STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Docket No. KENSC-CV-22-54

ANDREW ROBBINS, et al.,

Plaintiffs/Petitioners,

v.

STATE OF MAINE, et al.,

Defendants/Respondents.

PLAINTIFFS' MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND HABEAS REMEDIES.

Following the Court's January 3, 2025 Combined Order ("Order") on the parties' cross-motions for summary judgment, and consistent with the Court's January 6, 2025 scheduling order, the Subclass members file this motion for relief, requesting the following remedies. First, with respect to Count I, the Subclass members request: (1) a declaratory judgment that the MCPDS Defendants have violated the Subclass's constitutional rights by failing to provide continuous representation of counsel, and (2) an injunction requiring MCPDS to provide continuous representation of counsel to the Subclass members from the time of their initial appearance, and at all stages of the criminal process. To facilitate Defendants' compliance, the Subclass proposes that the Court require Defendants to submit a detailed written plan, within 30 days of the date of its order, outlining the steps the State will be taking to promptly comply with this order by guaranteeing timely and continuous appointment of counsel to the Subclass members.

Second, with respect to Count III, the Subclass members request an order that: (1) Subclass members who are detained and remain without counsel 7 days after initial appearance or withdrawal of counsel must be released from detention, and (2) Subclass members who remain without counsel 45 days after initial appearance or withdrawal of counsel must have the charges against them dismissed without prejudice until such time as counsel is made available to provide representation to that Subclass member.

When it comes to crafting a meaningful remedy for systemic delays in appointment of counsel, the Court is not writing on a blank slate. In several closely analogous cases of systemic non-representation, courts have ordered equitable relief on all fours with the relief sought here: release from detention for indigent defendants who remain unrepresented for over 7 days after initial appearance or withdrawal of counsel, and dismissal of charges without prejudice for defendants who remain unrepresented for over 45 days.

For example, in *Lavallee*, indigent criminal defendants in Massachusetts filed suit because, as here, they had not been appointed attorneys "due to a shortage of lawyers" "as a result of the Commonwealth's chronic underfunding" of the indigent defense system. *Lavallee v. Justices in Hampden Superior Ct.*, 812 N.E.2d 895, 900 (Mass. 2004). The Massachusetts Supreme Judicial Court rejected the Attorney General's argument that courts should order members of the bar to take on representation pro bono or that judges could adequately remedy the problem in individual cases through continuances, explaining that petitioners "cannot be required to wait on their right to counsel while the State solves its administrative problems." *Id.* at 240. Instead, the court ordered a meaningful, immediate remedy with definite timelines: "the Superior Court RAJ [Regional Administrative Justice] shall schedule a prompt status hearing with respect to each defendant who has been held for more than seven days, or each defendant

whose case has been pending for more than forty-five days," and if at that hearing there is "still no counsel willing and available to represent a defendant," then "the Superior Court RAJ must order the following: (1) with respect to any defendant who has been held in lieu of bail or pursuant to an order of preventive detention for more than seven days, the Superior Court RAJ shall order that the defendant be released on personal recognizance," with appropriate conditions, and "(2) with respect to any defendant who has been facing a felony charge for more than forty-five days without counsel," or facing a misdemeanor charge carrying a risk of imprisonment, "the Superior Court RAJ shall order that the charge or charges be dismissed without prejudice until such time as counsel is made available to provide representation to that defendant." *Id.* at 912.

Similarly, in *Betschart*, indigent defendants pursued class habeas claims because, as here, hundreds of defendants remained unrepresented for "days, weeks, and months" because "there were no longer enough lawyers to represent them." *Betschart v. Oregon*, 103 F.4th 607, 612-13 (9th Cir. 2024). As in *Lavallee*, the court ordered relief with clear, definite timelines: the court ordered both that "[i]f counsel is not secured within seven days of the initial court appearance for any member of the Custody Class, the sheriff of that county is ordered to release the class member from custody," and that "[i]f counsel is secured within the seven-day period but subsequently withdraws due to a conflict within that period, new counsel must be secured within seven days of the withdrawal. If new counsel is not secured within the seven-day period following withdrawal, the sheriff of that county is ordered to release the class member." *Betschart v. Garrett*, 2023 WL 7621969, at *1 (D. Or. Nov. 14, 2023).[1]

[1] The *Betschart* court's November 14 order included additional details concerning precisely how the relief should be implemented, which could likewise serve as a model here.

