MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
Docket No. CUM-19-239

STATE OF MAINE,
Appellee,

v.

A.I., Minor,
Appellant.

On Appeal from Justice Gorman's Order Denying the Petition for Habeas Corpus

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BRIEF OF ACLU OF MAINE FOUNDATION, DISABILITY RIGHTS MAINE, GLBTQ LEGAL ADVOCATES & DEFENDERS, JUVENILE LAW CENTER, and KIDS LEGAL, *AMICI CURIAE* SUPPORTING APPELLANT

August 13, 2019

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

CONSTITUTIONAL PROVISIONS

STATEMENT OF INTEREST

The American Civil Liberties Union of Maine Foundation (the "ACLU of Maine") is a nonprofit, nonpartisan organization founded in 1968 to protect and advance the civil rights and civil liberties of all Mainers. The ACLU of Maine strives to ensure that constitutional rights are protected at all stages of criminal and juvenile proceedings. The ACLU of Maine has a long history of involvement, both as direct counsel and as amicus curiae, in cases involving the proper functioning of our criminal and juvenile justice systems. The ACLU of Maine submits this brief to provide information about due process protections for children who are incompetent to stand trial in a juvenile matter.

Disability Rights Maine ("DRM") is Maine's designated protection and advocacy agency. Its mission is to protect and advocate for the civil and human rights of Maine's citizens with disabilities, including juveniles. *See*, *e.g.*, Developmental Disabilities Assistance and Bill of Rights Act (DD Act), 42 U.S.C. §§ 15002, 15041-15043, 45 C.F.R. §§ 1326.1 et seq.; Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act), 42 U.S.C. §§ 10801-10807, 42 C.F.R. §§ 51.41-51.46; and Protection and Advocacy of Individual Rights Act (PAIR Act), 29 U.S.C. §794e(f), 34 C.F.R. §§ 381.1 et seq. An important aspect of DRM's advocacy is to advocate for individuals with disabilities to be in the least restrictive environment that is appropriate; much of DRM's work focuses on the

deinstitutionalization of people with disabilities. DRM has a contract with the Office of Child and Family Services, within the Department of Health and Human Services, to advocate for children eligible for children's behavioral health services. As part of that work, DRM has conducted, and continues to conduct monthly monitoring and outreach visits at Long Creek Youth Development Center, where DRM staff meet with residents who have disabilities to discuss their rights and safety. DRM recently settled a federal lawsuit against the Maine Department of Corrections regarding its ability to access records and information pertaining to suicide attempts by Long Creek residents with disabilities. *See Disability Rights Me. v. Me. Dep't. of Corrs.*, No. 1:18-cv-00478-LEW (D. Me. 2018) (Consent Judgment approved by U.S. D. Ct. of Me. April 30, 2019).

Founded in 1978, GLBTQ Legal Advocates & Defenders ("GLAD") is New England's leading public interest legal organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. GLAD has a particular interest in the safety, health and well-being of lesbian, gay, bisexual, transgender and queer youth who are disproportionately represented in the juvenile justice system, including in the State of Maine.

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education,

training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

Kids Legal is the youth and education advocacy project within Pine Tree Legal Assistance. Kids Legal was founded in 2004 and is committed to protecting the rights and improving the lives of Maine's low-income children. Kids Legal has represented many youth who were involved in the juvenile justice system, most were children with disabilities. The goal of Kids Legal is to ensure that state and federal laws affecting children are upheld.

STATEMENT OF THE CASE

I . A.I. Is a Child with Serious Mental Health Challenges Who Has Been Declared Incompetent to Stand Trial

A.I. is a child who suffers from serious mental health conditions, including Attention Deficit Hyperactivity Disorder (ADHD), and Disruptive Mood Dysregulation Disorder (DMDD). His overall intellectual functioning is in the "borderline" range, at approximately "the third percentile for his age in terms of

overall intellectual functioning." Tr. 96:21-25.[1] He also suffers from "a whole constellation of deficits that are associated with the frontal lobe of the brain," which is the part of the brain responsible for controlling emotions and impulses. Tr. 92:1-19. These deficits include "acute memory impairment" and "disorganized behavior," as well as ADHD and DMDD. *Id.* His overall memory functioning is in "the mildly intellectually disabled range," Tr. 97:19-22, and he faces additional difficulty in "his capacity to reason, [and] to make judgments about what's in his best interests." Tr. 99:4-5.

Since age eleven, A.I. has spent critical, formative years of his life detained at Long Creek Youth Detention Center ("Long Creek"). (A. 11.) During his first period of detention at Long Creek, A.I.'s two front teeth were knocked out by a corrections officer when the officer restrained A.I. face-down into a bare metal bed frame.[2] Since that period, A.I. has been detained at Long Creek for more than nine months, with the most recent detention alone comprising more than seven months.

[1] This citation, and all similar citations after, references the hearing transcript for A.I.'s habeas corpus petition held on June 6, 2019. The format is Tr. page number: line number.

[2] *See* Children's Center for Law and Policy, Long Creek Youth Development Center Conditions Assessment Narrative Report (Sept. 2017) ("CCLP Report") at 55, available at https://www.aclumaine.org/sites/default/files/field_documents/report-_long_creek_youth_development_center_-_conditions_of_confinement_assessment.pdf (describing the use-of-force event). The CCLP Report was admitted by Justice Gorman in the hearing on the habeas petition. *See* Tr. 118:4-119:23. The use-of-force event that knocked out A.I.'s teeth has been separately challenged in Federal Court. *See Ali v. Long Creek Youth Development Center*, No. 18-cv-109-JAW (D. Me.). Lawyers from the ACLU of Maine represent the plaintiff in *Ali v. Long Creek Youth Development Center*.

(A. 11.) Despite A.I.'s extended detention, at no point during his time at Long Creek has A.I. ever been adjudicated of a crime. (A. 11.) Instead, he has spent much of his detention waiting on the performance and results of various mental competency examinations. (A. 11.)

On April 23, 2019, the lower court held the latest competency hearing and found A.I. incompetent to stand trial, but with a substantial probability of becoming competent in the foreseeable future. (A. 11.) Therefore, the court ordered the Department of Health and Human Services ("DHHS") to evaluate and provide treatment for A.I. consistent with the recommendations of the two clinicians who had evaluated A.I. (A. 11.)

