174PA21 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA

v.

PHILLIP BRANDON DAW

From Wake County

****

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, NORTH CAROLINA ADVOCATES FOR JUSTICE, DISABILITY RIGHTS NORTH CAROLINA, AND THE CATO INSTITUTE IN SUPPORT OF PHILLIP BRANDON DAW

****

Table of Contents

Table of Authorities

Cases

Statutes and Constitutional Provisions

Other Authorities

174PA21 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA

v.

PHILLIP BRANDON DAW

From Wake County

****

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, NORTH CAROLINA ADVOCATES FOR JUSTICE, DISABILITY RIGHTS NORTH CAROLINA, AND THE CATO INSTITUTE IN SUPPORT OF PHILLIP BRANDON DAW[1]

****

[1] No person or entity other than amici curiae, their members, or counsel wrote this brief or contributed money for its preparation.

INTRODUCTION

"The great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defence of personal freedom." *Ex Parte Yerger*, 75 U.S. 85, 95 (1868). It is "the great and efficacious writ, in all manner of illegal confinement[.]" William Blackstone, 3 *Commentaries on the Laws of England* 131. This flexible remedy provides relief from jurisdictional and procedural errors, as well as unlawful restraint that occurs during an originally lawful imprisonment. Our Court of Appeals has thought so for nearly fifty years. *See In re Stevens*, 28 N.C. App. 471, 474, 221 S.E.2d 839, 841 (1976).

But now the State asks the Court to overrule this longstanding precedent and impose a highly restrictive reading of habeas in North Carolina. For several reasons, Amici urge the Court to decline this invitation and affirm the Court of Appeals.

First, the Court of Appeals correctly read the constitutional and statutory text. North Carolina guarantees habeas in broadly-worded provisions that, under this Court's precedents, must be construed in favor of the people's liberty. That text authorizes the petition here: a prisoner, whose "original imprisonment was lawful," challenged "the continuance"

of his imprisonment because an "event, which ha[d] taken place afterwards," imposed restraint for which there was "no legal cause." N.C.G.S. § 17-33. While the habeas statutes bar challenges to detention imposed "by virtue of [a] final order," N.C.G.S. § 17-4(2), they allow challenges to *additional* restraint not contemplated by a final order—in this case, exposure to a deadly virus. The State's contrary view is wrong and would violate the Suspension Clause by eliminating habeas access with no adequate substitute in place.

Second, the legislature has not altered the habeas statutes despite decades of precedent from the Court of Appeals. This acquiescence shows the legislature's implicit approval. The State has not addressed this reality or otherwise justified such a turnabout in the law.

Third, persuasive authority supports affirmance. The United States Supreme Court has repeatedly suggested that habeas can remedy constitutional violations for people detained pursuant to a final judgment. Multiple federal courts of appeals have reached that conclusion. So have state supreme courts addressing habeas statutes much like North Carolina's.

Finally, eliminating habeas review for anyone confined pursuant to a final judgment will disproportionately harm people with disabilities, thousands of whom live in state facilities.

ARGUMENT

I. The Text and Purpose of North Carolina's Habeas Provisions Allow Relief for Unlawful Restraint That Occurs During an Originally Lawful Imprisonment.

The constitutional right of habeas corpus must be construed in favor of the people's liberty. So too must the statutes regulating this right. The plain text and legislative purpose of those provisions authorize the petition at issue here. The opinion below also aligns with the historical understanding of habeas as an adaptable and expeditious remedy. The State, however, wrongly urges a highly restrictive view that would conflict with North Carolina's Suspension Clause.

A. The constitutional right to habeas corpus must be construed in favor of the people's liberty.

Habeas is a constitutional right guaranteed in the Declaration of Rights. N.C. Const. art I, § 21. The General Statutes merely regulate it. As such, the writ must be assessed consistently with the constitutional

text and this Court's decisions on provisions designed to protect individual liberty.

"[A] constitution is intended to be a forward-looking document, . . . and where its terms will permit, is to be credited with a certain flexibility which will adapt it to the continuous growth and progress of the State." *Purser v. Ledbetter*, 227 N.C. 1, 5-6, 40 S.E.2d 702, 706 (1946). This Court "give[s] our Constitution a liberal interpretation in favor of its citizens with respect to those provisions which were designed to safeguard the liberty and security of the citizens in regard to both person and property." *Tully v. City of Wilmington*, 370 N.C. 527, 533, 810 S.E.2d 208, 214 (2018) (quoting *Corum v. Univ. of N. Carolina*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992)).

