction issued in Count I. Their plan was timely filed. In addition, the Court held the conference to schedule and discuss how to conduct the individual habeas hearings that would be required in light of the relief ordered by the Court in Count III in the March 7th Order.

The first motion filed by the MCPDS Defendants was a Motion for Certification of the Phase One Litigation pursuant to M.R. Civ. P. 54(b)(1), dated March 17, 2025. On the last page of that motion, the MCPDS Defendants provided notice to Plaintiffs that they had no more than 21 days to file an opposition. Ten days later, before the 21 days had come and gone, the MCPDS Defendants filed a Notice of Appeal of the Court's March 7th Order on Count I.

On March 27, 2025, the same day the MCPDS Defendants filed their Notice of Appeal, the State of Maine as Party-in-Interest also filed a Notice of Appeal of the Court's March 7th Order. After filing that appeal, on April 2, 2025, the State of Maine as Party-in-Interest filed the second pending motion, a Motion for Clarification of Procedural Schedule; or in the Alternative to Stay all Matters Related to Count III Pending Appeal.

Counsel for the parties appeared and were heard at the April 7th conference. All pending motions were discussed, and the Plaintiffs informed the Court that they would be filing a Motion to Continue Action on Count III pending appeal, which they did on April 10, 2025. That is the third motion awaiting resolution by the Court.

The following is the Court's analysis and conclusions on the above-described pending motions.

Count I: Motion for Rule 54(b)(1) Certification of "Phase 1" Adjudication

As noted, this motion by the MCPDS Defendants was brought 10 days before they filed their March 27, 2025 appeal. The Defendants fault the Plaintiffs for not responding to their motion before the appeal was filed, but it is not clear to the Court that Plaintiffs knew when the MCPDS appeal would be filed. The only information the Court has as to the required timing of Plaintiffs' response was the so-called "21-day language" the Defendants provided on the last page of their March 17, 2025 motion.

In any event, after reviewing the pertinent exceptions in Appellate Rule 3 that might permit this Court to take action on the Motion for Certification, the Court agrees that it lacks authority to act on this motion given the pending appeal on Count I, as a Motion for Certification does not fall within the enumerated exceptions.

At the April 7th conference, counsel for the MCPDS Defendants nevertheless acknowledged that Rule 62(d) of the Maine Rules of Civil Procedure permits this Court in its discretion to "suspend, modify, restore, or grant an injunction" notwithstanding their appeal. The Court will continue trial court action on Count I pending appeal, consistent with Rule 62.

As a remedy for violations of the Sixth Amendment, the Court issued an injunction that required the MCPDS Defendants to provide continuous representation for the Plaintiffs, and to create a plan to do so. They were also ordered to prioritize Plaintiffs who remained in custody awaiting representation. In Exhibit A to that plan, they reported that as of March 7, 2025, there were 85 individuals who remained in custody without representation. After compliance efforts began, only six of those 85 individuals who were in custody on March 7, 2025 remained incarcerated without representation by April 3, 2025, but the Court understands that there were likely around 30 additional unrepresented individuals in custody as of that date, as unrepresented individuals were "added" to the spreadsheet after March 7, 2025. As of the date of this Order, those numbers have gone up again.

As noted in Exhibit B of Defendants' plan, MCPDS developed with the Judicial Branch a "real time shared document" to replace the "without counsel spreadsheet" previously relied upon by MCPDS, the courts, and Class Counsel. To date, this Court has received a number of such "real time" documents. On April 16, 2025, the Court received the first one, which showed 36 defendants

were in custody without counsel. On April 18, there were 35. On April 23, there were 44. On April 25, there were 49. The Court has not received an updated list since April 25th.

This new document contains two references to this case: "Robbins Date: 14 days after initial appearance" and "Robbins Date: 60 days after initial appearance." Because this case is mentioned in this document, the Court sent what it received to counsel of record, as it is not clear to the Court whether Class Counsel or any other counsel of record received these documents or will receive such documents in the future. If Class Counsel are not going to be routinely included as recipients of this information, the Court trusts the parties can agree on a way to make that happen without court order. If that is not possible, a motion or motions seeking or objecting to the provision of this information to all counsel of record may be filed with the Court.

In addition, because Rule 62(d) permits trial court action pending appeal, any party may file any pleading with the Court commensurate with the Rule.

Count III: Jurisdictional Challenge & Cross-Motions

Before addressing the pending cross-motions on Count III, the Court will address a related but previously unasserted theory related to Count III. For the first time in this litigation on Count III, at the April 7th conference, counsel for the State of Maine as Party-in-Interest raised with the Court the argument that, under 14 M.R.S. § 5512(1), criminal defendants who have been charged with a "felony" are not eligible for habeas relief. The State of Maine's argument is that a "jurisdictional command" embedded in Maine's habeas statutes prohibits the Court from providing relief to any Plaintiff charged with a "felony." Because the argument raises the issue of the Court's jurisdiction, it will be addressed here.