II. A.I. Requires Structured Mental Health Treatment and Competency Restoration Services in a Therapeutic Setting

According to testimony at the June 6, 2019 hearing on the habeas petition before Justice Gorman, A.I. requires serious medical and behavioral intervention to treat his mental health conditions. Specifically, he requires medication, a highly structured behavioral program, and controlled exposure to other youth, to help him "learn to control his behavior slowly over time." Tr. 101:16-102:24. Even more intervention would be required for A.I. to achieve competency—if that is possible for him at all. *See* Tr. 102:1-103:25; *see also* Tr. 103:3-9 (expert testimony from neuropsychologist Dr. James Harrison, stating that he believes A.I. is unlikely to become capable of "the kind of reasoning skill" necessary to achieve competency).

Achieving competency would require working "on an everyday basis and trying to develop [A.I.'s] ability to reason." Tr. 103:18-104:6.

With regard to the need for immediate treatment, Dr. Harrison testified "[w]hen you put [A.I.] in an environment without treatment, he is not going to make any improvement." Tr. 107:6-8. A punitive or threatening environment "makes things worse." Tr. 107:6-16. "The longer he goes without treatment, the harder it will be to provide the kind of behavioral training and skill development that he needs to even marginally function." Tr. 107:13-16.

Dr. Harrison's treatment recommendations were incorporated by reference in the April 23, 2019 competency order. In that order, the Juvenile Court directed DHHS "to evaluate and treat the juvenile for mental health and behavior needs identified in the report of the State Forensic Services examiner." (A. 21.) (quoting J. Powers Apr. 23, 2019 Order). The court specifically referred A.I. "to the Commissioner of Health and Human Services for evaluation and treatment of the mental health and behavioral needs identified in the reports of Dr. Harrison and Dr. Donnelly."[3] (A. 21.) (quoting J. Powers Apr. 23, 2019 Order).

[3] Dr. Peter Donnelly provided the forensic competency evaluation of A.I. Dr. James Harrison completed a physician-ordered neuropsychological evaluation of A.I. (A. 6.)

III. Long Creek Does Not and Cannot Provide the Mental Health and Competency Restoration Treatment that A.I. Needs

Months after the April 23, 2019 Order, A.I. has not received mandated treatment from DHHS, but instead continues to be detained at Long Creek. (A. 11; Tr. 65:17-23.) Long Creek is a correctional facility managed by the Maine Department of Corrections whose purpose, in relevant part, is "[t]o detain juveniles pending a court proceeding." *See, e.g.*, 34-A M.R.S. § 3802(1)(A) (2003). It does not offer the type of therapeutic or clinical setting that A.I. needs, nor does it provide competency restoration services. *See, e.g.*, Tr. 80:6-18.

Consistent with its corrections focus, Long Creek has taken no steps to provide competency restoration services to A.I. DOC Associate Commissioner for Juvenile Services Colin O'Neill testified that he was not even aware "of the court order . . . to restore competency," Tr. 42:11-13, nor of the contents of Dr. Harrison's treatment recommendations. Tr. 49:2-10. Nor could DOC Associate Commissioner O'Neill represent that A.I.'s treating psychiatrist at Long Creek had seen Dr. Harrison's evaluations or treatment recommendations. Tr. 51:12-25. Despite the frequency with which incompetent youth are sent to Long Creek, there was no protocol for ensuring that the services provided match those ordered by a court. Tr. 66:14-19.

Todd A. Landry, Director of the Office of Child and Family Services, testified at the same hearing that "[Long Creek] is not the recommended treatment

level services based on the evaluation that I've seen." Tr. 80:16-18; 83:8-13. To his knowledge, DHHS had not provided A.I. with competency treatment. Tr. 80:16-18; 83:8-10. Finally, Doctor Harrison testified that withholding competency restoration treatment works directly against the court's goal of restoring competency for A.I. Tr. 103:12-15.

STATEMENT OF ISSUES

(1) Whether the months-long, pre-trial detention of a child who is incompetent to stand trial violates substantive due process, when the child's and the State's interests both require that the child receive intensive mental health treatment and competency restoration services that are unavailable in at a correctional facility.

(2) Whether a petition for the writ of habeas corpus is an appropriate vehicle to expeditiously challenge the unconstitutional detention of A.I. by the State of Maine.

SUMMARY OF ARGUMENT

This case presents an issue of first impression in this Court regarding the constitutional rights of youth who are declared incompetent to stand trial and detained in a correctional facility. Freedom from incarceration lies at the heart of the liberty interests protected by the Fourteenth Amendment, and it is well-established that substantive due process forbids the prolonged incarceration of an adult defendant who is incompetent to stand trial. The State's sole interest in such cases is to restore the defendant to competency—which requires treatment and not

incarceration. Decision after decision has held that incarceration of incompetent defendants for periods from eight to twenty-two days violates the Constitution.

These constitutional concerns are even greater when we consider the injustice of unnecessarily incarcerating juveniles—who are entitled to even greater state protection than adults. The research is clear that incarceration is harmful to youth; it increases recidivism rates, results in physical harm, worsens educational and employment outcomes, and damages mental health. In the context of a child who is incompetent to stand trial, moreover, each of these tragic consequences of incarceration runs directly contrary to the State's sole legitimate interest in restoring competency to stand trial. The State's *parens patriae* interest in children's welfare further mandates treatment and not incarceration.

The precedent is clear, moreover, that lack of resources is not an adequate State interest to justify incarceration; the State's choice to invest in jails rather than treatment centers cannot justify unconstitutional detention.

Applying these basic constitutional standards to this appeal, A.I.'s months-long detention in Long Creek violates the Constitution and mandates immediate relief. In these unique circumstances, moreover, an appeal from the Juvenile Court would not have provided the expeditious and comprehensive proceedings required to challenge A.I.'s ongoing detention. Nor does the State's recent voluntary cessation of that detention moot the case. Accordingly, the instant petition for the

writ of habeas corpus is—and remains—the appropriate vehicle to challenge A.I.'s unconstitutional detention.

Finally, the serious constitutional harms challenged in this case, sadly, are not isolated to A.I. alone. The exceptionally important public policy issues presented in this appeal further support the Court's careful consideration of this appeal.