Of course, the legislature can regulate constitutional provisions via statute. *See, e.g.*, *Baxter v. Danny Nicholson, Inc.,* 363 N.C. 829, 833, 690 S.E.2d 265, 267 (2010). But statutes cannot abridge constitutional guarantees. *See Mahaffey v. State*, 87 Idaho 228, 231, 392 P.2d 279, 280 (1964) ("While the legislature . . . is without power to abridge this remedy [of habeas] secured by the Constitution, it may add to the efficacy of the writ.").

Here, Section 21 of the Declaration of Rights provides: "Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended."

These words are comprehensive. They make no distinction between civil and criminal cases. They make no distinction between liberty restrained by process and liberty restrained by final judgments. And the commands against denying, delaying, or suspending the writ further caution against a restrictive reading.

In light of this text and precedent, the Court of Appeals has rightly construed habeas as a flexible remedy meant to protect against a wide variety of unlawful restraint: among the writ's many uses, it can remedy "a clear instance of constitutional infirmity," even when the petitioner's original imprisonment was lawful. *In re Stevens*, 28 N.C. App. at 474, 221 S.E.2d at 841. The State's contrary view—reading a statute narrowly to restrict a constitutional guarantee—is flawed from the start.

B. The plain text and legislative purpose of the habeas statutes authorize Mr. Daw's petition.

"The cardinal principle of statutory construction is that the intent of the legislature is controlling. In ascertaining the legislative intent, courts should consider the language of the statute, the spirit of the statute, and what it seeks to accomplish." *State ex rel. Util. Comm'n v. Public Staff,* 309 N.C. 195, 210, 306 S.E.2d 435, 443-44 (1983) (citations omitted). A remedial statute must "be construed broadly to effectuate its purposes." *Abbott Laboratories v. Portland Retail Druggists Ass'n, Inc.*, 425 U.S. 1, 12 (1976).

Moreover, when a statute employs broad language, courts must construe the law accordingly. As this Court observed of another broadly-worded remedial statute: "It is critical that the generality of these standards of illegality be noted. The broad language of the statute indicates that the scope of its concept and application is not limited to precise acts and practices which can be readily catalogued." *Johnson v. Phoenix Mut. Life Ins. Co.*, 300 N.C. 247, 262, 266 S.E.2d 610, 621 (1980) (citations omitted), *overruled on other grounds, Myers & Chapman, Inc. v. Thomas G. Evans, Inc.*, 323 N.C. 559, 374 S.E.2d 385 (1988).

Here, in addition to guaranteeing habeas in the 1868 Constitution, North Carolina expanded the writ via statute. General Statute § 17-33 provides: "If no legal cause is shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held." It goes on to authorize the writ when the "original imprisonment" was lawful, but "some act, omission or event, which has taken place afterwards," entitles the party "to be discharged." § 17-33(2).

This text is broad. It evinces the legislative goal of providing "an adaptable remedy" with "[i]ts precise application and scope chang[ing] depending upon the circumstances." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (discussing historical development of habeas). And it is well-established that, in extreme circumstances, ongoing prison conditions—including exposure to serious infectious disease—may violate the Eighth Amendment and require temporary release. *See Brown v. Plata*, 563 U.S. 493, 511 (2011) (extreme risks of harm caused by overcrowding required population cap); *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (prison officials may not be "deliberately indifferent to the exposure of inmates to a serious, communicable disease").

Thus, the statutory text authorizes petitions, like Mr. Daw's, that seek habeas to remedy an ongoing Eighth Amendment violation. There is no "legal cause . . . for the continuance" of imprisonment, § 17-33, if the conditions of that imprisonment violate "the supreme law of the land." *State v. Emery*, 224 N.C. 581, 583, 31 S.E.2d 858, 860 (1944).

