

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

LOUIS MATTHEW CLEMENTS,

Petitioner,

vs.

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

No. 2:24-cv-294-JES-NPM

**PETITIONER'S BRIEF PURSUANT TO
THE COURT'S ORDER OF AUGUST 15**

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Petitioner Louis Matthew Clements respectfully submits this brief pursuant to the Court’s order of August 15, 2025 (Dkt. 23).

INTRODUCTION

Pursuant to Florida law, petitioner must register as a sex offender for the rest of his life. Under threat of reincarceration for failure to comply, he must report in person to the local sheriff’s office at least twice per year at specifically appointed times, appear in person to report each and any change to his address or vehicle registration, and give in-person notice prior to out-of-state travel, without which vacations are made felonies. On top of all that, petitioner cannot live where he chooses: Under Florida’s residency restrictions for sex offenders, nearly one of every two housing units in Florida is off-limits. In urban areas, it is far worse—in Broward County, for instance, *more than 95%* of residential units are off limits to registered sex offenders like petitioner. There is no denying that these are “conditions [that] significantly confine and restrain [petitioner’s] freedom,” which the Supreme Court has long said is “enough to keep him in the ‘custody’” for habeas purposes. *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

The State’s contrary legal arguments are not persuasive. It makes no difference for federal habeas purposes whether state-imposed restrictions on liberty follow from criminal punishment or collateral civil consequences of a conviction. Habeas review is available when an individual is in custody prior to conviction, for instance, or in custody under a civil detention regime. The Court thus should hold that petitioner is “in custody” within the meaning of 28 U.S.C. § 2254.

BACKGROUND

A. Legal background

1. *The “in custody” requirement for federal habeas review*

Federal courts may hear habeas petitions brought by “a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The jurisdictional “custody” element established by this language is not limited to “physical imprisonment.” *Jones*, 371 U.S. at 240. It is satisfied, too, when a petitioner is subject to restraints on liberty “not shared by the public generally.” *Id.* If “conditions and restrictions . . . significantly restrain [a] petitioner’s liberty to do those things which in this country free men are entitled to do,” that is “enough” to constitute custody “within the meaning of the habeas corpus statute.” *Id.* at 243; accord *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015) (holding that habeas “petitioners need only show that they are subject to a significant restraint on their liberty that is not shared by the general public”).

Against this background, the Supreme Court has held the custody requirement satisfied by parole conditions (*Jones*, 371 U.S. at 241-43) and conditions of release on personal recognizance (*Hensley v. Municipal Court*, 411 U.S. 345, 351-53 (1973)). And the Eleventh Circuit and its predecessor court¹ have found that pre-deportation supervision programs rendered immigrants in custody. *See Romero v.*

¹ All decisions rendered by the Fifth Circuit before the close of business on September 30, 1981, are binding precedent in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

Secretary, U.S. Department of Homeland Security, 20 F.4th 1374, 1377 (11th Cir. 2021); *U.S. ex rel. Marcello v. District Director of Immigration & Naturalization Services*, 634 F.2d 964, 971 & n.11 (5th Cir. 1981).

2. Florida's sex offender registration scheme

Florida is one of 18 states that have substantially implemented all aspects of the federal Sex Offender Registration and Notification Act (SORNA), Pub. L. 109-248, 120 Stat. 587 (2006) (codified at 34 U.S.C. § 20901 *et seq.*). Under Florida law, individuals convicted of certain sex offenses must register as sex offenders for the rest of their lives. *See* Fla. Stat. §§ 943.0435(1)(h), (11)(b). Upon initial registration, they must provide the state with identifying data, including basic demographic and biographic information, descriptions of “tattoos or other identifying marks,” fingerprints, employment information, permanent and temporary addresses, a complete description and tag number of all vehicles owned, home telephone numbers, mobile telephone numbers, email addresses, and all internet profile information for all websites. *Id.* § 943.0435(2)(b), (3). If there are any subsequent changes to employment, telephone number, email address, or internet identifiers, they must report those changes online within 48 hours. *Id.* § 943.0435(4)(e).