The statute in question reads as follows:

> The following persons shall not of right have such writ: Persons committed to jail for certain offenses. Persons committed to 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.

14 M.R.S. § 5512(1).

Section 5512 dates back to the beginning of Maine's statehood, in 1821. P.L. 1821, ch. 64 § 1. Its language has remained nearly identical for 204 years, and it has rarely been analyzed, let alone cited to. But the language of § 5512 does not do away with the court's discretionary authority in the habeas context.[2]

In *Welch v. Sheriff of Franklin County,* habeas petitioners had been charged with cheating by false pretenses, a felony in 1901. 95 Me. 451, 50 A. 88, 88 (1901). The Law Court ultimately dismissed their petition for a writ of habeas corpus, but not because the petitioners had been charged with felonies. The Law Court acknowledged that while "they are in confinement, charged with the commission of a felony, and are not entitled to the writ of habeas corpus *as a matter of right*," it was still within "the discretion of the court" whether or not to grant their petition. *Id.* at 88–89 (emphasis added). Section 5512 does not categorically bar individuals charged with a "felony" from obtaining habeas relief. The issues remain whether a petitioner's restraint is illegal, and according to the statute, whether issuance of the writ is "necessary for the furtherance of justice." 4 M.R.S. § 7.

Chapter 609 of Title 4, the habeas corpus chapter, supports this conclusion. Section 5518 lays out the proper procedure for a court to follow "[w]hen such writ is issued on an application in [sic] behalf of any person described in section 5512." 14 M.R.S. § 5518. The only people "described" in § 5512 are those committed to jail on charges of "felony" or treason; and those committed through a civil process. *Id.* This indicates that the Legislature recognizes there are

[2] *See* 4 M.R.S. § 7 (explaining that the Supreme Judicial Court "may issue all writs and processes . . . necessary for the furtherance of justice") *and* 4 M.R.S. § 105(2)(B) (stating that the Superior Court and the Supreme Judicial Court are vested with "concurrent jurisdiction" over the extraordinary writs).

circumstances in which a petitioner charged with a "felony" would indeed be entitled to habeas relief, as the Legislature laid out a procedure for specifically that purpose.

In its Opposition to the Plaintiffs' Motion to Continue Action on Count III, the State argues that "14 M.R.S. § 5512 bars members of the Plaintiff subclass from obtaining habeas relief if they are charged with Class A, B, or C offenses." PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 10. But this assertion does not explain how today's classification of offenses compares, if at all, to offenses considered "felonies" in 1821, when § 5512 was first adopted. Moreover, "felony" is not a term used in Maine's Criminal Code[3] or Rules of Criminal Procedure. In 1976, the State of Maine adopted Title 17-A (the Maine Criminal Code), replacing Title 17 (the former home of Maine's criminal laws). In doing so, the Legislature undertook a comprehensive reclassification and codification of most criminal offenses, including the explicit "abolition of the felony-misdemeanor distinction." M.R.U. Crim. P. 1 committee advisory note 1976.

The State's argument also fails to address or account for the second category of offense listed in § 5512(1): "Persons committed to or confined in prison or jail on suspicion of *treason*, felony or accessories before the fact to a felony . . . ." 14 M.R.S. § 5512(1) (emphasis added). The Legislature paired "felony" together with "treason." Treason is no longer a crime under Maine state law. Under Maine's former Title 17, treason was indeed a crime, 17 M.R.S.A. §§ 3801–03 (1975), repealed by P.L. 1975, ch. 499 (effective March 1, 1976), but those sections were repealed by the Legislature when Title 17-A was adopted in 1976 and were not included in the Maine Criminal Code.

[3] The one exception being the crime of felony murder, found in 17-A M.R.S. § 202.

The Court will 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.

The Pending Cross-Motions on Count III

The State as Party-in-Interest's Motion for Clarification of Procedural Schedule or in the Alternative to Stay All Matters Related to Count III Pending Appeal, dated April 2, 2025, along with Plaintiffs' April 10, 2025 Motion to Continue Action on Count III raise essentially the same issues. The Court will address them together.

Plaintiffs ask the Court to proceed with the habeas hearings ordered as a remedy in the Court's March 7th Order. They make a number of arguments in support of their position that the Court may continue trial court proceedings on Count III. First, they argue that the appeal is interlocutory and is one taken from an order granting partial summary judgment, and that Appellate Rule 3(c)(4) allows the Court to proceed while the appeal is pending. Pls.' Mot. to Continue Action on Count III 8–9. Second, they argue that under longstanding common law in Maine, habeas corpus relief is not stayed pending appeal. *Id.* at 2–8. Plaintiffs also ask the Court to clarify the meaning of the term "party-in-interest" as applied to the State in Count III given the State's ongoing assertion of sovereign immunity in Count V, which it claims bars this Court from including the State as a party in that count and/or taking any action of any kind against the State in this litigation. *Id.* at 9–11.