ARGUMENT

I. Standard of Review

This Court reviews questions of law, including alleged constitutional violations, de novo. *State v. Jones*, 2012 ME 126, ¶ 35, 55 A.3d 432 (citing *Malenko v. Handrahan*, 2009 ME 96, ¶ 21, 979 A.2d 1269).

II. Continued Incarceration of A.I. Violates Due Process

This case is about the State's months-long, pre-trial incarceration of a child who has been repeatedly found incompetent to stand trial, but has not received any competency restoration services that would enable him to attain competency to stand trial. This child's liberty interest and need for proper treatment vastly outweigh any interests the State may have in his prolonged detention at a youth prison.

A. Substantive Due Process Prohibits Jailing Defendants Who Are Incompetent to Stand Trial

No state shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. Substantive due process bars the government from "engaging in conduct that shocks the conscience, or interferes with rights 'implicit in the concept of ordered liberty.'" *United States v. Salerno*, 481 U.S. 739, 746 (1987) (citing *Rochin v. California*, 342 U.S. 165, 172 (1952); *Palko v. Connecticut*, 302 U.S. 319, 325–26 (1937)). Among the rights that are implicit in the concept of ordered liberty are the liberty interests to be free from bodily restraint and imprisonment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (setting presumptively reasonable time limits on immigration detention).

In light of these weighty liberty interests, substantive due process limits the state's authority to incarcerate. For example, the government may incarcerate criminal defendants who have been convicted of a crime, "beyond a reasonable doubt." *See, e.g.*, *Alexandre v. State*, 2007 ME 106, ¶ 15, 927 A.2d 1155. Additionally, in the pre-trial context, the U.S. Supreme Court has upheld the government's ability to detain a criminal defendant to ensure appearance at trial or

to protect the public—subject to the "stringent time limitations" associated with the right to a speedy trial. *Salerno*, 481 U.S. at 742, 747.[4]

When a criminal defendant is found incompetent to stand trial, however, the individual's liberty interest becomes stronger and the state's interests in prosecution become weaker, thus narrowly limiting the permissible nature and duration of commitment. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). In such circumstances, "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"—which, for an incompetent defendant, is to restore competency so the trial can proceed. *Id.* Accordingly, "it is well-established that the extended imprisonment of pretrial detainees when they have been ordered to receive [mental health] services violates the Constitution." *Geness v. Cox*, 902 F.3d 344, 363 (3d Cir. 2018) (citing, *inter alia*, *Foucha v. Louisiana*, 504 U.S. 71, 77 (1992); *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 822 F.3d 1037, 1039 (9th Cir. 2016); *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1122 (9th Cir. 2003)).

To the knowledge of counsel, every federal court to consider the question has found that prolonged jailing of incompetent criminal defendants awaiting

[4] In *Schall v. Martin*, likewise, the United States Supreme Court upheld juvenile pretrial detention that lasted only for 15 days, in which the relevant statute authorized a maximum detention of 17 days for a serious crime and 6 days for a less serious crime. 467 U.S. 253, 259, 270 (1984). A.I.'s extended, months-long detention, without trial, for Class D and E offenses presents a far more serious intrusion on individual liberties.

competency restoration treatment violates their due process liberty interests. In *Advocacy Center for the Elderly and Disabled v. Louisiana Department of Health and Hospitals*, for example, the U.S. District Court for the Eastern District of Louisiana ordered relief after finding that the Louisiana Defendants' practice of keeping incompetent criminal defendants in parish jails was an economic practice, not a decision made out of concern for the individuals' mental-health treatment based on professional judgment. 731 F. Supp. 2d 603, 623 (E.D. La. 2010). There, defendants had been waiting "many months" to be transferred to the state's forensic facility, and at least two individuals had been waiting for over a year. *Id.* at 619.

The *Advocacy Center* court determined that the balance of the individuals' liberty interests and the state's interests required restorative treatment at a forensic facility, not the minimal care that was provided to them while they remained in jail. *Id.* at 610, 623. It ruled that the Louisiana Defendants' practice of leaving these individuals in jails bore "no rational relationship to the restoration of their competency or a determination that they will never become competent." *Id.* at 610. In short, "[w]hile these Detainees are in parish jails, their continued confinement bears no rational relationship to the restoration of their competency." *Id.* at 624.

In *Oregon Advocacy Center. v. Mink*, likewise, the Ninth Circuit found that Oregon state officials violated the substantive due process rights of mentally

incapacitated criminal defendants by jailing them for an average of one month before accepting them for evaluation and treatment. 322 F.3d 1101, 1106, 1121-22 (9th Cir. 2003). The court held that "[i]ncapacitated criminal defendants have liberty interests in freedom from incarceration and in restorative treatment." *Id.* Relying on *Jackson*, the Court of Appeals determined that "[h]olding incapacitated criminal defendants in jail for weeks or months violates their due process rights because the nature and duration of their incarceration bear no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals." *Id.* at 1122.

The *Mink* court also explained that, in balancing liberty interests against the state's interests in detention, the unwarranted jailing of incapacitated defendants "undermines the state's fundamental interest in bringing the accused to trial." *Id.* at 1121. Importantly, the court squarely rejected any defense based on a "[l]ack of funds, staff or facilities." *Id.* (internal quotation marks and citation omitted). As a result, *Mink* affirmed an injunction requiring the defendants to admit incompetent criminal defendants within seven days of a judicial finding of incompetency. *Id*. at 1123.