To be clear, under N.C.G.S. § 17-4(2), a person cannot use habeas to challenge detention imposed "by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction[.]" Habeas is available, however, when a prisoner later experiences unlawful restraint not contemplated by such an order. As another state's high court held when addressing a nearly identical statute, "[A]ny *further* restraint *in excess* of that permitted by the judgment or constitutional guarantees should be subject to inquiry" under habeas. *People ex rel. Brown v Johnston*, 9 N.Y.2d 482, 485, 174 N.E.2d 725, 726 (1961).[2]

This Court should recognize the same. Mr. Daw was sentenced to incarceration—not exposure to a deadly virus. The Court of Appeals

---

[2] Like N.C.G.S. § 17-4(2), that statute did not allow habeas challenges to imprisonment or restraint imposed "by virtue of the final judgment . . . of a competent tribunal of . . . criminal jurisdiction." *People ex rel. Brown*, 9 N.Y.2d at 485, 174 N.E.2d at 726 (ellipses original) (quoting Civ. Prac. Act, §§ 1231, 1230).

correctly held that he could challenge the conditions of his imprisonment via habeas.

C. The State's arguments are ahistorical, atextual, and would produce discordant results.

The State contends that the scenarios allowing habeas listed in § 17-33 only apply to restraint imposed in civil and not criminal cases. (State's Br. pp 27-30). This argument is not persuasive because, as the Court of Appeals explained, "the statutory reference to civil process [reflects] that the writ of habeas corpus is a feature of civil government, and specifically, a feature of the civilian rather than military system of justice." *State v. Daw*, 277 N.C. App. 240, 255, 860 S.E.2d 1, 13 (2021).

But assume the State is right—the second sentence of § 17-33 only applies to civil cases. That argument still doesn't account for § 17-33's first sentence, which requires discharge from "imprisonment or restraint" when there is no "legal cause . . . for [its] continuance . . . ." This sentence makes no distinction between criminal and civil cases and gives no limiting criteria. Then the second sentence starts with the conjunctive "but," contrasting it with the first. Unlike the first sentence, the second allows discharge "only" in certain circumstances, and, in the

State's view, only in civil cases. So, those limitations would not apply to criminal cases like Mr. Daw's—habeas would still be available in all circumstances when there is no "legal cause" for continued imprisonment, including those listed in § 17-33.

The State argues in the alternative that, regardless of the civil/criminal distinction, § 17-33 only allows habeas for restraint caused by "civil process," which does not encapsulate a final judgment. (State's Br. pp 29-31). Again, even if the State is right, the reference to "civil process" is in § 17-33's second sentence, not the first, which authorizes discharge without any distinction between restraint imposed by process and final judgments.

But the State's reading cannot be right. If someone imprisoned pursuant to a final judgment could not obtain relief under § 17-33(2), they could not obtain relief in the other scenarios listed either. Those allow habeas when restraint results from a jurisdictional, procedural, or substantive legal error. *See* § 17-33(1), (3)-(6). Relief from those situations has long been a critical feature of habeas jurisprudence. *See Strickland v. Washington*, 466 U.S. 668, 696 (1984) ("[F]undamental fairness is the central concern of the writ of habeas corpus[.]"). The State's view would

also bar habeas where someone initially imprisoned pursuant to a valid final judgment has been pardoned, been granted clemency, or received a commutation.

It is simply implausible that the legislature meant to forbid habeas in these scenarios while otherwise expanding and strengthening the writ. This Court should reject that reading, and instead apply its normal statutory analysis aimed towards "adopt[ing] an interpretation which will avoid absurd or bizarre consequences[.]" *State ex rel. Com'r of Ins. v. N. Carolina Auto. Rate Admin. Office,* 294 N.C. 60, 68, 241 S.E.2d 324, 329 (1978).

D. The Court of Appeals' view aligns with the broader historical understanding of habeas and avoids conflict with the Suspension Clause.

The opinion below aligns with the broader historical understanding of habeas as an adaptable and expeditious remedy. The State ignores this background, advancing a view that is not only wrong but conflicts with North Carolina's Suspension Clause.

Habeas "is not 'a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose.'" *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

That purpose "is to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). "[O]ver the years, the writ . . . evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction." *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973).[3] As discussed above, the text and purpose of North Carolina's habeas provisions comport with this view.