In opposition to the Plaintiffs' motion, the State argues that Maine Rule of Appellate Procedure 3(b) "unambiguously" precludes the Court from taking any further action on Count III while the State's appeal is before the Law Court. PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 4–6; M.R. App. P. 3(b) ("The trial court shall take no further action

pending disposition of the appeal by the Law Court."). It asserts that any conflicting rules and any common law to the contrary are secondary to Appellate Rule 3. *Id.* at 6–8. The State also objects to the Plaintiffs' characterization of the Court's March 7th Order as a summary judgment order or as an injunction. *Id.* at 5–6, 8–9. Neither characterization is accurate, the State argues, and thus the Court may not proceed on Count III without leave of the Law Court.

The Court has considered the arguments of the parties and has reviewed the pertinent rules and case law. The Court concludes that it may proceed with individual habeas hearings under Count III without first seeking leave of the Law Court for several reasons.

Habeas Relief While Appeal is Pending

a. The State's appeal is an interlocutory appeal of a summary judgment order, permitting the Court to proceed while that appeal is pending.

With respect to their first argument, Plaintiffs point to Appellate Rule 3(c)(4), which permits a trial court to act pending appeal if the appeal taken is of "an order granting or denying a motion for summary judgment."[4] They argue that the March 7th Order constitutes such an order. The State of Maine as Party-in-Interest disagrees, arguing that the March 7th Order is not properly understood as a summary judgment order because it came *after* the January 2025 trial and was distinct from the Court's January 3rd Order—the only order that could have fallen under Rule 3(c)(4).

As stated above, in the Court's January 3rd Order, the Court granted Plaintiffs' motion for partial summary judgment as to Count III on the issue of liability only, which meant that further

[4] In the alternative, Plaintiffs argue that Appellate Rule 3(c)(2) would also permit the Court to proceed without Law Court approval as the pending appeal is of injunctive relief granted by the trial court, pursuant to Maine Rule of Civil Procedure 62(a) and (d). The Plaintiffs argue that habeas relief "falls within any reasonable understanding of an injunction." Pls.' Mot. to Continue Action on Count III 9. The Court does not find this argument persuasive. The Court does not believe that habeas relief is properly understood as a form of injunctive relief. Maine caselaw and Maine statutes make clear that habeas corpus is a unique remedy, aimed at rectifying a specific type of harm and carried out with unique procedures, *see* 14 M.R.S. §§ 5501–47.

proceedings would be necessary. And at the January 2025 trial, the Court and the parties addressed issues related to remedies under Counts I and III. On Count I, the parties addressed factual issues pertinent to the injunctive relief sought by the Plaintiffs on Count I. On Count III, the Court permitted the Plaintiffs, the State of Maine as Party-in-Interest, and the Respondent-Sheriffs to present evidence, if they wished, on the issue of habeas remedies. The Sheriffs declined to do so. And finally, the State as Party-in-Interest and Plaintiffs addressed the role of the Maine Constitution in Count III, which was the legal issue remaining on liability in Count III.

The March 7th Order followed the January 2025 trial. Further briefing by the parties was requested and permitted. The Court made factual findings primarily on the issue of injunctive relief, but also related to Count III, including the numbers of unrepresented criminal defendants and how long some had been in custody. The Court relied upon some of these findings in establishing the standards that it would apply at the habeas hearings that were not part of the January 2025 trial proceedings, and which have yet to be conducted. Those standards described habeas relief that could be available to two separate groups of Plaintiffs, depending on whether they were held in custody, and for how long, or whether they were living in the community under Orders of Commitment subject to Conditions of Release, and for how long.

The January 3rd Order, the January 2025 trial, and the March 7th Order were all part and parcel of the decision of the parties to litigate and resolve Count III (and the other Counts) by way of Rule 56 of the Maine Rules of Civil Procedure, which anticipates and provides for such sequential proceedings. *See* M.R. Civ. P. 56(c) ("A summary judgment, interlocutory in character, may be rendered on the issue of liability alone.") *and* M.R. Civ. P. 56(d) (entitled "Case Not Fully Adjudicated on Motion," discussing the proper procedure when "judgment is not rendered upon the whole case" upon motions for summary judgment, and explaining that, where issues remain,

the court must then have a trial and make an order which, among other things, "direct[s] such further proceedings in the action as are just.").