Sex offenders must also report to the local sheriff's office in person two or four times per year, depending on the offense. *Id.* § 943.0435(14). If they are homeless, they must do so monthly. *Id.* § 943.0435(4)(b)(2). They also must report in person within 48 hours any change in residential address or vehicle registration. *Id.* § 943.0435(2)(b)(3), (4)(b). If they plan to travel domestically out of state for three

or more days, they must report in person 48 hours before leaving. *Id.* § 943.0435. If they plan to travel internationally for five or more days, they must report in person 21 days before leaving. *Id.* Failure to comply with any of these requirements and other restrictions is a felony. *See id.* § 943.0435(9).

Other provisions of Florida law restrict where registrants are permitted to live. Statewide, registrants “may not reside within 1,000 feet of any school, child care facility, park, or playground.” *Id.* § 775.215(2)(a). It does not matter whether a school, child care facility, park, or playground is public or private. *Id.* § 775.215(1). These provisions create “exclusion zones” in which registrants are barred from residing. *McGuire v. Marshall*, 50 F.4th 986, 1009 (11th Cir. 2022) (per curiam). Violating these prohibitions is a crime. Fla. Stat. § 775.215(2)(b).

Many local ordinances further restrict where sex offenders may live and recreate. In Lee County, for example—where petitioner resides—sex offenders are forbidden from “being on or within” public libraries, fairs, zoos, amusement parks, indoor recreational facilities, public beaches, public swimming pools, and other locations, or “loitering or prowling” within 300 feet of those locations. Lee County Ordinance No. 09-19 (as amended by Lee County Ordinance No. 11-05).

3. The circuit split on the “custody” question presented here

The courts of appeals are divided on the question whether sex offense registration requirements like Florida’s amount to “custody” under Section 2254. The Third Circuit, in *Piasecki v. Court of Common Pleas*, 917 F.3d 161 (3d Cir. 2019), has held that they do. Pennsylvania’s SORNA law—which is in most relevant

respects the same as Florida’s—requires offenders to “register in-person with the State police every three months for the rest of his life.” *Id.* at 164 (citing 42 Pa. Consol. Stat. § 9799.15(a)(3), (e)(3)). Similar to the Florida scheme, “the statute also require[s] [offenders] to appear, in-person” to notify authorities of changes to their names, addresses, employment status, or educational enrollment. *Id.* at 164-65 (citing 42 Pa. Consol. Stat. § 9799.15(g)(1)-(9)). And “[p]rior to any international travel,” registrants must “‘appear in person at an approved registration site no less than 21 days’ before . . . anticipated departure.” *Id.* at 165. If registrants are homeless, they must report monthly. *Id.* Failing to satisfy any of these requirements is a crime. *Id.*

Analyzing the Supreme Court’s Section 2254 precedents, the Third Circuit concluded that “those requirements . . . clearly rise to the level of ‘custody’ for purposes of our habeas corpus jurisdiction.” 917 F.3d at 173. The court noted “that Piasecki was subject to severe restraints on his liberty not shared by the public generally,” focusing on how the law “required him to physically appear at a State Police barracks” for “banal” tasks like “taking a week’s vacation” and “compelled” him to “report to a police station every three months for the rest of his life.” *Id.* at 172-73. Such restrictions meant he “was not free to ‘come and go as he pleased.’” *Id.* at 170 (quoting *Hensley*, 411 U.S. at 351) (cleaned up).

Three other circuits, reviewing sex offender registration schemes analytically the same as Florida’s, have held the opposite. *See Hautzenroeder v. Dewine*, 887 F.3d 737, 741-44 (6th Cir. 2018) (holding that the petitioner’s “freedom of move-

ment is unconstrained, her registration and reporting obligations notwithstanding,” and thus “her statutorily mandated obligations are [not] custodial”); *Calhoun v. Attorney General of Colorado*, 745 F.3d 1070, 1074 (10th Cir. 2014) (similar); *Wilson v. Flaherty*, 689 F.3d 332 (4th Cir. 2012) (similar). See also *Corridore v. Washington*, 71 F.4th 491 (6th Cir. 2023) (reaffirming *Hautzenroeder*).