"[T]he duty to provide . . . counsel falls squarely on government, and the burden of a systemic lapse is not to be borne by defendants." *Lavallee*, 812 N.E.2d at 911. This Court can "urge such cooperation [among branches of government] in fashioning a permanent remedy for . . . a systemic problem of constitutional dimension," but "[i]n the meantime . . . while the constitutional rights of particular petitioners have not yet been adequately addressed," it is the Court's duty "to fashion an appropriate remedy to the continuing constitutional violation suffered by indigent criminal defendants in the courts" across Maine. *Id.* That remedy must require Defendants to offer unrepresented indigent defendants more than "a shoulder shrug" or "a promise that they are 'working on it'": to afford meaningful relief, the Court should set clear timelines requiring the release from pretrial detention and, ultimately, dismissal of charges for the indigent defendants who have waited far too long to be provided a lawyer. *Betschart*, 103 F.4th at 612.

I. The Court has both the authority and the obligation to safeguard the Subclass members' right to counsel.

As this Court has held, "fundamentally, neither the Legislature, nor any Executive Branch actor, may under our constitutional system take away from the Judicial Branch the fundamental authority to adjudicate and remedy constitutional violations." February 27, 2024 Combined Order, at 12 (citing *Burr v. Dep't of Corrections*, 2020 ME 130, ¶ 27, 240 A.3d 371). The Court possesses "authority after trial to declare what the law is (or is not) regarding the rights and obligations of the parties" when indigent defendants "remain unrepresented for indefinite periods of time." Order on Motion to Amend Class, at 9. And the Executive Branch "can be ordered to comply with constitutional standards and to perform acts consistent with their obligations so long as the Court considers and adheres to the doctrine of separation of powers." *Id.* at 9 (citing *Burr*). Courts have authority to order injunctive relief for civil rights violations

under Section 1983 when, as the Court found here, *"a constitutional violation has already occurred* or the threat is both real and immediate." *Burr*, 202 ME 130, ¶ 27 (court has power to issue injunction that defines what is prohibited and enjoins "specific conduct that the court found unconstitutional—a power that rests with the judiciary").

The Court "has broad authority to fashion an equitable remedy for the constitutional violations at issue in this case." *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1133–34 (W.D. Wash. 2013) (ordering injunctive relief to remedy systemic Sixth Amendment violations, citing *Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.")). Indeed, "the unique characteristics of the indigent defense crisis make it an ideal candidate for reform through the use of structural injunctions." Nicholas A. Lutz, A Right Without A Remedy: The Sixth Amendment Right to Counsel and the American Indigent Defense Crisis, 7 U. Denv. Crim. L. Rev. 103, 113 (2017).

Separation of powers principles do not relieve the court of its "essential obligation to provide a remedy for violation of a fundamental constitutional right." *Hurrell-Harring v. State*, 15 N.Y.3d 8, 26, 930 N.E.2d 217, 227 (2010) (rejecting state's argument that remedies for systemic Sixth Amendment would violate separation-of-powers principles, citing *Marbury v. Madison*, 1 Cranch, 5 U.S. 137, 147, 2 L.Ed. 60 (1803) ("every right, when withheld, must have a remedy, and every injury its proper redress"). Defendants "are obligated to comply with the dictates of the Sixth Amendment," and the Court must "'not shrink from [its] obligation to enforce the constitutional rights of all persons.'" *Wilbur*, 989 F. Supp. 2d at 1133–34 (*quoting Brown v. Plata*, 536 U.S. 493, 511 (2011)). Indeed, even in "times of crisis, judges must not

shrink from [their] duty to safeguard the rights' guaranteed by the Constitution," and "denying a watershed right to criminal defendants, presumed to be innocent, is a textbook example of shrinking from this duty." *Betschart*, 103 F.4th at 626 (cleaned up) (affirming order to release indigent defendants not provided counsel within 7 days).

"The continuation of what is now an unconstitutional state of affairs cannot be tolerated." *Lavallee*, 812 N.E.2d at 911. The Court should exercise its authority to order meaningful equitable relief to remedy the ongoing widespread violations of the Subclass members' constitutional right to counsel.

II. The Court should order declaratory and injunctive relief requiring Defendants to provide continuous representation of counsel to the Subclass members from the time of their initial appearance.

