

STATE OF MAINE

SUPREME JUDICIAL COURT  
Docket No. SJC-23-2

STATE OF MAINE, *ex rel.* PETERSON *et al.*,

*Petitioners,*

*v.*

**Motion to Hear Evidence  
(14 M.R.S. § 5523)**

PETER A. JOHNSON, *et al.*,

*Respondents.*

Petitioners hereby respectfully move for this Court to accept the evidence described herein:

1. This Court “may, in a summary way, examine the cause of imprisonment or restraint [and] hear evidence produced on either side ...” 14 M.R.S. § 5523. Because such a process is explicitly “prescribed by the statutes of the State of Maine,” the civil rules do not limit this “summary way” of “conducting” such a hearing. M.R.Civ.P. 81(b)(1)(A).
2. The rules of evidence, likewise, do not pose any limitation on the Court’s consideration of the attached evidence. *See* M.R.Evid. 101(b)(11) (rules of evidence don’t apply when statute exempts itself from their applicability). Regardless, this Court could anyway take judicial notice “of court records in other cases including pleadings and docket entries.” *Guardianship of Jewel M.*, 2010 ME 80, ¶ 24, 2 A.3d 301; *see* M.R.Evid. 201 (regarding judicial notice, generally).

3. The attached exhibits are: Petitioner's Exhibit 8 ("PX 8"), an email with the subject line "Counsel Needed" forwarded by a paralegal for the Maine Commission on Indigent Legal Services and dated November 1 at 2:57 p.m, which in turn contains an email earlier that day from a representative of the Office of Court Operations which shares with the recipients a spreadsheet "showing defendants in need of counsel throughout the state;" Petitioner's Exhibit 9 ("PX 9")<sup>1</sup> is an Excel spreadsheet that was attached to the email that is PX 8, entitled "11-1-23."
  
4. The attached exhibits are relevant in at least two ways. First, PX 9 contains the names and docket numbers of individuals subject to relief via this proceeding. In fact, according to PX 8 and 9, at least three of those individuals named in the *Amended Petition for Writ of Habeas Corpus* filed on October 20, 2023 remain incarcerated without counsel. Also, the prevalence of similarly situated (*i.e.*, incarcerated pretrial without counsel) individuals – dozens of them – speaks to the ongoing, repetitive nature of the issue of incarceration without representation that is the focus of this proceeding. Were, for the sake of argument,

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<sup>1</sup> To display PX 9 in a manner comparable to its appearance on a computer screen, Petitioners have cut and paste the Excel spreadsheet and converted it to a PDF. To ensure accuracy, the Court should refer to the spreadsheet itself, a copy of which is attached to the email sent to the Court for filing.

this Court prepared to find the matter moot, the attached exhibits are relevant to showing that the issue presented is capable of repetition yet evading review.

WHEREFORE, the Court should accept and hear the evidence as presented above.

Respectfully submitted this 11th day of November 2023,

By the Petitioners,

  
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#### CERTIFICATE OF FILING AND SERVICE

I hereby certify that:

- I filed a copy of this Motion to Hear Evidence with the Maine Supreme Judicial Court by hand-delivery and email. See M.R.U.Crim. P. 46(d) & 49(d) & Advisory Committee Note [1998];
- I have caused to be delivered, or have attempted to cause to be delivered, a copy of this Amended Petition to: [MLichtenstein@wheelerlegal.com](mailto:MLichtenstein@wheelerlegal.com); [tsmith@lokllc.com](mailto:tsmith@lokllc.com); and [Sean.D.Magenis@maine.gov](mailto:Sean.D.Magenis@maine.gov).

  
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**OATH AND AFFIRMATION**

I, Robert J. Ruffner, do swear and affirm, under penalty of perjury, that the foregoing and attached exhibits are correct and accurate as to my information and belief.



Dated: 11/2/2023

State of Maine  
County of Cumberland

Sworn to and subscribed before me, Leslie Wilson, this 2<sup>nd</sup>  
day of ~~October~~ November 2023.

 010318

Attorney/~~Notary Public~~

[If Notary Public] My Commission Expires: N/A