While Rule 3(c)(4) does not distinguish between cases where full summary judgment is granted or denied, or when partial summary judgment on liability (or on a particular theory of liability) is granted or denied, it clearly contemplates that trial court action can continue toward resolution of the remaining issues in a particular count or cause of action while the appeal of an order for summary judgment remains pending in the Law Court. M.R. App. P. 3(c)(4) ("The trial court is permitted to *act on a case* pending resolution of any appeal of . . . an order granting or denying a motion for summary judgment . . . ." (emphasis added)). The Rule could be also be seen as designed to protect the appellate rights of the party aggrieved by an order issued under Rule 56 by permitting the appeal to be filed consistent within the deadline, but still permitting the court to complete any additional, subsequent proceedings necessitated by an order issued pursuant to the Rule. Any other interpretation of Civil Procedure Rule 56, read together with Appellate Rule 3(c)(4), could result in piecemeal litigation, significant uncertainty for parties and litigants, added expense, delays, and potentially multiple appeals to the Law Court on the same claim, cause of action, or "case."

b. The State's status as "Party-in-Interest" and its role in habeas hearings as permitted by 14 M.R.S. § 5512.

The Plaintiffs have asked the Court to clarify the State's role as "Party-in-Interest" to Count III. Pls.' Mot. to Continue Action on Count III 9. In its opposition, the State of Maine as Party-in-Interest asked the Court not to address Plaintiffs' question, stating that it would "not be appropriate" for the Court to do so, as that in itself would constitute impermissible further trial court action on Count III. PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 9–10. The Court disagrees. In the Court's view, the State's status as Party-in-Interest is pertinent

to its claim that no habeas hearings should be held while its appeal of the March 7th Order is pending.

The Plaintiffs note a disconnect between the State's role in Count III and its role in Count V. As to the latter, the State of Maine insists that it is beyond the reach of this Court, or any Maine court, to treat the State of Maine as a party in Count V due to its assertion of sovereign immunity. In Count III, acting as a Party-in-Interest, the State nevertheless insists it is entitled to enjoy all the traditional benefits which accrue to a "party."

The State's argument as to Count III fails to address how the Maine Legislature defines its role in habeas proceedings. The Legislature could have permitted the State to be a "party," but it did not do so. Instead, it defined the State's role to be that of an "interested person." 14 M.R.S. § 5522. The Legislature also defined the rights that the State has in habeas proceedings, namely the right to receive notice of the hearing, the right to be represented at the hearing, and the right to "object" at the hearing, if the State sees fit. *Id.*

In its August 13, 2024 Order on Pending Motions to Dismiss, this Court designated the State of Maine as a "Party-in-Interest" to Count III. Order on Pending Mots. Dismiss 17. In doing so, the Court "follow[ed] the lead" of Justice Douglas in the habeas proceeding *Peterson v. Johnson*. In *Peterson*, Justice Douglas relied on the procedure laid out in 14 M.R.S. § 5522. *Peterson v. Johnson*, SJC-23-02, at 5–6 (Nov. 6, 2023) (Douglas, J.).

The State itself cited to Justice Douglas's *Peterson* decision in its opposition to Plaintiffs' Motion to Continue Action on Count III, acknowledging the statutory role of the State in a habeas proceeding. PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 10 n.5. 14 M.R.S. § 5522 states: "If imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the Attorney General or other attorney for the State that he

may appear and object, if he thinks fit." The statute contains no express authorization for the Party-in-Interest to appeal the grant of a writ of habeas corpus, and it is also silent as to whether the filing of an appeal by the Party-in-Interest would result in the stay of an order of discharge of a habeas petitioner should the Court issue such an order.

Importantly, the hearings at which the State has the statutory right to be heard and to object have not occurred—or even been scheduled to occur—due to the State of Maine as Party-in-Interest's appeal, and the need for the Court to address these pending motions. Nevertheless, the State of Maine as Party-in-Interest submits that individual Plaintiffs, who are presumed innocent but who remain in custody without representation for an indefinite period of time, must continue to wait, again for an indefinite period of time, for the parties to litigate this Court's legal findings on Count III before they even get an individualized hearing on their habeas claims.

The Party-in-Interest's legislatively prescribed rights in a habeas proceeding may be exercised at the individual habeas hearings, but the Court concludes that those rights should not be construed to prevent such habeas proceedings from occurring at all.

c. Maine common law regarding habeas appeals does not support the Party-in-Interest's claim that the Court cannot conduct individual habeas hearings pending its appeal.

In the alternative, the Plaintiffs argue that habeas relief is not stayed pending appeal under Maine's common law, and that the common law, not the Rules of Civil or Appellate Procedure, governs habeas appeals.

Plaintiffs cite to Rule 81 of the Maine Rules of Civil Procedure and its reporter's notes. Rule 81 lays out the applicability of the Maine Rules of Civil Procedure and includes several particular proceedings to which the Rules of Civil Procedure have "limited applicability." M.R. Civ. P. 81(b). Habeas corpus is first on the list. Because the "extraordinary" writ of habeas corpus

"differ[s] so greatly" from what the justice system considers to be an "ordinary" civil action, it is "excluded from general coverage" by the Rules of Civil Procedure. M.R. Civ. P. 81 reporter's notes. Habeas proceedings "symbolize traditional rights of citizens." *Id.* In the habeas context, that symbol is "preserved" in "the practice prescribed by" Title 14, Chapter 609. *Id.*; M.R. Civ. P. 81(b)(1). But neither that chapter, the Rules of Civil Procedure, nor the Appellate Rules contain a process for appeal, either when the writ is granted or when the writ is denied.[5] There is no procedure for a respondent-sheriff or a party-in-interest to appeal a court's granting of a writ of habeas corpus, nor to pause a petitioner's release by doing so. Under such circumstances, Rule 81 declares "these proceedings shall follow the course of the common law." M.R. Civ. P. 81(b)(1).