Habeas has also long been understood as a uniquely fast remedy. "Proceedings under the writ of *habeas corpus*, which have for their principal object the release of a party from illegal restraint, must necessarily be summary and prompt to be useful." *State v. Miller*, 97 N.C. 451, 1 S.E. 776, 778 (1887). Chapter 17 bears this out. It repeatedly states that relief must not be delayed. N.C.G.S. §§ 17-1, 17-9. It imposes civil and criminal penalties for refusing to grant the writ or interfering with

[3] The federal habeas statutes are worded differently from North Carolina's, but even when parallel state and federal statutes differ, this Court often looks to federal decisions for guidance. *See, e.g.*, *Beroth Oil Co. v. North Carolina Dept. of Transp.*, 367 N.C. 333, 342 n.4, 757 S.E.2d 466, 474 n.4 (2014).

the process. §§ 17-10, 17-26, 17-27, 17-28. It allows petitions to be made "[t]o any one of the superior court judges, either during a session or in vacation," § 17-6(2), foreclosing potential delay from litigating forum or venue. And the State cannot appeal a grant of the writ. *Ex parte Williams*, 149 N.C. 436, 63 S.E. 108, 109 (1908).

The State sees things differently. In its view, "the great and efficacious writ, in all manner of illegal confinement," 3 Blackstone, *Commentaries* 131, is actually a "narrow privilege," powerless to address unlawful restraint for anyone subject to a final judgment, even if that restraint will cause serious injury or death. (*See* State's Br. pp 12-21).

That argument contravenes the Suspension Clause, which states: "The privilege of the writ of habeas corpus shall not be suspended." N.C. Const. art. I, § 21. A legislature may only limit access to habeas if it "has provided adequate substitute procedures . . . ." *Boumediene,* 553 U.S. at 771. To be adequate, "the habeas court must have the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every

case in which the writ is granted." *Id.* at 779. Any alternative procedure must also be prompt. *See id.* at 795.[4]

State law offers no other remedy that guarantees speedy judicial review of allegedly unlawful restraint, and the State does not suggest otherwise. Motions for appropriate relief cannot address conditions of confinement. *See* N.C.G.S. § 15A-1415. And civil litigation often moves at a slower pace with no guarantee of prompt review. *See Ziglar v. Abbasi*, 582 U.S. 120, 144-45 (2017) (describing habeas as a potentially necessary and faster route to relief than civil litigation); *Bedell v. Schiedler*, 770 P.2d 909, 912 (Or. 1989) ("The central characteristic of the writ of habeas corpus is the speed with which it triggers judicial scrutiny.").

Therefore, eliminating habeas review for people subject to a final judgment would implicate the Suspension Clause. And "[w]here one of two reasonable constructions will raise a serious constitutional question, the construction which avoids this question should be adopted." *Matter*

[4] It does not appear that this Court has closely examined the state Suspension Clause. But decisions of the United States Supreme Court concerning the federal Constitution set the minimum protections for parallel provisions of the state Constitution. *State v. Jackson*, 348 N.C. 644, 648, 503 S.E.2d 101, 103 (1998).

of Arthur, 291 N.C. 640, 642, 231 S.E.2d 614, 616 (1977). The Court should therefore affirm the longstanding view of the Court of Appeals.

II. Legislative Acquiescence Weighs Against Overruling Nearly Fifty Years of Precedent.

The State urges the Court to overrule the Court of Appeals' line of cases addressing § 17-33. (State's Br. pp 31-32). The lack of intervention by the legislature, however, further shows that the Court of Appeals has been right all along.

"The legislature's inactivity in the face of the [judiciary's] repeated pronouncements [on this issue] can only be interpreted as acquiescence by, and implicit approval from, that body." *In re T.R.P.*, 360 N.C. 588, 594, 636 S.E.2d 787, 792 (2006) (brackets original) (quoting *Rowan Cty. Bd. of Educ. v. U.S. Gypsum Co.,* 332 N.C. 1, 9, 418 S.E.2d 648, 654 (1992)); *see also Connette for Gullatte v. Charlotte-Mecklenburg Hosp. Auth.,* 382 N.C. 57, 80, 876 S.E.2d 420, 435 (2022) (Barringer, J., dissenting) ("Of course, the legislature, which is not bound by stare decisis, could have at any time in the last ninety years enacted a different rule . . . .").