Another case, *Trueblood v. Washington State Department of Social and Health Services*, applied an analysis similar to the one used in *Mink* to determine that Washington State violated the Due Process Clause by failing to provide

competency restoration treatment within seven days of a court order for such services. No. C14-1178, 2016 WL 4533611, at *1-*2 (D. Wash. Feb. 8, 2016), *vacated and remanded on other grounds*, 822 F.3d 1037, 1046 (9th Cir. 2016). In *Trueblood*, criminal defendants who had been found incompetent waited an average of ninety-four days to receive restoration services at one state hospital. *Id.* at *2. The *Trueblood* court found seven days to be "the maximum justifiable period of incarceration absent an individualized finding of good cause to force a class member to continue to wait for competency services." *Id.* at *1. As the appellate court confirmed, "[i]t is well recognized that detention in a jail is no substitute for mentally ill detainees who need therapeutic evaluation and treatment." *Trueblood v. Wash. State Dep't of Soc. & Health Servs*., 822 F.3d 1037, 1039 (9th Cir. 2016).[5]

Terry ex rel. v. Hill found a due process violation under similar circumstances. 232 F. Supp. 2d 934, 945 (E.D. Ark. 2002). In *Terry*, incompetent criminal defendants waited an average of more than eight months for evaluations and more than six months for treatment. *Id.* at 938. The *Terry* court determined that "[t]he lengthy and indefinite periods of incarceration, without any legal

[5] On appeal, the Ninth Circuit vacated the seven-day limit for incarcerating defendants awaiting competency evaluations, but the state did not appeal (and thus accepted) the seven-day limit for providing restoration treatment after a finding of incompetency. *See Trueblood*, 822 F.3d at 1040.

adjudication of the crime charged, caused by the lack of space at [the state hospital], is not related to any legitimate goal, is purposeless and cannot be constitutionally inflicted upon the members of the class." *Id.* at 943-44. The court explained that limited resources was not an excuse, and thus, the defendant violated the class members' constitutional rights to due process. *Id.* at 944-45.

In sum, federal courts to decide the issue have required that transfers of incompetent criminal defendants occur in twenty-one days or fewer. *See, e.g.*, *Mink*, 322 F.3d 1101 (seven days); *Advocacy Ctr.*, 731 F. Supp. 2d at 627 (21 days). Other federal courts have determined that waits much shorter than the delay suffered by A.I. are unconstitutional. *See, e.g.*, *Disability Law Ctr. v. Utah*, 180 F. Supp. 3d 998 (D. Utah 2016) (holding wait times of thirty to 180 days are unconstitutional). The rule to be derived from each of these cases is that "detention in a jail is no substitute for mentally ill detainees who need therapeutic evaluation and treatment." *Geness*, 902 F.3d at 363 (quoting *Trueblood*, 822 F.3d at 1039)).[6]

B. At Least the Same Protections Apply to Incompetent Children

A.I. is entitled to at least the same degree of protection against unjustifiable incarceration as adult criminal defendants. Indeed, A.I.'s quickly passing youth—which offers unique opportunities for treatment during developmental

[6] In this case, the Court need not determine the exact number of days that it is permissible to incarcerate an incompetent child before transferring them to a treatment facility, as the length of A.I.'s detention far exceeds any permissible period.

milestones—provides an even greater need for prompt treatment and action. As discussed below, A.I.'s right to be free from incarceration outweighs the State's sole legitimate interest in continuing to detain A.I. to restore his competency for trial. As in the adult context, the weighing of these interests demonstrates that prolonged pretrial incarceration of an incompetent youth violates due process.

1. Youth Have Weighty Interests in Remaining Free from Incarceration

Although the due process rights of children differ in some respects from those of adults, "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (citing *Breed v. Jones*, 421 U.S. 519 (1975); *Goss v. Lopez*, 419 U.S. 565 (1975); *Tinker v. Des Moines School Dist*., 393 U.S. 503 (1969); *In re Gault*, 387 U.S. 1 (1967)). "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault*, 387 U.S. at 13.

Like adults, children have an interest in freedom from incarceration and freedom from bodily restraint. Even after adjudication, juveniles "have a due process interest in freedom from unnecessary bodily restraint which entitles them to *closer scrutiny* of their conditions of confinement than that accorded convicted

[adult] criminals."[7] *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir. 1983) (emphasis added). Indeed, the due process rights afforded to adjudicated juveniles' interests has been analogized to the liberty interests "of an involuntarily confined mental patient." *Id.* (citing *Youngberg v. Romeo*, 457 U.S. 307 (1982)). This is because, like involuntarily committed mental patients, adjudicated juveniles "have not been convicted of crimes." *Id.* at 1179. Incompetent youth who have not been convicted *or even adjudicated* of any crime have an even greater interest in freedom from bodily restraint. And just as adjudicated juveniles are entitled to even "closer scrutiny" of their conditions of confinement than convicted adults, *id.*, pre-trial, incompetent juveniles are entitled to at least the same—or greater—protections against incarceration as incompetent adults.

2. The State's Sole Legitimate Interest Is to Restore Competency

By contrast, the State's sole legitimate interest in continuing to incarcerate an incompetent child is to restore him to competency and try him for the pending juvenile charges. Absent restoration in A.I.'s competency to stand trial, the State has no legitimate interest in prolonged incarceration of A.I., which carries "life-long stigma and emotional ramifications." *State v. J.R.*, 2018 ME 117, ¶ 32 n.10,

[7] The child's interest in not being detained is also "inextricably linked with the parents' interest in and obligation for the welfare and health of the child," making "the private interest at stake . . . a combination of the child's and parents' concerns." *Parham v. J.R.*, 442 U.S. 584, 600 (1979).

191 A.3d 1157 (Saufley, J., concurring). To paraphrase the Supreme Court's reasoning in *Jackson*, even if the juvenile may be restored to competency in the foreseeable future, "his continued commitment must be justified by progress toward that goal." 406 U.S. at 738.

Once a court finds that a pretrial detainee is not competent to stand trial, "that [legitimate government] interest is displaced by the State's interest in 'determin[ing] whether there is a substantial probability that he will attain [ ] capacity in the foreseeable future.'" *Disability Law Ctr. v. Utah*, 180 F. Supp. 3d 998, 1010 (D. Utah 2016) (summarizing US Supreme Court precedents and finding that incompetent criminal defendants-as pretrial detainees-have a liberty interest in being free from incarceration absent a criminal conviction and observing that jails are not appropriate facilities to provide appropriate mental health treatment) (quoting *Jackson*, 406 U.S. at 738).

To be clear, the State has no freestanding interest to incarcerate incompetent children based upon vague public safety concerns or concerns about the child's best interests. Although such considerations may be relevant in deciding whether to detain a youth before trial while trial is reasonably imminent, *see* 15 M.R.S. § 3203-A(4)(D), those interests cannot be separated from the goal of restoring competency to stand trial on a juvenile offense. *See, e.g.*, 15 M.R.S. § 3203-A(4-A). This is because the purpose of the pre-trial detention is to ensure appearance at

trial or to keep incompetent youth or the public safe pending trial on the juvenile charges. *See* 15 M.R.S. § 3203-A(4)(D). For children who have been held incompetent to stand trial, these interests also collapse into the interest to restore competency.