Longstanding common law in Maine holds that the discharge of an incarcerated individual on a successful habeas petition cannot be stayed by an appeal. Plaintiffs cite to the 1881 Law Court case *Knowlton v. Baker*, which, in its entirety, reads

> Exceptions do not lie to the discharge of a prisoner on *habeas corpus.* The object of the writ is to secure the right of personal liberty; and this can only be accomplished by prompt action and a speedy trial. To allow exceptions to the order of the court in term time, or to the order of a judge in vacation, discharging a prisoner, would necessarily result in considerable delay, and thus defeat one of the principal purposes of the writ, namely, a speedy release. True, errors may result from such hasty action, and parties interested in the imprisonment of the person released, may thereby suffer. But the history of the writ shows that greater evils are liable to result from the want of speedy action. We have been cited to no authority justifying the allowance of exceptions in such cases, and we are not aware of the existence of any. On the contrary, it has been decided in Massachusetts that exceptions do not lie in such cases. And their *habeas corpus* act, in force at the time of the decision, so far as this question is concerned, was in no respect different from what ours is now. In fact, ours, as is well known, is substantially a transcript of theirs. *Wyeth v. Richardson,* 10 Gray, 240.

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[5] Instead, Chapter 609 contains multiple sections which explicitly give Maine courts the authority to release a petitioner on bail or to lower a petitioner's bail, even where the court has denied the petitioner's writ of habeas corpus. *See, e.g.*, 14 M.R.S. § 5513 ("If the writ is denied and an appeal taken to the law court, the person restrained may be admitted to bail within the discretion of the justice rendering judgment thereon, pending such appeal."); 14 M.R.S. § 5516 ("If it appears that he is imprisoned on mesne process for want of bail and the court or justice thinks that excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged."); 14 M.R.S. § 5531 ("The party may be bailed to appear from day to day until judgment is rendered or remanded or committed to the sheriff or placed in custody, as the case requires.").

72 Me. 202, 202–03 (1881). Where a writ has been granted, the purpose of habeas corpus—to swiftly secure the liberty of a person wrongfully detained—would be defeated if the delays resulting from an appeal could pause the discharge of a wrongfully detained person.

The Law Court reaffirmed this principle in *Stewart v. Smith*, holding as follows:

> 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 [sic] a speedy hearing and determination of the questions involved and as to the right of the petitioner to be released from imprisonment. To allow exceptions to the order for a discharge of the prisoner, by any judge who is given by statute the power to order the issuance of the writ and to act thereon, would be to seriously impair the efficiency of a process which has been relied upon by English speaking people for many centuries as the bulwark of their liberties, and would be inconsistent with the history and theory of the writ. It is better that occasional errors by a judge having jurisdiction should go uncorrected than that the speedy release of a person illegally deprived of his liberty should be prevented, or delayed by the length of time that must necessarily elapse in many cases before exceptions to an order for the discharge of the petitioner could be presented, argued, and determined by the proper tribunal.

101 Me. 397, 64 A. 663, 664 (1906).

The supreme courts of other states have cited to *Knowlton* (and other state's similar holdings) for the rule that "to allow a review of an order of another court made in a habeas corpus case is inconsistent with the object of the writ," that is, that a writ cannot be appealed at all. *Ex parte Sullivan*, 189 P.2d 338, 346 (Nev. 1948); *see also Wisener v. Burrell*, 118 P. 999, 999 (Okla. 1911) (citing to *Knowlton* and holding that "an appeal from a decision in habeas corpus, discharging a person held, as in the case at bar, does not lie."); *and In re Barker*, 56 Vt. 1, *5–6 (1884) (citing to *Knowlton* and *Wyeth v. Richardson,* 76 Mass. 240 (10 Gray 240)—the Massachusetts case cited by *Knowlton*—for the same conclusion). The Plaintiffs do not go so far, arguing only that, under Maine's common law, the State's appeal of Count III cannot result in the suspension of proceedings that might provide habeas relief to individual Plaintiffs.

The State of Maine as Party-in-Interest's arguments fail to account for these decisions. Instead, they assert that the cases cited by Plaintiffs do not advance their argument because they were supplanted by the adoption of Appellate Rule 3 in 2001.[6] This argument overlooks Rule 81(b)(1) of the Rules of Civil Procedure, which requires that court proceedings follow the common law where the procedure is "not specifically covered by statute *or other court rules*." (emphasis added). Appellate Rule 3 does not mention habeas proceedings, and it has never been applied to a writ of habeas corpus, either by the Law Court or the Superior Court. This Court cannot so easily ignore Law Court precedent, Rule 81 of the Rules of Civil Procedure and its reporter's notes, nor the history and meaning of the "great writ of liberty." *See Stewart*, 101 Me. 397, 64 A. 663, 664 (1906).