B. Procedural background

Prior habeas proceedings. Petitioner—who must register under Florida’s sex-offender registration scheme—filed a *pro se* habeas corpus petition in this Court, challenging his plea-based conviction. *Clements v. Florida (Clements I)*, 59 F.4th 1204, 1207 (11th Cir. 2023). He asserted that, while his period of probation had expired, he was still in custody given his sex-offender registration obligations. *Id.*

The Court dismissed the petition, reasoning that sex-offender registration does not render an individual “in custody” within the meaning of Section 2254, as necessary for jurisdiction over the petition. See Order of Dismissal, *Clements v. Florida*, No. 2:17-cv-396, Dkt. No. 51, at 2 (M.D. Fla. Jul. 26, 2021). The Court reasoned that Florida’s registration requirements “do[] not restrict an offender’s freedom of movement, require him to obtain the government’s approval before locating or re-locating somewhere, or condition an offender’s continued liberty on remaining employer or refraining from lawful activities.” *Id.* at 10. It noted that “the Third Circuit reached a different conclusion” in *Piasecki* but found contrary opinions from other circuits “more persuasive here.” *Id.* at 7-10. The court did not then consider Florida law’s residency restrictions.

The Eleventh Circuit affirmed. *Clements I*, 59 F.4th at 1206. The court noted that Supreme Court and Eleventh Circuit precedent made the jurisdictional issue a “hard question to answer,” observing that “the ‘in custody’ requirement should be construed ‘very liberally.’” *Id.* at 1213 (quoting *Howard*, 776 F.3d at 775). But it determined, in the end, that “Florida’s registration and reporting requirements [do not] substantially limit Clements’s actions or movement.” *Id.* at 1214. Critical to that conclusion was the Eleventh Circuit’s decision not to consider Florida’s residency restrictions. *See id.* at 1208-09. Though it recognized that petitioner had acted *pro se*, the court expressed concern that any argument concerning the residency restrictions was undeveloped. *Id.* at 1208. The Eleventh Circuit even appeared unsure whether petitioner remained subject to residency restrictions after the expiration of his probation at all. It thus did not pass judgment on that issue. *Id.* Rather, it decided to “leave [residency restrictions] for another day.” *Id.*

Judge Newsom concurred. *See Clements I*, 59 F.4th at 1217-26. In his view, the Supreme Court’s construction of custody is overly broad and warrants revisiting. *See generally id.*

The present habeas petition. On April 2, 2024, once again acting *pro se*, Clements filed a new habeas corpus petition in this Court. The petition alleges several constitutional violations in his criminal conviction. As relevant here, in a section prominently titled “EXPLANATION REGARDING LACK OF CUSTODY BELOW,” the petition addresses Eleventh Circuit’s prior jurisdictional decision, asserting that, on top of the other burdens of Florida’s sexual offender registration

system, Clements is in custody due to Florida’s residency restrictions. *See* Dkt. 1 at 13–14. “Adding this to the analysis,” the petition argues, “should tip [the jurisdictional analysis] in Mr. Clements’ favor.” *Id.*

This Court dismissed the petition, *sua sponte*, for lack of jurisdiction, relying on the Eleventh Circuit’s opinion in *Clements I*. *See* Dkt. 4.

Clements appealed, this time represented by undersigned counsel. The Eleventh Circuit reversed in an unpublished, per curiam decision. It explained:

Clements I is not binding as to whether Clements is “in custody” for the purposes of his instant petition. In the prior case, we expressly reserved consideration of the residency requirements “for another day,” as Clements had neither raised the argument in the district court nor developed a complete factual record. Florida’s sex-offender residency requirements are, therefore, more than an “alternate reason” why Clements may be “in custody” for the purposes of the instant case. These restrictions present a potential custodial constraint on Clements’s liberty, and our Court explicitly left open the consideration of the restrictions.