To the extent the State wishes to commit a youth for other reasons, it must pursue separate, appropriate procedures to do so. In *Jackson*, for example, the Supreme Court explained that, absent any reasonably foreseeable trial on the pending criminal charges, "the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant." *Jackson*, 406 U.S. at 738. Likewise, in the case of an incompetent youth, the State's sole interest is in promoting the restoration of competency so the youth can proceed to trial on the pending juvenile charges. For any other interest in commitment, the State must proceed through other means.[8] *See id.*

The State also has a *parens patriae* interest, and corresponding obligation, to protect the welfare of its youth. *See, e.g.*, *Kent v. United States*, 383 U.S. 541, 554-55 (1966). "But the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness." *Id.* at 555. Far from supporting continuing

[8] Notably, the state appears to concede that, in this case, it cannot currently satisfy the high level of proof required for involuntary commitment of A.I. in a psychiatric hospital. *See* Tr. 22:13-25.

incarceration, the *parens patriae* authority mandates the State to protect children's welfare by ensuring appropriate treatment. It would be ironic and cruel to subject a child to prolonged incarceration that would be prohibited for adult defendants, on the ground that the State has the additional *parens patriae* interest in protecting the child. To do so would be to subject youth to "the worst of both worlds: . . . [the child] gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Gault*, 387 U.S. at 18 n.23 (citing *Kent*, 383 U.S. at 556).

Accordingly, the State cannot rely on *parens patriae* authority to support DHHS's failure to provide any competency restoration services, nor to support DOC's failure to apprise itself of the competency restoration order. *See* Tr. 42:7-12, 83:8-10. In short, the State cannot rely on *parens patriae* authority to incarcerate a child and point fingers at other State entities when the time comes to follow through.

Finally, the State's "systemic lack of resources" for mental health treatment provides no justification for prolonged incarceration without rehabilitative services. (*See, e.g.*, A. 10.) "Lack of funds, staff or facilities cannot justify the State's failure to provide . . . treatment necessary for rehabilitation." *See Mink*, 322 F.3d at 1121 (internal quotation marks and citation omitted). Nor can inadequate funding "justify the continued detention of defendants who have not been

convicted of any crime, who are not awaiting trial, and who are receiving next to no mental-health services." *Advocacy Ctr.*, 731 F. Supp. 2d at 624. In any event, inadequate funding alone does not explain the State's failure to provide appropriate mental health and competency treatment to A.I., while simultaneously spending approximately $250,000 per year to unconstitutionally incarcerate A.I. at Long Creek.[9] Accordingly, "the systemic lack of adequate resources within the State of Maine for juveniles with mental illness and cognitive challenges," do not support A.I.'s prolonged incarceration in Long Creek. (*See* A. 10.)

In conclusion, as in the adult context, "the extended imprisonment" of pretrial youth detainees who have been ordered to receive mental health treatment "violates the Constitution." *See Geness*, 902 F.3d at 363.

3. Incarceration in Youth Prison Does Not Advance the State's Interests

Prolonged incarceration in Long Creek does not—and cannot—provide the necessary rehabilitative services for competency restoration. The testimony in this case, reports about the conditions in Long Creek, and social science research soundly reject any claim that Long Creek is an appropriate placement to provide competency restoration services.

[9] *See, e.g.*, Susan Sharon, *Another Study Shows Juvenile Jails, Like Long Creek in Maine, Are Ineffective* (Jan. 19, 2018), available at https://www.mainepublic.org/post/another-study-shows-juvenile-jails-long-creek-maine-are-ineffective#stream/0 (noting the $250,000 price tag to jail a single kid at Long Creek).

First and foremost, Long Creek is a correctional facility staffed primarily with correctional officials. (A. 19.) Although Long Creek has added five behavioral health technicians in recent years, it simultaneously added *twenty-eight* correctional officers. (A. 20, n.3.) Revealingly, DOC has recently sought to transfer adult female prisoners to be housed at Long Creek, confirming that Long Creek provides a prison environment. (A. 19-20.)

Far from providing a therapeutic environment, "the actual incarceration of the youth" carries "life-long stigma and emotional ramifications." *State v. J.R.*, 2018 ME 117, ¶ 32 n.10, 191 A.3d 1157 (Saufley, J., concurring). Indeed, A.I.'s daily life at Long Creek is similar to the one narrated in the landmark Supreme Court case, *In re Gault*, describing a child whose "world becomes a 'building with whitewashed walls, regimented routine and institutional hours . . . .'" *In re Gault*, 387 U.S. at 27. "Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness to rape and homicide." *Id.*[10] The only difference in A.I.'s case is that A.I. has been subject to

[10] As the Court explained in *Gault*, "[i]t is of no constitutional consequence . . . that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, [it] is an institution of confinement in which the child is incarcerated for a greater or lesser time." *In re Gault,* 387 U.S. at 27.

this correctional environment for months on end, without ever being adjudicated of any juvenile charge.

The fact that the goal of rehabilitation "remains at the heart of the Juvenile Code" is of no relevance here. *See State v. J.R.,* 2018 ME 117, ¶ 14, 191 A.3d 1157. A.I. is presumed innocent of the charges against him. As such, "rehabilitation" cannot be a justification for A.I.'s incarceration under the Juvenile Code. Indeed, as a detained youth, A.I. is categorically barred, by Long Creek policy, from certain treatment options regardless of his needs or symptoms. Tr. 52:3-55:17. Moreover, rather than focusing on the "euphemis[m]" of juvenile detention, courts should confront the hard "realities." *See Gault*, 387 U.S. at 27, 30 & n.44 (internal citations omitted). And the reality is that youth prisons in general, and Long Creek in particular, are harmful and not rehabilitative. Instead, such institutions increase the risk of reoffending, expose youth to physical danger, damage educational and employment outcomes, and worsen mental health outcomes.