On Plaintiffs' Section 1983 claim against MCPDS (Count I) , Plaintiffs seek a declaratory judgment consistent with the ruling made in the Court's January 3, 2025 Order: the MCPDS Defendants are violating the federal constitution by failing to provide continuous representation of counsel to the Subclass members from the time of their initial appearance, and at all stages of the criminal process. Order, at 15-16. The declaratory judgment should also reflect that, because the federal constitution establishes a floor for the protection of individual rights, the MCPDS Defendants are necessarily also violating the state constitution. *See, e.g., State v. Rees*, 2000 ME 55, ¶ 5, 748 A.2d 976, 978; *All. For Retired Ams. v. Sec'y of State*, 240 A.3d 45, 54 (Me. 2020) *Opinion of The Justices*, 306 A.2d 18, 21 (Me. 1973); Clint Bolick, Principles of State Constitutional Interpretation, 53 Ariz. St. L.J. 771, 773 (2021) ("Moreover, the national constitution provides a 'floor' for the protection of rights, above which state courts may find greater protections in their state constitutions."); William J. Brennan, Jr., The Bill of Rights and the States: The Revival of State Constitutions As Guardians of Individual Rights, 61 N.Y.U.L.

Rev. 535, 548 (1986) ("As is well known, federal preservation of civil liberties is a minimum, which the states may surpass so long as there is no clash with federal law.")

In addition, on Count I, Plaintiffs seek an injunction ordering MCPDS—the agency Maine has charged by statute with providing indigent defense services throughout the state—to provide continuous representation of counsel to the Subclass members from the time of their initial appearance and at all stages of the criminal process. *See* Order on Motion to Amend, at 9 (holding that agency actors can be ordered to comply with constitutional standards and to perform acts consistent with their obligations); 4 M.R.S. §§ 1801, 1804(3)(A), 1804(3)(D) (detailing MCPDS's statutory obligation to provide indigent defense services). To provide some assurance that Defendants will comply, and *soon*, Plaintiffs propose that the Court require Defendants to submit a detailed written plan, within 30 days of the date of its order, explaining how they will promptly comply with the order. This is precisely the kind of injunctive relief endorsed in *Burr*: an injunction that "defines what is prohibited" by law—a power "that rests with the judiciary"—and that "leaves it to [Defendants] to decide how to comply." *Burr*, 240 A.3d at 379.

The deprivation of the Subclass's right to counsel easily meets the standard for injunctive relief. *See Windham Land Tr. v. Jeffords*, 2009 ME 29, ¶ 41, 967 A.2d 690, 702. The four criteria for permanent injunctive relief, which must be weighed together, are: "(1) the party would suffer irreparable injury if the injunction is not granted; (2) such injury outweighs any harm that granting injunctive relief would inflict on the party opposing the injunction; (3) the public interest will not be adversely affected by granting the injunction; and (4) the plaintiff succeeds

on the merits." *Id.*[2] Each of these factors weighs heavily in favor of granting injunctive relief to the Subclass. Plaintiffs intend to present evidence relevant to these factors at the upcoming hearing on January 22-24.

Success on the merits. Courts place the greatest emphasis on the "success on the merits" factor, and that "holds especially true" when plaintiffs seek an injunction "because of an alleged constitutional violation." *Betschart v. Garrett*, 700 F. Supp. 3d 965, 980 (D. Or. Nov. 2, 2023). The Subclass members have plainly succeeded on the merits of their Sixth Amendment claims: following extensive discovery and based on hundreds of pages of summary judgment briefing, the Court ruled that the Subclass members "have been deprived of continuous representation after the right to counsel attaches as required in Maine by the Sixth Amendment; and because counsel is not being provided at critical stages as also required by the Sixth Amendment." Order, at 9.

Irreparable harm. "[T]he deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). That is plainly the case here, where each day hundreds of indigent defendants facing imprisonment are being denied their right to counsel, a "right of the highest order." *United States v. Proctor*, 166 F.3d 396, 402 (1st Cir. 1999) (Coffin, J.). As the court explained in *Betschart*, "Petitioners will continue to suffer irreparable harm" unless they are provided an attorney; "[t]here is simply no alternative redress for the harm that is being suffered here." *Betschart v. Garrett*, 700 F. Supp. 3d at 984 (D. Or. Nov. 2, 2023); *see also Wilbur*, 989 F. Supp. 2d at 1133–34 ("[a] system that makes it impossible