Clements v. Secretary, Department of Corrections, 2025 WL 1892401, at *2 (11th Cir. 2025). Following that analysis, the court concluded:

We remand this case to the district court to permit the parties the opportunity to develop the record as to the restrictions imposed by Florida’s sex-offender residency requirements. The district court shall then rule on whether these residency restrictions, considered in combination with the registration and reporting requirements, render Clements “in custody” for habeas purposes.

Id. at *3.

This Court, on remand, has since ordered the development of a factual record and briefing on the custody question. *See* Dkt. 23. In the time since, petitioner has developed a record comprising an expert report of Dr. Kelly M. Socia, an associate

professor at the School of Criminology and Justice Studies at the University of Massachusetts; as well as the declarations of 25 Florida sex-offender registrants and family members, including petitioner. Petitioner voluntarily served the State with this evidence on November 9, 2025. The State has not objected to the evidence or contested its admissibility.

ARGUMENT

A. Florida’s sex offender registration scheme imposes a substantial restraint on liberty, apart from the State’s residency restrictions

1. In the first appeal, the Eleventh Circuit recognized “that the lifetime registration and reporting requirements imposed on Clements by Florida law are demanding and not the sort of obligations and restraints ‘shared by the public generally.’” *Clements I*, 59 F.4th at 1215 (alteration adopted) (quoting *Jones*, 371 U.S. at 240). Indeed, it noted that in some respects they were “more burdensome and restrictive of his personal liberty” than similar restrictions in cases where the Eleventh Circuit previously has found custody. *Id.* at 1214 (citing *Marcello*, 634 F.2d at 971 & n.11, and *Romero*, 20 F.4th at 1379). And the restraints on petitioner’s liberty as a result of his registration alone are, in fact, onerous. He must:

- provide various demographic and biographic data, descriptions of “tattoos or other identifying marks,” fingerprints, employment information, address, a description and tag number of vehicles owned, home telephone numbers, mobile telephone numbers, email addresses, and all internet profile information for all websites (Fla. Stat. § 943.0435(2)(b), (3));
- report to the local sheriff’s office in person every six months, unless he becomes homeless—a common fate for sex-offender registrants—in which case he must report monthly (*id.* § 943.0435(4)(b)(2));

- report in person within 48 hours any change in address or vehicle registration (*id.* § 943.0435-(2)(b)(3), (4)(b)), which also is common since residency restrictions lead to frequent address changes;
- report in person all out-of-state travel plans, including 48 hours before any out-of-state domestic travel lasting three days or more, and 21 days before any international travel lasting five days or more (*id.* § 943.0435(7)); and
- report online within 48 hours any changes to employment, telephone number, email address, or internet identifiers (*id.* § 943.0435(4)(e)).

These in-person reporting requirements are themselves significant restraints of liberty and freedom of movement. When reporting and re-registering, petitioner must present himself at a sheriff’s office or local jail to be fingerprinted, have his picture taken, and review and initial more than 41 documents. *See* App. 64-65 (Clements Decl. ¶¶ 7-9). He is not free to leave and go about his business until the process, which can take all day, is complete. App. 65 (Clements Decl. ¶ 9); *cf.* *Brendlin v. California*, 551 U.S. 249, 261 (2007) (an individual is seized within the meaning of the Fourth Amendment when he is “not free to ignore the police presence and go about his business”).

Petitioner no longer travels out of State because of the burden entailed and “the added stress of making one mistake and getting arrested for a felony.” App. 65 (Clements Decl. ¶ 10). He must register out-of-state trips longer than four days with both the Lee County Sheriff’s Office and the sheriff in the destination location, often with “no idea” if he will be allowed to remain at his destination. *Id.*

Of course, petitioner’s experience is not unique. Registrants across the state report significant limitations to their abilities “to work, travel, or reside where [they] please[]” due to registration requirements. *Howard*, 776 F.3d at 776. As the

law makes clear, registrants must report to a government office at an appointed time, typically for hours at a time, during which they are constitutionally detained. *See, e.g.*, App. 83 (██████████ Decl.); App. 85 (██████████ Decl.); App. 89 (██████████ Decl.). If they leave before completing their registration obligations, they commit a felony.