Moreover, this Court gives considerable weight to longstanding precedent from the Court of Appeals, especially when the legislature has not indicated disagreement. *See State v. Steen,* 376 N.C. 469, 483, 852 S.E.2d 14, 24 (2020) (relying on Court of Appeals precedent "and the fact that the General Assembly has not taken any action tending to suggest" disagreement); *In re T.R.P.*, 360 N.C. at 594, 636 S.E.2d at 792 (relying on "more than twenty years" of Court of Appeals precedent addressing issue of first impression); *see also Mole' v. City of Durham,* 884 S.E.2d 711, 713 (N.C. 2023) (Dietz, J., concurring) ("The Court of Appeals' ability to create its own body of binding precedent is essential to our State's jurisprudence.").

Between 1976 and 2021, the Court of Appeals published five opinions acknowledging that N.C.G.S. § 17-33(2) may provide relief to people imprisoned pursuant to a final judgment. *See Daw*, 277 N.C. App. at 249-52, 860 S.E.2d at 9-10. The legislature has not seen fit to correct that view. This lack of intervention shows that the Court of Appeals has correctly identified the legislature's intent.

The legislature's silence is also unsurprising—these decisions have not thrown trial courts into turmoil or threatened public safety. Each

time the Court of Appeals addressed § 17-33(2) it denied relief, and even during the exigent circumstances of the pandemic, trial courts granted few petitions. The burden for proving an Eighth Amendment violation of the sort Mr. Daw alleged remains high. *See Rhodes v. Chapman,* 452 U.S. 337, 347 (1981).

Thus, § 17-33 provides a safety valve for dire circumstances when an otherwise lawful custody will result in serious injury or death. This Court should not foreclose the mere possibility of obtaining relief in those situations.

III. Persuasive Authority Supports Affirmance.

Decisions from the United States Supreme Court and other courts—some interpreting statutes much like North Carolina's—support the Court of Appeals' decisions.

The Supreme Court has repeatedly suggested that habeas can remedy unconstitutional conditions of confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) ("When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making custody illegal."); *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971) (observing that

challenges to prison conditions were "cognizable in federal habeas corpus"); *Johnson v. Avery*, 393 U.S. 483, 490 (1969) (allowing habeas challenge to rule barring prisoners from sharing legal advice). Most recently, the Court explained that "the habeas remedy, if necessity required its use, would have provided a faster and more direct route to relief" than civil litigation. *Ziglar*, 582 U.S. at 145.

Lower courts have listened. The D.C. Circuit held that prisoners may seek habeas as a remedy for unconstitutional living conditions, which "simply reflects the extension of the basic principle that '[h]abeas is at its core a remedy for unlawful executive detention.'" *Aamer v. Obama*, 742 F.3d 1023, 1036 (D.C. Cir. 2014) (brackets original) (quoting *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). The First, Second, Third, and Sixth Circuits agree. *See United States v. DeLeon*, 444 F.3d 41, 59 (1st Cir. 2006); *Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008); *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241-42 & n.5 (3d Cir. 2005); *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020).[5]

[5] Some circuits have reached different conclusions. But those courts either ruled inconsistently with the Supreme Court or invoked federal statutes that are not at issue here and have no state analog. *See Aamer*, 742 F.3d at 1037-38.

State courts construing habeas statutes similar to ours have also allowed habeas challenges to restraint that occurs during an otherwise lawful imprisonment. As noted above, the New York Court of Appeals addressed a statute that did not allow habeas to "challenge imprisonment or restraint by virtue of the final judgment of a competent tribunal of criminal jurisdiction." *People ex rel. Brown v Johnston*, 9 N.Y.2d 482, 485, 174 N.E.2d 725, 726 (1961) (cleaned up). The court explained that "any *further* restraint *in excess* of that permitted by the judgment or constitutional guarantees should be subject to inquiry." *Id*. Other state courts have invoked that reasoning as well. *See Penrod v. Cupp*, 283 Or. 21, 24, 581 P.2d 934, 935-36 (1978); *State ex rel. Cole v. Tahash*, 269 Minn. 1, 8, 129 N.W.2d 903, 907 (1964).

Moreover, like our Court of Appeals, the Colorado Supreme Court has allowed habeas petitions when looking to the state's "subsequent act, event or omission" provision. *See* Colo. Rev. Stat. § 13-45-103(2)(b). The court held that "any restriction in excess of legal restraint that substantially infringes on basic rights may be remedied through habeas corpus[.]" *Marshall v. Kort*, 690 P.2d 219, 221-22 (Colo. 1984) (en banc),

overruled in part by Jacobs v. Carmel, 869 P.2d 211 (Colo. 1994) (en banc). [6]

Accordingly, persuasive authority weighs against overruling the Court of Appeals' decisions.