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[2] These are identical to the factors for granting preliminary injunctive relief, except that the analysis for preliminary relief looks to "likelihood of success on the merits" rather than actual success on the merits. *See, e.g., Bangor Historic Track, Inc. v. Dept. of Agric.*, 2003 ME 140, ¶ 9, 837 A.2d 129, 132.

for appointed counsel to provide the sort of assistance required by the Sixth Amendment works irreparable harm: the lack of an actual representational relationship and/or adversarial testing injures both the indigent defendant and the criminal justice system as a whole."); *Lavallee*, 812 N.E.2d at 906 (finding no adequate alternative remedies were available to address deprivation of counsel and therefore judicial intervention was required).

If more were needed (and it is not), Plaintiffs' Motion for Partial Summary Judgment and accompanying Statement of Undisputed Material Facts (SMF) catalogued extensive expert testimony concerning the significant harm to Subclass members from the unconstitutional denial of counsel—both to Subclass members' ability to defend against pending criminal charges and more broadly to their housing, employment, family relationships, and medical needs. As Plaintiffs explained in their Reply in Support of their Motion for Partial Summary Judgment and their Reply to Defendants' Response to Plaintiffs' Statement of Material Facts, Defendants did not meaningfully contest this evidence, instead quibbling on the margins with whether the expert testimony was cognizable under the summary judgment standard. These arguments were meritless and, regardless, the Court can rely on controverted testimony and opinion when issuing an injunction. *See FrontierVision Operating Partners, L.P. v. Town of Naples, Maine*, 2001 WL 220192, at *1 (D. Me. Mar. 7, 2001) (resolving factual disputes when resolving request for injunctive relief). In particular, the Court can look to Plaintiffs' SMF, paragraphs 57-61, 71-79, 85-89, 96-103, 109-112, and 118, for testimony about the irreparable harms to the ability of individuals to successfully defend themselves or reach a just resolution to their underlying criminal cases. And, the Court can look to Plaintiffs' SMF paragraphs 130-148 for testimony about the irreparable harms to health, safety, and familial relations caused by Defendants' failure to provide counsel.

Balancing of Equities and Public Interest. The balance of equities weighs strongly in favor of the Subclass.[3] The State is only being asked to comply with a federal and state constitutional obligation established by the U.S. Supreme Court more than six decades ago. The State, in other words, just needs to follow the law—as nearly every other state in the country has managed to do. On the other hand, without immediate relief, the Subclass members will continue to be deprived of their fundamental constitutional right to counsel, with all of the negative practical consequences for their legal defenses and their lives detailed by Plaintiffs' experts. The public interest also would be served by the requested injunction. As the court explained in *Betschart*, the balance of equities favors the petitioners because "the deprivation of class members' constitutional rights threatens the rights of all," because "all citizens have a stake in upholding the Constitution." *Betschart v. Garrett*, 700 F. Supp. 3d at 984 (D. Or. Nov. 2, 2023) (cleaned up). The failure to provide counsel to the Subclass members undermines the presumption of innocence—"that bedrock 'axiomatic and elementary principle whose 'enforcement lies at the foundation of the administration of our criminal law.'" *In re Winship*, 397 U.S. 358, 363 (1970) (cleaned up). The failure to provide counsel likewise impedes the progress of criminal prosecutions, undermining the public interest in a functioning court system. And widespread detention of criminal defendants in violation of their constitutional rights erodes the public's faith in the court system. The public undoubtedly "has an interest in a functioning criminal justice system and the protection of fundamental rights." *Betschart v. Oregon*, 103 F.4th 607, 625 (9th Cir. 2024).

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[3] Where the respondent is the government, the "balancing of equities" and "public interest" factors for injunctive relief "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

In sum, on Count I, the Subclass requests that the Court provide: (1) a declaration that the MCPDS Defendants are violating the federal and state constitutions by failing to provide continuous representation of counsel to the Subclass members from the time of their initial appearance, and at all stages of the criminal process; and (2) injunctive relief requiring Defendants to provide continuous representation of counsel to the Subclass members from the time of their initial appearance, and at all stages of the criminal process.

III. Under Count III, the Court should order habeas relief requiring release from detention after 7 days and dismissal without prejudice after 30 days.