Moreover, Florida law imposes certain reporting requirements within 48 hours of the associated triggering event, such as obtaining a new car. But registration locations often are “closed for periods longer than 48 hours at a time,” stretching even four days, from every Thursday afternoon to every Tuesday morning. *See, e.g.*, App. 85, (██████████ Decl.). This “lack of operating hours” means, for example, that “if an opportunity for interstate travel arises on short notice (for example to see a concert, take a last-minute trip, or visit sick family) there is no way” to comply, and the travel becomes categorically illegal. *Id.* This has happened to one declarant “on more than one occasion.” *Id.*

2. These are the same basic restrictions that the Third Circuit found custodial in *Piasecki*. According to that court, such “requirements . . . clearly rise to the level of ‘custody’ for purposes of [federal] habeas corpus jurisdiction.” 917 F.3d at 173. The court noted “that Piasecki was subject to severe restraints on his liberty not shared by the public generally,” focusing on how the “law required him to physically appear at a State Police barracks” for “banal” tasks like “taking a week’s vacation” and “compelled” him to “report to a police station every three months for the rest of his life.” *Id.* at 172-73. Such restrictions meant he “was not free to ‘come and go as he please[d].” *Id.* at 170 (quoting *Hensley*, 411 U.S. at 351).

Beyond that, the Second, Third, and Sixth Circuits have held that even just a community service obligation can render someone “in custody,” because “an individual who is required to be in a certain place . . . is clearly subject to restraints on his liberty not shared by the public generally.” *Barry v. Bergen County Probation Department*, 128 F.3d 152, 161 (3d Cir. 1997). As the Sixth Circuit has put it, because “[p]robation’s restraints on liberty suffice to satisfy the ‘in custody’ requirement,” “the same [must be] true for community service.” *Lawrence v. 48th District Court*, 560 F.3d 475, 480-81 (6th Cir. 2009); *accord Nowakowski v. New York*, 835 F.3d 210, 216-17 (2d Cir. 2016).

In making these points, we acknowledge that the Fourth, Sixth, and Tenth Circuits have held that sex-offender schemes like Florida’s do *not* satisfy the “in custody” requirement of Section 2254. *See Hautzenroede*, 887 F.3d at 741; *Calhoun*, 745 F.3d at 1074; *Wilson*, 689 F.3d at 338. But, respectfully, those cases were wrongly decided and do not control the outcome here.

B. The residency restrictions of Florida’s sex offender registration scheme are a major additional restraint on liberty

Clements I did not address Florida’s residency restrictions, which taken together with all the other burdens on liberty associated with Florida’s sex offender registration scheme, undoubtedly push the restrictions on liberty here over the line, constituting “custody” for federal habeas purposes. Unlike in earlier proceedings, expert analysis and sworn declarations now show this to be true beyond debate.

1. *Florida’s residency restrictions prohibit sex-offender registrants from living in nearly half of Florida’s housing units*

Florida’s sex-offender residency restrictions establish enormous 72-acre exclusion zones around tens of thousands of “restricted locations” where registered sex offenders are forbidden to “reside,” whether permanently or just for three days in a one-year period. *See Fla. Stat. § 775.21(n)*. Statewide, these restricted locations include schools, day care centers, parks, and playgrounds. The metes and bounds of a residential plot must fall fully outside of all restricted zones, meaning even if a single corner of a residential parcel’s property intersects a buffer zone by only a few inches, the entire residence is off limits.

Dr. Kelly M. Socia is a Professor at the School of Criminology and Justice Studies at the University of Massachusetts, Lowell, and an expert on crime control policies, spacial analysis, and geographic information system (GIS) mapping. *See App. 37*. He analyzed Florida’s state residency restrictions for sex offense registrants and determined that, as of late 2025, registrants are barred from residing in 45.9% of residential housing units throughout the state due solely to their proximity to schools, daycares, or parks. *See App. 20 (Socia Report 14)*.