IV. The State's Approach Would Disproportionately Harm Individuals With Disabilities.

Many institutionalized people have disabilities. And people with disabilities, like Mr. Daw, are often more vulnerable to infectious disease and other environmental hazards common in state institutions. Thus, eliminating access to the expeditious remedy of habeas would hurt them the most.

In a recent report, the Bureau of Justice Statistics found that two in five state and federal prisoners had at least one disability.[7]

---

[6] Other state supreme courts have also allowed habeas challenges to conditions of confinement. *See Crain v. Bordenkircher,* 176 W.Va. 338, 343, 342 S.E.2d 422, 427 (1986); *Wickham v. Fisher*, 629 P.2d 896, 900 (Utah 1981); *McIntosh v. Haynes*, 545 S.W.2d 647, 652 (Mo. 1977) (en banc); *Hamrick v. Hazelet*, 209 Kan. 383, 385, 497 P.2d 273, 275 (1972) ; *Com. ex rel. Bryant v. Hendrick*, 444 Pa. 83, 90, 280 A.2d 110, 113 (1971); *In re Riddle*, 22 Cal. Rptr. 472, 473, 372 P.2d 304, 305 (1962).

[7] Laura M. Maruschak et al., *Disabilities Reported by Prisoners*, BUREAU OF JUSTICE STATISTICS (March 2021), https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016.

Approximately 24 percent of the North Carolina prison population, roughly 7,400 individuals, requires mental health treatment.[8] Every juvenile in a North Carolina Youth Development Center requires treatment for a disability.[9] Disabilities become more common as individuals age,[10] and North Carolina's prison population is rapidly aging—there are roughly 8,400 people aged fifty and over in state prisons, comprising 27 percent of the population.[11]

People with disabilities face a high risk of incarceration. And "prisons and other carceral institutions are characterized by high levels of stress, fear, social isolation, infectious diseases, and violence

---

[8] The Department of Adult Correction provided these numbers on May 18, 2023, in response to a public records request.

[9] *Day 8 of 15|Criminal Justice*, Disability Rights North Carolina (April 13, 2023), https://disabilityrightsnc.org/news/criminal-justice/.

[10] *Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults – United States,* CENTERS FOR DISEASE CONTROL AND PREVENTION (2016), https://www.cdc.gov/ncbddd/disabilityandhealth/features/kf-adult-prevalence-disabilities.html#:~:text=Anyone%20can%20have%20a%20disability,age%20group%20have%20a%20disability.

[11] *See* Note 8, *supra*.

exposure," all of which put people with disabilities at heightened risk of harm. [12]

While in state custody, these people have a constitutional right to physical safety and adequate medical care. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Habeas can provide critical and prompt protection for these individuals when the prison system cannot. For example, during the pandemic, some courts ordered petitioners to home confinement to mitigate health risks. *See Martinez-Brooks v. Easter*, 459 F. Supp. 3d 411, 430-31 (D. Conn. May 12, 2020). And as discussed above, civil litigation is not designed to assure prompt judicial review. This Court should not foreclose even the possibility of habeas relief for the people who need it most.

CONCLUSION

The decision of the Court of Appeals should be affirmed.

---

[12] Laurin Bixby et al., *The Links Between Disability, Incarceration, and Social Exclusion*, 41 HEALTH AFFAIRS, No. 10, 1460 (Oct. 2022) https://doi.org/10.1377/hlthaff.2022.00495.

Respectfully submitted, this 2nd day of June, 2023.

/s/Daniel K. Siegel
Daniel K. Siegel
N.C. State Bar. No. 46397
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611
(919) 592-4630
dsiegel@acluofnc.org

I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Ivy Johnson
N.C. State Bar. No. 52228
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611
919-532-3681
ijohnson@acluofnc.org

CERTIFICATE OF SERVICE

I certify that on June 2, 2023 I served the foregoing document on counsel of record for the parties via email addressed to:

Heidi M. Williams
hwilliams@ncdoj.gov
Counsel for the State

Rob Heroy
rheroy@goodmancarr.net
Counsel for Phillip Brandon Daw

/s/Daniel K. Siegel
Daniel K. Siegel
N.C. State Bar. No. 46397
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611
(919) 592-4630
dsiegel@acluofnc.org