Regarding recidivism, secure juvenile incarceration "can actually increase reoffending for certain youth,"[11] and prior incarceration is associated with a higher

[11] Mara Sanchez, Erica King, and Jill Ward, *Youth Justice in Maine: Imagine a New Future Summit, Summary & Recommendations* at 7, Muskie School of Public Service (Jan. 2018), http://www.njjn.org/uploads/digital-library/White%20paper%20-%20the%20Justice%20Policy%20Program.pdf ("Muskie Report") (citing Pew Charitable Trusts, *Re-Examining Juvenile Incarceration*, goo.gl/prqkbq (2015)).

likelihood of youth reoffending.[12] In fact, incarceration had a much stronger negative effect than carrying a weapon, gang membership, or a poor parental relationship, and was the single most significant predictor of recidivism.[13] Even controlling for other factors, youth in community placements are 14 percent less likely to reoffend than incarcerated youth.[14] "[M]odels of youth justice that rely heavily on confinement are not effective at rehabilitation[.]"[15]

Data from Maine confirm that the pattern of increased recidivism applies here. As a recent report explained, low-risk youth in Maine who were committed between 2010 and 2014 were assessed as *more* likely to reoffend after their period of incarceration than before.[16] As the report explained, incarceration is "not only

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[12] Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute at 4, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf (citing Brent B. Benda & Connie L. Tollet, *A Study of Recidivism of Serious and Persistent Offenders Among Adolescents*, 27 J. of Crim. Justice 111, 111-26 (1999)).

[13] *Id*. (citing Brent B. Benda & Connie L. Tollet, *A Study of Recidivism of Serious and Persistent Offenders Among Adolescents*, 27 J. of Crim. Justice 111, 111-26 (1999)).

[14] *Id*. at 6 (citing Michael Fendrich & Melanie Archer, *Long-Term Re-arrest Rates in a Sample of Adjudicated Delinquents: Evaluating the Impact of Alternative Programs*, 78 Prison J. 360, 360-89 (1998)).

[15] *See* Muskie Report at 6 (citing Patrick McCarthy, et al., *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, New Thinking in Community Corrections, October 2016 No. 2 available at goo.gl/xLHX93).

[16] Muskie Report at 7 (citing Dumont, R. & King, E., *Youth recidivism: Diversion to discharge in Maine's juvenile justice system* (2017), available at http://muskie.usm.maine.edu/justiceresearch/). This information is particularly pertinent to A.I.'s case because, although he has not been adjudicated, he has been housed alongside committed youth for weeks on end. *See* Tr. 49:13-50:3; *compare Salerno*, 481 U.S. at 747 (explaining that the challenged pretrial detention did not qualify as punishment, in part because detained inmates were housed separately from convicted inmates).

inconsistent with the purpose of the juvenile system," but also "both ineffective and inadequate in addressing youth needs, especially youth who have experienced trauma or who have developmental challenges."[17] An independent investigation of Long Creek by the Children's Center for Law and Policy (CCLP Report) likewise found that incarcerating youth with mental illness only "makes it *more* likely that youth will graduate to the adult corrections system in Maine."[18]

Incarcerating kids can also cause them physical harm. Nationwide, a recent report found "evidence of systemic or recurring youth maltreatment in 45 different states between 1970 and 2015."[19] Specific instances in Maine, including A.I.'s own injury at age eleven, show that youth also suffer from physical harm at Long Creek.[20] Indeed, the CCLP found "a number of dangerous and harmful conditions and practices," including instances of excessive force against incarcerated youth.[21]

Incarceration also harms children's educational and employment outcomes. A study from 2013 studied "empirically how incarceration as a juvenile influences high school completion – a partial measure of social and human capital formation –

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[17] *Id.*

[18] CCLP Report at 8.

[19] Muskie Report at 7 (citing Annie E. Casey Foundation, Richard A. Mendel, *No Place for Kids* (2011), available at www.aecf.org; Annie E. Casey Foundation, Richard A. Mendel, *Maltreatment of Youth in U.S. Juvenile Corrections Facilities* (2015), available at www.aecf.org).

[20] CCLP Report at 55.

[21] CCLP Report at 6-7.

and the likelihood of incarceration later in life."[22] Even after controlling for age, race, criminal background, and neighborhood, the study found that juvenile incarceration is associated with worse future grades.[23] In Maine, the CCLP Report found that many youth were not receiving legally mandated educational services while in Long Creek.[24] Regarding employment, moreover, one study found that jailing youth "reduced work time over the next decade by 25-30 percent,"[25] and another report found that youth with a prior history of incarceration "experienced three weeks less work a year" compared to non-incarcerated youth.[26]

Finally, incarceration is bad for youth's mental health—which is particularly relevant here given A.I.'s need for intensive mental health treatment. "[Y]oung people with behavioral health problems simply get worse in detention,

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[22] Anna Aizer & Joseph Doyle, *What is the Long-Term Impact of Incarcerating Juveniles*, Vox CEPR Policy Portal (July 2013), https://voxeu.org/article/what-long-term-impact-incarcerating-juveniles.

[23] *Id.*; *see also* Anna Aizer & Joseph Doyle (2013), *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, NBER Working Paper, 19102, available at https://www.nber.org/papers/w19102.pdf.

[24] CCLP Report at 9.

[25] Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, at 10, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf (citing Freeman, R.B., *Crime and the Employment Disadvantage of Youth*, National Bureau of Economic Research (2011)).

[26] *Id.* (citing Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market?: The Penal System as a Labor Market Institution*, 104 Am. J. of Sociology 1030, 1030-60 (1992)).

not better."[27] Data also supports the inference that incarceration itself causes the harm: "for one-third of incarcerated youth diagnosed with depression, the onset of depression occurred *after* they began their incarceration."[28] Indeed, the data suggest that "poor mental health and the conditions of detention conspire together to generate higher rates of depression and suicide ideation."[29]

The experiences of Maine's youth at Long Creek support the correlation between incarceration and poor mental health. The CCLP report documented a "high rate of youth engaging in self-harming behavior at Long Creek."[30] As it explained, "there are clearly many youth who are engaging in this behavior because of mental illness and trauma."[31] "[A]ny outside observer should see the number of suicide attempts and self-harming gestures as clear evidence of the inappropriateness of Long Creek as a placement for many youth."[32]

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[27] *Id.* at 8.

[28] *Id.* (citing Javad H. Kashani, et al., *Depression Among Incarcerated Delinquents*, 3 Psychiatry Resources 185, 185-91 (1980)) (emphasis added). "The transition into incarceration itself . . . may be responsible for some of the observed [increased mental illness in detention] effect." *Id*. (citing Christopher B. Forrest, et al., *The Health Profile of Incarcerated Male Youths*, 105 Pediatrics 286, 286-91 (2000)).