To safeguard against the risk Defendants will not comply with the order requested above by promptly providing counsel to the Subclass members going forward, Plaintiffs seek preemptive habeas relief under Count III. Specifically, the Court should order: (1) Subclass members who are detained and remain without counsel 7 days after their initial appearance or withdrawal of counsel must be released from detention, and (2) Subclass members who remain without counsel 45 days after their initial appearance or withdrawal of counsel must have the charges against them dismissed without prejudice until such time as counsel is made available to provide representation to that Subclass member. For current members of the Subclass, these deadlines should begin running 30 days from the date of the Court's order, *i.e.*, the same day the Defendants would be required to submit their compliance plan.

This Court has already found a violation of the Subclass's Sixth Amendment right to continuous representation of counsel from the time of initial appearance, and based on that ruling it necessarily also has found a violation of Article I, Section 6 of the Maine Constitution. While the Maine Constitution's protection can be broader than the Federal Constitution, it cannot be less broad. Thus, based on the Court's findings, liability on Count III has been established. The Subclass members are therefore entitled to discharge from their pre-conviction confinement and

restrictive conditions of release, which have become unconstitutional due to the Sixth Amendment violation. No further evidentiary showing is required to support the Subclass's entitlement to habeas relief—under Maine statutory law, once the court has found that the imprisonment or restraint is unlawful, the court "shall discharge" the accused from that illegal restraint. 14 M.R.S. § 5523.

The only remaining question is precisely how the Court should fashion its habeas relief. Here, clear timelines are necessary to "provide[] prompt relief to those defendants whose right to counsel is being violated," to "set[] a clear deadline by which counsel must be secured in order to proceed with the case or continue to hold a defendant," and to "provide[] all concerned with an opportunity of known duration to make all reasonable efforts to cure this violation in the most direct and effective way, i.e., to secure counsel for the defendant." *Lavallee*, 812 N.E.2d at 912. The time frames proposed by the Subclass are consistent with those imposed by courts in similar cases of systemic, indefinite delays in appointment of counsel. *Id.* at 901, 912 (ordering release of indigent defendants in detention not provided counsel within 7 days, and ordering dismissal of charges without prejudice for those not provided counsel within 45 days); *Betschart v. Garrett*, 2023 WL 7621969, at *1 (ordering release if counsel not secured within 7 days of initial court appearance, or within 7 days of withdrawal of counsel); *David v. Missouri*, No. 20AC-CC0093, at 13, 15-16 (Mo. Circuit Ct. Cole Cnty., Feb. 6, 2023) (holding that right to counsel is violated if counsel not provided within *earlier* of two weeks from first appearance or time to assist with an earlier critical stage such as bail hearing). Setting these clear time limits "recognizes the public's strong interest in bringing serious criminals to justice swiftly, but it also recognizes society's vital interest in the fair conduct of criminal proceedings." *Lavallee*, 812 N.E. 2d at 911.

A. The Court has broad authority to order the requested habeas relief.

The Court has already ruled that a Sixth Amendment violation "has been established as a matter of law" and that it will apply those legal findings to the habeas proceedings. Order, at 35. And, although the Court's January 3, 2025 order found a violation only of the Sixth Amendment, that ruling necessarily entails a finding of violation of Article I, Section 6 of the Maine Constitution as well: it is black letter law that the federal constitution creates "constitutional minimum or universal mandate" for protection of individual rights, and so our state constitutional right to counsel must be *at least* as protective as its federal corollary. *State v. Rees*, 2000 ME 55, ¶ 5, 748 A.2d 976, 978.[4] Based on the Court's findings, the Subclass members are entitled to discharge from their pre-conviction confinement and restrictive conditions of release. The Court therefore should order habeas relief to remedy the ongoing unlawful restraints on the liberty of Subclass members denied their constitutional right to counsel. 14 M.R.S. § 5523.

Habeas corpus is the appropriate remedy when a petitioner challenges "the fact or duration of his confinement" *or* seeks a "quantum change" to a less restrictive form of custody. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 873 (1st Cir. 2010). Under Maine's habeas statute, "[e]very person unlawfully deprived of his personal liberty by the act of another . . . shall of right have a writ of habeas corpus." 14 M.R.S. § 5501; *see also* 14 M.R.S. § 5511 (authorizing "any person" to seek writ of habeas corpus on behalf of "any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced"). An action in habeas corpus is available "to protect and vindicate [a person's] right of personal liberty by freeing [the person] from illegal restraint." *Roussel v. State*, 274 A.2d 909, 913 (Me. 1971); *Hughes v. State*, 161 Me.