Having carefully considered the arguments of the parties, along with pertinent Rules, statutes, and common law, the Court concludes it has the authority, and indeed the obligation, to proceed with the individual habeas hearings that it ordered on March 7, 2025. The Court has ruled that the Plaintiffs are being wrongfully deprived of their liberty because they are being held, or are out on bail with restrictive conditions, without the constitutionally guaranteed assistance of counsel.

As the Court stated more than once in its March 7th Order, the preferred remedy for any such violation is the provision of counsel. If counsel is not made available within 7 days after the individual habeas hearing at which the Court determines the eligibility of the Plaintiff for habeas

[6] The State of Maine as Party-in-Interest also argues that Rule 81 does not apply because this is a *pre*-conviction habeas action, and Rule 81 is limited to *post*-conviction habeas actions. The Court disagrees. Rule 81(b)(1)(A) reads: "Proceedings for post-conviction relief in criminal actions or under the writ of habeas corpus." The "or" separates the two types of proceedings listed. Furthermore, the adoption of the post-conviction review chapter, 15 M.R.S. §§ 2121–32, explicitly replaced the remedies for so-called "post-conviction habeas corpus." If Rule 81 were referring only to post-conviction habeas corpus, including the second phrase at all would be redundant. The State's argument also fails to grapple with the reporter's note to Rule 81, which discusses the reason for the habeas exception and does not distinguish between pre- and post-conviction habeas proceedings.

relief, the Court could then provide individual relief consistent with the legal standards established in the March 7th Order. Those standards were established after careful consideration of the decisions made by courts in Oregon and Massachusetts that were forced to confront the same systemic and unconstitutional conditions within their indigent legal systems that exist in Maine today.

And yet individual Plaintiffs have not actually had their day in court. While they may have prevailed on some, but certainly not all, of their claims, not one of them has been brought into any courtroom to plead their habeas case, as the great writ has always required. *See Habeas Corpus*, BLACK'S LAW DICTIONARY (12th ed. 2024) (translating "habeas corpus" as Latin for "that you have the body" and defining the writ as being "employed to *bring a person before a court*, most frequently to ensure that the person's imprisonment or detention is not illegal." (emphasis added)). Many likely do not even know whether or not they are entitled to any relief by this Court, if for no other reason but that they remain unrepresented by counsel in their criminal cases who could, among other things, advise them of their rights to habeas relief.

In sum, to completely halt individual habeas hearings for all eligible class members in this Phase I litigation pending appeal would be contrary to the common law principles outlined in *Knowlton* and *Stewart*, and would result in the abrogation of a right that was described by the Law Court in *Stewart* as a "bulwark of [] liberties." And it is a right that both the Maine and United States Constitutions state "shall not be suspended." Me. Const. art. I, § 10; U.S. Const. art. I, § 9, cl. 2.

A common thread in all the cases reviewed by this Court is this: individuals whose liberties are restrained are entitled to *speedy* resolution of their claim that their restraint is illegal. These habeas hearings can only be conducted individually, as the rights at stake are personal to each

individual class member. *Betschart v. Garrett*, 700 F. Supp. 3d 965, 988 (D. Or. 2023), *amended*, 2023 WL 7621969, *1 (D. Or. Nov. 14, 2023).

The number of individuals that may be entitled to such relief has fluctuated over time, and that is likely to continue to be the case. Depending on the success of ongoing compliance efforts by the MCPDS Defendants, there may be a very few individuals entitled to relief, or there may be many more. That is simply unknowable until the habeas proceedings for these Class are scheduled and actually held.

In a separate Order to be issued over the next few days, the Court will notify counsel for the parties, including counsel for the State of Maine as Party-in-Interest, as to when and where the habeas hearings will occur, consistent with the process set out in the March 7th Order. It is likely that there will be two sessions scheduled in June and July in Penobscot and Androscoggin Counties. The Order will also address the obligation of counsel of record to agree to the list of individuals presumptively entitled to these individual hearings, consistent with the standards determined in the March 7 Order. The Court hopes the new "live" document being utilized by the Judicial Branch and MCPDS will be useful for this purpose, but it will also be necessary for the parties to indicate where the individuals are physically located. The Court will accommodate the concerns of the Respondent-Sheriffs as to how and when each individual will need to be transported and will do everything possible to conduct the hearings in the individual counties or regions where each individual is held.

Count V: Motion for Summary Judgment

One of the issues of first impression in this litigation centers around the State of Maine's assertion of sovereign immunity in Count V. Because the issue has been pending or deferred for some time, a brief procedural history follows.