[29] *Id.* (citing D.E. Mace, et al., *Psychological Patterns of Depression and Suicidal Behavior of Adolescents in a Juvenile Detention Facility*, 12 J. of Juvenile Justice & Detention Servs. 18, 18-23 (1997)).

[30] CCLP Report at 8.

[31] *Id.*

[32] *Id.* Although the report noted that some youth engage in self-harming behavior as a strategy to obtain individual attention or to be removed from general programming, that strategy should "raise[] concerns about those youth's perceptions of their own safety." CCLP Report at 8.

Given this comprehensive showing that youth jails are harmful, it should be clear that incarcerating A.I. at Long Creek bears no rational connection to the State's interest in treating A.I.'s mental conditions and restoring him to competency.

The realities of A.I.'s time at Long Creek confirm that Long Creek is an inappropriate placement to provide treatment and competency restoration services. The testimony in the habeas hearing unequivocally shows that Long Creek is not providing competency restoration services to A.I. For example, DOC Associate Commissioner Colin O'Neill was unaware of any steps taken by DOC to restore A.I.'s competency, and admitted he had never even seen the competency order. Tr. 42:7-13; Tr. 48:15-17. Director Landry, likewise, testified that based on the evaluation he had seen, Long Creek was "not the recommended treatment level service" and not therapeutic for A.I. Tr. 80:16-18.[33] To be sure, Long Creek provides *some* medical and mental healthcare to A.I. (*e.g.*, Tr. 43:6-17, 48:20-49:1) —as jails and prisons are constitutionally obligated to for all inmates regardless of

[33] The modern-day realities of Long Creek are a far cry from the privileges available to committed juvenile in the early years of this Court's juvenile justice jurisprudence—including that "a juvenile is not required to wear institutional garb; he is not under constant surveillance of guards; he is not confined within fenced or walled areas; he may leave the grounds to spend week-ends at private homes; he may attend a public high school in the vicinity or be allowed to take courses at the University of Maine; he may travel throughout the state as part of the Center's athletic program or choir group." *Shone v. State*, 237 A.2d 412, 416 (Me. 1968). Youth who are detained at Long Creek enjoy none of these privileges, but rather experience a correctional setting that more closely resembles an adult prison. *See id.*; *Shone v. State of Me.*, 406 F.2d 844, 849 (1st Cir.), *vacated as moot on other grounds sub nom. Maine v. Shone*, 396 U.S. 6 (1969).

competency status. *See, e.g.*, *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (establishing "the government's obligation to provide medical care for those whom it is punishing by incarceration"). But Long Creek does not provide the mandated competency treatments, and its officials were wholly unaware of the Juvenile Court's competency order and the contents of Dr. Harrison's treatment recommendations. *See* Tr. 42:7-12; Tr. 48:15-17; Tr. 49:2-10.

In sum, weighing the individual and State interests at stake clearly demonstrates that the State's continued incarceration of A.I. is unconstitutional. A.I. maintains a strong liberty interest in being free from the correctional setting at Long Creek, and to be placed in appropriate treatment. The State's sole legitimate interest, meanwhile, is in providing A.I. appropriate competency restoration treatment that could lead to an ultimate trial on the pending juvenile charges. Accordingly, the prolonged incarceration of A.I. in a correctional setting violates due process, and any further commitment of A.I. must be in a therapeutic setting where A.I. can receive competency restoration services and other appropriate mental health and behavioral care.

III. Habeas Relief Is Appropriate and Enables the Court to Fashion Equitable Relief

The constitutional violations in this case require expeditious relief. "The writ of habeas corpus is designed to give a person whose liberty is restrained an immediate hearing to inquire into and determine the legality of the detention." 39

C.J.S. Habeas Corpus § 13. "[H]abeas corpus is an extraordinary remedy" that "should be invoked only in cases of special urgency, leaving more conventional remedies for cases in which the restraints on liberty are neither severe nor immediate." *Id.* The writ is necessary in this case because A.I.'s prolonged, months-long detention has resulted in "severe" and "immediate" constitutional violations that have caused A.I. lasting harm. *See supra* pp. 8-27.

Procedurally, moreover, this is not a case in which habeas is being used to supplant other available procedures. An appeal would not have offered the expedited and complete constitutional review necessary in this unique case. Any appeal of the detention order, for example, would have featured the probable-cause determination and risk analysis in the statutory detention inquiry, which are different than the due process inquiry about whether A.I.'s ongoing detention is constitutionally permissible. *See supra* p. 20 (citing 15 M.R.S. §§ 3203-A(4)(D), 3203-A(4-A)). Such an appeal, moreover, would have failed to provide expeditious review, because it would have required counsel to first obtain an updated detention ruling by the Juvenile Court, which, in this case, had already delayed proceedings on the juvenile's contempt motion.[34] 15 M.R.S. § 3402(1)(D) (2005); Blue Br. 9-10.

[34] A.I.'s counsel attempted to schedule a contempt hearing before the Juvenile Court to challenge the state's failure to treat A.I., but that hearing was delayed until *after* she had filed the petition for habeas in this case. (Blue Br. 9-10.)

As the Court acknowledged, moreover, it is "not clear" whether A.I. could have appealed from the competency order. (A. 8, n.1.) And even if he could have done so, it is unclear why he would: The current problem is with the State's failure to comply with the treatment mandated by the April 23, 2019 Order from Judge Powers, not in Judge Power's Order finding that A.I. is incompetent.

Nor would an appeal of the detention order have provided an expedited hearing with all relevant parties before the court. The State entity that holds the body—DOC—is not a party to the juvenile case, making it difficult for the Juvenile Court, or this Court on appeal, to fashion appropriate relief in such an appeal. In these unique circumstances, therefore, an appeal from the Juvenile Court would have been insufficient, justifying the request for habeas relief.