[4] The Court's ruling in Defendants' favor on Count II made clear that it did "not address the meaning or breadth of Article I, Section 6 of the Maine Constitution," but was instead "limited to a decision of what is required for private citizens to bring claims under the Maine Civil Rights Act." Order, at 34.

424, 428, 213 A.2d 435, 437 (1965) (holding that habeas is "to afford the citizen a speedy and effective method of securing his release when illegally restrained of his liberty," and ordering petitioner discharged because "[t]he process under which the petitioner was incarcerated is illegal"). Under Maine law, if the court finds that the imprisonment or restraint is unlawful, the court "*shall discharge*" the accused from that restraint. 14 M.R.S. § 5523 (emphasis added).

Importantly, in the context of a habeas petition, custody is not limited to "actual physical custody;" instead, a petitioner is "in custody" if they are subject to significant restraints on their liberty that are not otherwise experienced by the general public. *Jones v. Cunningham*, 371 U.S. 236, 239 (1963); *see also Dow v. Cir. Ct. of First Cir. Through Huddy*, 995 F.2d 922 (9th Cir. 1993) (habeas available to a person required to attend a class); *Barry v. Bergen Cnty. Prob. Dep't,* 128 F.3d 152 (3d Cir. 1997) (habeas available to a person facing community service requirement); *Nowakowski v. New York*, 835 F.3d 210 (2d Cir. 2016) (habeas available in light of one-day community service requirement and requirement to report to court afterwards). These kinds of liberty restrictions are not abstract possibilities—they are conditions to which Subclass members are routinely subjected. As this Court explained in its January 3, 2025 Order, even for indigent defendants who are not in jail, "arguments about conditions of release constitute a 'significant infringement of liberty.'" Order, 26 (quoting *Lerman*, No. ANDCD-CR-2024-451 Unified Criminal Docket, at 12 (Androscoggin Cnty., June 1, 2024). Maine's bail code (15 M.R.S. § 1026), for instance, states that a person may be released "on personal recognizance," or with any of a list of conditions, including continued employment, seeking employment, education, limitations on places the person can live or travel, regularly reporting to a government agency, a curfew, submission to random searches, and many others. Violating these conditions can lead to new charges and revocation of bail. 15 M.R.S. § 1026(5)(B). Any one of these

conditions is a liberty restraint not suffered by the general public. Habeas relief is therefore also available to Subclass members who have been released with restrictions. For Subclass members released with restrictions, relief from that restraint on their liberty requires the dismissal of charges without prejudice, until such time as counsel is made available.

The violation of the Subclass's Sixth Amendment rights requires a remedy commensurate with the wrong. *See, e.g., Colson v. Joyce*, 646 F. Supp. 102, 104 (D. Me. 1986), *aff'd*, 816 F.2d 29 (1st Cir. 1987) (granting habeas relief to remedy denial of petitioner's Sixth Amendment right to counsel at section 1304 show-cause hearing for nonpayment of fines, ordering petitioner's sentence to be vacated and ordering petitioner to be released from confinement or bail, unless the state promptly affords petitioner a new show-cause hearing with counsel). The Subclass members must either be provided counsel or freed from the unlawful restraints on their liberty until counsel can be provided.

B. Policing interests cannot prevent a remedy for the ongoing violations of the Subclass's constitutional right to counsel.

Defendants may argue that concerns around public safety counsel against the habeas remedies the Subclass has requested. If they do, that argument must be rejected as a matter of constitutional law.

As *Betschart* explained when ordering the release of unrepresented indigent defendants after 7 days, "while the release of certain pretrial defendants into the community may cause legitimate concern about community safety, that theoretical fear does not mean that we should suspend the Constitution as our response. The public's interest in the rule of law and the protection of our fundamental rights is at the heart of our democracy. With every right there is a measure of risk." *Betschart v. Garrett,* 700 F. Supp. 3d at 984–85 (D. Or. 2023). In affirming the release of unrepresented indigent defendants, the Ninth Circuit explained that "[w]henever a

court issues an order requiring the State to adjust its incarceration and criminal justice policy, there is a risk that the order will have some adverse impact on public safety," but that did not justify the "certain and unacceptable risk of continuing violations of the rights of [Petitioners]." *Betschart v. Oregon*, 103 F.4th at 626 (quoting *Brown v. Plata*, 563 U.S. 493, 533-34 (ordering release of prisoners to remedy overcrowding in violation of Eighth Amendment)). Moreover, the government had not shown that the release of non-convicted indigent defendants "would threaten community safety so drastically as to justify continuing to deny Petitioners their constitutional rights," particularly given that the state could still monitor released defendants by other appropriate means. *Id.*; *see also Lavallee*, 812 N.E.2d at 245 (rejecting government's objections to release of unrepresented defendants on public safety grounds, observing that "[p]ublic safety, however, comes with a cost").