It was first asserted on June 14, 2024, when the State moved to dismiss Count V, arguing that it is immune from suit under the doctrine of sovereign immunity and that the Declaratory Judgments Act does not provide Plaintiffs with a cause of action in Count V. Def. State of Maine Mot. Dismiss 4–10. The Court denied the State's motion in part, holding that the State is not immune from the declaratory relief Plaintiffs seek. Order on Pending Mots. Dismiss 9–17. The State therefore remained a Defendant in the case for the purposes of the declaratory judgment sought in Count V. *Id.* The Court deferred ruling on a question of first impression, namely whether the Court had the authority to issue injunctive relief against the State on Count V given the assertion of immunity, but allowed that the issue "may be explored and argued after trial, should Plaintiffs prevail in establishing liability." *Id.* at 15.

The State appealed the Court's August 13, 2024 Order to the Law Court. After that appeal was docketed, a single Law Court Justice remanded the case back to this Court, stating: "[t]he trial court may take any action on, and may proceed with, its matter in the usual course as though no appeal had been taken." *Robbins v. Comm'n on Pub. Def. Servs.*, No. Ken-24-450 (Me. Oct. 24, 2024) (Horton, J.). The State requested clarification, and the single Justice explained that the prior order "does not direct the Superior Curt to take any particular action and does not prohibit the Superior Court from taking any particular action." *Robbins*, No. Ken-24-450 (Me. Nov. 4, 2024) (Horton, J.).

The State then filed a Motion for Summary Judgment on Count V along with a Motion to Continue Trial on Count V. In the motion to continue, the State argued that it had been fundamentally unfair of the Court to deprive the State of an opportunity to conduct discovery on Count V. Def. State of Maine Mot. Continue 11–12. In its summary judgment motion, the State made a number of arguments, including ones previously presented to the Court in its motion to

dismiss: (1) that the State of Maine is immune from suit under the doctrine of sovereign immunity and has not waived its immunity; (2) that the Declaratory Judgments Act does not form the basis of a cause of action against the State of Maine; and (3) that the Declaratory Judgments Act does not provide for the relief Plaintiffs seek from the State of Maine. Def. State of Maine Mot. Summ. J. 3–13.

The Court addressed both motions in its January 3rd Order. As to the motion to continue, the Court granted the motion in part, permitting limited discovery on an expedited schedule by way of depositions only. Jan. 3rd Order 41. The Court did not otherwise delay resolution of any count except Count V, as Count V was "the only Count in which the State of Maine is now a party." *Id.* at 38.

After the January 2025 bench trial and post-trial briefing by the parties as to remedies, the Court issued its March 7th Order. The Court declined to reverse its August 13, 2024 conclusion that the State was not immune from Plaintiffs' request for declaratory judgment against the State, citing to *Welch v. State*, 2004 ME 84, 852 A.2d 214, and Judge Duddy's decision in *NECEC Transmission LLC v. Bureau of Parks & Land*, No. BCD-CIV-2021-058, 2021 WL 6125325 (Me. B.C.D. Dec. 16, 2021). March 7th Order 43. As to the issue of injunctive relief under the Declaratory Judgments Act, the Court requested that counsel for the State consider the Law Court's decision in *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, 237 A.3d 882, and advise the Court whether the State would agree to assist its agency actors, the MCPDS Defendants, to comply with the injunction ordered against them in Count I. March 7th Order 44. If so, it would become unnecessary for the Court to consider or resolve "the complex issues of first impression as to the injunctive relief requested by Plaintiffs." *Id.* at 44.

On March 17, 2025, the State responded to the Court's request. Counsel for the State stated that it had never committed the State to stepping up and supporting MCPDS in providing a remedy. Def. State of Maine's Response to the Court's Inquiry 2. The State stated it was unable to answer the Court's inquiry at all because: (1) *Avangrid*'s "commentary has no bearing on this case," as it involved a discrete state official; and (2) counsel for the State does not know which state officers the Court might issue injunctive relief against. *Id.* at 2–3. The State also questioned whether the Court was "asking for the State of Maine to commit to enact legislation, to appropriate additional funds to MCPDS or to the Judicial Branch, or to promulgate rules." *Id.* at 4.