The equitable nature of habeas relief means that the Court may exercise its discretion in deciding how to fashion habeas relief. Throughout this country's history, the equitable nature of the habeas remedy has been molded and shaped to address the injustices of our time. "[E]quitable principles have traditionally governed the substantive law of habeas corpus." *Holland v. Florida*, 560 U.S. 631, 646 (2010) (quoting *Munaf v. Geren,* 553 U.S. 674, 693 (2008)) (internal quotation marks omitted); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (stating "[h]abeas corpus is an equitable remedy"). "The court has the discretion to fashion relief that is fair in the circumstances." *Jimenez*, 317 F. Supp. 3d at 636. In

this case, therefore, the Court possesses discretion to decide how to "fair[ly]" remedy the constitutional violation. *See id.* Any order, however, must rectify the serious constitutional violation of incarcerating a child for months on end, without any legitimate state interest in doing so.

IV. The Appeal Should Not Be Dismissed as Moot

Finally, the State has filed a motion to dismiss the appeal as moot on the ground that A.I. was transferred to a residential treatment facility on August 8, 2019, days before the deadline for the State's responsive brief. Appellee Mot. to Dismiss (Aug. 9, 2019). As discussed below, however, the State's voluntary cessation of the challenged conduct does not moot the case. And even if the case were technically moot, the public interest exception applies and requires guidance to the bar and public on this important issue. *See In re Walter R.*, 2004 ME 77,¶ 9, 850 A.2d 346.

"It is well settled that, in a suit for injunctive relief, the voluntary cessation of the allegedly illegal conduct does not moot the controversy arising from the challenged activity." *Advocacy Ctr. for Elderly & Disabled v. La. Dep't of Health & Hosps.*, 731 F. Supp. 2d 583, 597-98 (E.D. La. 2010) (citing, *e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 180 (2000)). "The voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged

conduct as soon as the case is dismissed." *Knox v. Service Employees Int'l Union*, 132 S. Ct. 2277, 2287 (2012) (internal citation omitted).[35] The party asserting mootness bears the "heavy" and "formidable" burden of demonstrating that the allegedly wrongful behavior could not be reasonably expected to recur. *Advocacy Ctr.*, 731 F. Supp. at 597-98 (internal citations omitted).

The state of Louisiana, for example, failed to carry its burden to demonstrate mootness when it had transferred an incompetent juvenile out of the local jail but failed to demonstrate that the injury would "not be repeated." *Advocacy Ctr*., 731 F. Supp. at 597-98. In this case, likewise, the State has transferred A.I. out of Long Creek, but has provided no assurances that it will refrain from returning A.I. to Long Creek. Nor has the State carried the formidable burden of proving that it will provide the long-term mental health services and competency restoration services that are constitutionally required. Finally, the State has not—and cannot—demonstrate that the constitutional violation is unlikely to recur. *See Advocacy Ctr.*, 731 F. Supp. at 598. To the contrary, A.I.'s situation is extremely likely to recur because the State has no protocol in place to provide competency restoration services to juvenile pretrial detainees found incompetent to stand trial. *See* Tr.

[35] "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party," *Id.* (internal citations and quotation marks omitted). "[A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* (internal citation omitted).

66:14-19. Accordingly, A.I.'s current petition for habeas corpus, and the equitable relief available from this Court, are not moot.

Even if the Court finds that A.I.'s habeas corpus petition is technically moot because A.I. is temporarily not incarcerated at Long Creek, the Court ought to proceed to consider the merits of the underlying constitutional claim and to order declaratory relief. The public interest exception to mootness applies to "questions of great public interest" that should be addressed "to guide the bar and public." *In re Walter R.*, 2004 ME 77,¶ 9,850 A.2d 346 (citing *Young v. Young*, 2002 ME 167 ¶ ¶ 8-9, 810 A.2d 418). This Court previously applied the public interest exception to review an order for involuntary commitment, holding that "the State's interest in protecting the mentally ill is a public concern." *Id.* (citing *Young*, 2002 ME 167, ¶ 9, 810 A.2d 418). The same public concern applies in this case, heightened by the additional interest in protecting young people in the state. *C.E.W. v. D.E.W.*, 2004 ME 43, ¶ 10, 845 A.2d 1146 (citing *Roussel v. State*, 274 A.2d 909, 925-26 (Me. 1971)). The issues presented in A.I.'s case are of great public interest—both to him and to other children with serious mental challenges who are detained at Long Creek. *See, e.g.*, Tr. 66:14-19; CCLP Report at 6-8 (describing the serious mental challenges faced by youth at Long Creek). Other

courts have progressed to decision on nearly identical facts as these. *See, e.g.*, *In re Mille*, 182 Cal. App. 4th 635 (2010).[36]

As to the State's claim that the alleged constitutional violation in this case is "deeply fact specific," *see* Appellee Mot. to Dismiss, it is worth noting that courts have frequently mandated due process relief for incompetent defendants on a class-wide basis. *See, e.g.*, *Trueblood*, 822 F.3d at 1039; *Terry,* 232 F. Supp. 2d at 944-45. Likewise here, the treatment of mentally incompetent youth is a system-wide problem that requires system-wide solutions. To ensure that no other child is subject to the serious constitutional deprivations challenged in this case, we respectfully request that the Court provide greatly needed "future guidance" to the bar, public, and the State on the appropriate treatment of incompetent youth.

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[36] The *In re Mille* court explained the relevant exception to mootness where the pretrial detainee has been transferred from the correctional facility as follows:

> Where questions of general public concern are involved, particularly in the area of supervision of the administration of criminal justice, [the courts] may reject mootness as a bar to a decision on the merits. Furthermore, habeas corpus is an appropriate procedure for disposing of the present case [pretrial detainee not competent to stand trial held in county jail for 84 days after trial court ordered transfer to psychiatric hospital] since it can be used by petitioner to obtain a declaration of rights in the prevailing circumstances. While the questions presented herein are likely to recur, each case could become moot before we could have acted upon it. Consequently, [the court considers habeas corpus petitioner's] case an appropriate vehicle for addressing this issues presented herein.

In re Mille, 182 Cal. App. 4th 635, 639 (2010) (internal citation omitted).

CONCLUSION

Amici support this request for habeas relief because A.I.'s interests in freedom from restraint and to appropriate treatment vastly outweigh any legitimate interest the State could have in prolonged incarceration. The amici respectfully request that the Court declare the prolonged incarceration of A.I. unconstitutional and order appropriate equitable relief.

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. CUM-19-239

State of Maine, Appellee

v.

A.I., Appellant

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