To the extent some courts in Maine have found Sixth Amendment violations but provided no remedies for these violations, those findings improperly relied on the United States Supreme Court decision in *United States v. Morrison*, 449 U.S. 361 (1981). *Morrison* considered remedies for a wholly different kind of Sixth Amendment violation, one in which the government actively interfered with an already formed relationship between a defendant and her privately retained counsel in ways that the defendant never alleged resulted in any harm to her, her counsel, or her case. And the remedy that the Court rejected in that case was dismissal *with prejudice*.

The U.S. Supreme Court has already discussed what the appropriate remedy is in cases involving complete denials of counsel. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court held that a complete denial of counsel merits reversal of a criminal conviction regardless of any public safety concerns. *Morrison* itself recognized that "[t]he premise of our prior cases is that the constitutional infringement identified has had *or threatens* some adverse effect upon the

effectiveness of counsel's representation." *Morrison*, 449 U.S. at 365 (citing *Gideon* and its progeny with approval (emphasis added)). When there is a threat of an adverse effect upon the effectiveness of counsel's representation, courts have an obligation to "identify and then neutralize the taint by tailoring relief appropriate in the circumstances to assure the defendant the effective assistance of counsel and a fair trial." *Id.*

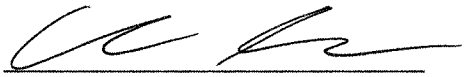
As the Supreme Court found in the context of coerced confessions, "in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." *Spano v. New York*, 360 U.S. 315, 320-21 (1959). To the extent that public safety clashes with federal constitutional rights, the latter must prevail. For example, the State could not deprive a felony defendant of an attorney at trial and then avoid reversal on appeal by arguing that public safety required the court to uphold the conviction. *Gideon* would require reversal regardless of the guilt or innocence of the defendant, the nature or severity of the charges, or the potential threat to public safety that would accompany reversing a serious felony conviction. Not even Congress can override the protections guaranteed by the federal constitution. *See Dickerson v. United States*, 530 U.S. 428, 437 (2000) ("Congress may not legislatively supersede our decisions interpreting and applying the Constitution."). The Supremacy Clause forecloses any argument that the State can elevate public safety over well-established federal constitutional law. *See Stone v. Powell*, 428 U.S. 465, 494 n.35 (1976) ("State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law.")

CONCLUSION

For the reasons given above, and based on the evidence before the Court and to be elicited at the forthcoming January 22 to 24, 2025 hearing, the Court should award the Subclass the relief requested.

January 8, 2025

Respectfully submitted,



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[PROPOSED] ORDER

It is hereby ORDERED that Plaintiffs' Motion for Declaratory and Injunctive Relief and Habeas Remedies is GRANTED. The Court orders as follows:

1. On Count I, the Court enters a declaratory judgment that the MCPDS Defendants have violated the Subclass's constitutional rights by failing to provide continuous representation of counsel to the Subclass members from the time of their initial appearance, and at all stages of the criminal process.
2. On Count I, the Court orders permanent injunctive relief requiring the MCPDS Defendants to provide continuous representation of counsel to the Subclass members from the time of their initial appearance, and at all stages of the criminal process. To facilitate Defendants' compliance, the Court orders Defendants to submit a detailed written plan, within 30 days of the date of its order, outlining how Defendants will immediately comply with this order by guaranteeing prompt and continuous appointment of counsel.

3. On Count III, the Court orders that (1) Subclass members who are detained and remain without counsel 7 days after initial appearance or withdrawal of counsel Subclass members must be released from detention, and (2) Subclass members who remain without counsel 45 days after initial appearance or withdrawal of counsel must have the charges against them dismissed without prejudice until such time as counsel is made available to provide representation to that Subclass member.

_____ _____

Dated Justice, Maine Superior Court