The Court has repeatedly acknowledged in this case that, under Maine's separation of power, no court in Maine has the authority to order the Legislature to act or to appropriate funding of any kind. Counsel for the State is surely aware of this. The issue is whether in a civil case a court has the authority to declare and enforce the clear holdings of *Gideon v. Wainwright* and its progeny—that it is the *State's* obligation to provide indigent criminal defendants with representation. Or as counsel for the MCPDS Defendants put it very early in this litigation: it is the State of Maine that is the "real party in interest in this matter." Mot. Dismiss Tr. 16, 17 (May 26, 2022). The State nevertheless asserts that no court in Maine has the authority to order the State, as a party, to do anything in any civil case whenever the defense of sovereign immunity is asserted. According to the State of Maine's attorney, this is so even when, as here, the Court would not be ordering the Legislature to appropriate funds, or ordering the Governor to do anything, and even when fundamental rights to liberty and due process have been violated.[7]

[7] *See Welch v. State*, 2004 ME 84, ¶ 8, 853 A.2d 214 ("To allow the State to assert sovereign immunity as a bar to quiet title actions brought in its own courts by private citizens *would fly in the face of the constitutional protections and property rights of the people.* As the Supreme Court said, 'sovereign immunity . . . does not confer upon the State a concomitant right to disregard the Constitution.'" (quoting *Alden v. Maine*, 527 U.S. 706, 754–55 (1999) (emphasis added)); *and NECEC Transmission LLC v. Bureau of Parks & Land*, No. BCD-CIV-2021-058, 2021 WL 6125325, *8 n.15 (Me. B.C.D. Dec. 16, 2021) (declining to formally address the sovereign immunity defense raised by defendants on a motion for preliminary injunction, but stating that the court was "inclined to agree" with the line of cases across

On April 22, 2025, L.D. 1101 was enacted as an emergency measure by the Maine Legislature. P.L. 2025, ch. 40 (emergency, effective April 23, 2025). In Section 3, it enacted 4 M.R.S.A. § 1807, which now authorizes Maine judges to appoint private attorneys for indigent defendants irrespective of their enrollment on MCPDS "rosters," so long as certain requirements are met. It requires the court to find that no public defender, assigned counsel, contract counsel, or employed counsel is available; that the private attorney is "qualified" in the view of the court and has three years of legal experience "relevant to the pending matter"; and that the attorney has not otherwise been disqualified by MCPDS. 4 M.R.S. § 1807(1)(A)–(C).

Section 4 requires MCPDS, an Executive Branch agency, to submit a report to the Judiciary Committee by January 1, 2026, updating the Legislature on the status of this case, *Robbins v. Billings, et al.*, CV-22-54. It requires MCPDS to advise the Legislature of the number of defendants granted habeas relief by the court; the type of habeas relief granted; along with efforts made by MCPDS to provide representation before any habeas relief was granted. *Id.* Section 6 provides "ongoing funding" to create additional public defenders and other positions within MCPDS.

Section 5 is directed at the Judicial Branch. It requires the Branch to submit its own report to the Legislature by the same date required of MCPDS, providing statistics on the number of cases in which courts have appointed private counsel as now permitted.

In Sections 4 and 5, the Legislature states in reference to the reports required of both MCPDS and Judicial Branch that the "Joint Standing Committee on Judiciary may report out legislation related to the report to the Second Regular Session of the 132nd Legislature."

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other states that hold that sovereign immunity is not an available defense when the issue is constitutional—"the availability of judicial review here appears to be integral to the constitutional framework.").

In light of this new law, and the Legislature's active and ongoing oversight of Maine's indigent defense system, the Court concludes that it is not necessary for it to address the issue of first impression as to its authority, or any Maine court's authority, to order injunctive relief against the State. Clearly, the Legislature is sufficiently concerned about the ongoing crisis of non-representation that it has ordered MCPDS to report by the end of the year on its efforts to address the crisis and provided additional resources to increase the capacity of the agency to provide counsel to unrepresented indigent criminal defendants. And the Legislature empowered individual jurists to appoint counsel under certain circumstances when no attorney approved by MCPDS is available to represent an indigent criminal defendant. In other words, it could be said that the State of Maine's three branches of government are working within their own spheres of authority to address the same problem: the crisis of unrepresented indigent criminal defendants.

In sum, given the directives made by the Legislature to the Executive and Judicial Branches, and the Legislature's ongoing oversight and monitoring, there is no need for this Court to further address the issues of first impression generated in Count V. These actions constitute the work of "The State" to remedy Plaintiffs' harms. The Court believes that the constitutional violations that have been established can be adequately redressed by the injunctive relief ordered against MCPDS Defendants, in tandem with individual habeas hearings that will now proceed as provided in this Combined Order.

CONCLUSION

The entry will be:

The MCPDS Defendants' Motion for M.R. Civ. P. 54(b)(1) Certification of the Phase One Litigation is DENIED. The Court may continue trial court proceedings pending appeal consistent with Rule 62(d) of the Maine Rules of Civil Procedure.

The State of Maine as Party-in-Interest's Motion for Clarification of Procedural Schedule or in the Alternative to Stay all Matters Related to Count III Pending Appeal is DENIED.

The Plaintiffs' Motion to Continue Action on Count III is GRANTED.

The State of Maine's Motion for Summary Judgment on Count V is DENIED in part with respect to Plaintiffs' request for Declaratory Relief but GRANTED in part with respect to their request for Injunctive relief against the State of Maine.

The Clerk shall note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: May 7, 2025

Justice, Maine Superior Court