County and city ordinances substantially increase that figure. Florida’s most populous counties impose additional 2,500-foot exclusion zones around various additional property features, such as schools, daycares, parks, playgrounds, public school bus stops, and generally “places where children congregate.” *App. 3, 16 (Socia Report ii, 10)*. Others, such as Putnam and Union Counties, have adopted

“clustering” restrictions that prohibit sex offenders from living within 500 feet of each other, or limit the total percentage of residential units that can be occupied by sex offenders to 10%. *Id.* App. 19; *see also* App. 78 (Spragg Decl.). Municipalities may apply their own ordinances on top of county and state residency restrictions, rendering “virtually the entire city” off limits. App. 10 (Socia Report 10 & n. 4).

For purposes of this litigation, it was infeasible for Dr. Socia to map the multifarious restrictions imposed by each of Florida’s 67 counties and 412 incorporated municipalities. He therefore analyzed only the two most populous counties in Florida—Miami-Dade County and Broward County—in addition to Lee County, where petitioner lives. As to those three jurisdictions, Dr. Socia’s estimates are conservative and “very likely underestimate the true extent of restricted housing statewide, and within given counties and cities.” App. 5 (Socia Report iv).

In Miami-Dade County, a total of 615,840 of residential units (72.6%) are off-limits to sex-offender registrants by virtue of the statewide residency restrictions only. App. 15 (Socia Report 9). After applying Miami-Dade County’s own ordinance, which imposes an additional 2,500’ exclusion zone around schools, a total of 772,293 (91.1%) residential units are off limits. *Id.*

In Broward County, under just the statewide restrictions, a total of 640,405 residential units (70.1%) are barred for registrants. App. 15 (Socia Report 9). Similar to Miami-Dade, Broward County imposes an additional 2,500’ buffer zone around schools, daycares, parks, playgrounds, and public-school bus stops. App. 16 (Socia Report 10). When accounting for the county restrictions, a total of 881,943 residen-

tial units (96.5%) are unavailable to registrants like petitioner. App. 15 (Socia Report 9). Dr. Socia’s estimates do not include bus stops, however, because that data is not readily available. *Id.* at 10. It is likely that inclusion of bus stops would increase the percentage of restricted residential parcels and residential units. *Id.*

In Lee County, the ninth most populous in the State and where petitioner lives, residency restrictions are also highly restrictive. Under statewide residency restrictions alone, 30.1% of its 453,419 residential units are off limits to sex-offender registrants. App. 17 (Socia Report 11). Lee County does not have a county-wide restriction, but some individual cities, such as Cape Coral, do. *Id.*

In Fort Myers, where petitioner resides, a total of 27,974 residential units (52.3%) are out of bounds to him under just the statewide residency restriction. *Id.* . Fort Myers also has a presence-based restriction. While this does not prohibit *residence*, it does prohibit registered individuals from being present on a wide variety of public and private properties where children are present or may congregate, including public beaches, libraries, and swimming pools. *Id.* As a result, petitioner cannot play a game of tennis at a public tennis court or enjoy an afternoon at the beach in Fort Myers—*ever, period.* App. 63 (Clements Decl. ¶ 3).

2. Florida’s residency restrictions have profound, liberty-limiting impacts on registrants across the state

Substantial written testimony confirms that sex-offender registrants face a wide range of serious liberty restrictions impacting their daily lives. Take first the sworn declaration of petitioner himself. Over the past 17 years, he’s had to move no fewer than 10 times due to changing residency restrictions. App. 64 (Clements Decl.

¶ 5). He currently sleeps on a cot at the business his mother owns. App. 63 (¶¶ 1-2). He cannot stay in his mother's house because of Florida's residency restrictions; he was forced to leave her community twice. App. 64 (¶ 5).

Petitioner's experience is not unique. Many registrants cannot return to their longtime homes after being released from prison. *See, e.g.*, App. 67 (██████ Decl.); App. 71 (██████ Decl.); App. 76 (██████ Decl.). And declarants and their family members displaced from their homes describe the search to find compliant residences as a seemingly "impossible" task. *E.g.*, App. 80 (██████ Decl.); App. 86 (██████ Decl.). One registrant spent six months submitting "countless addresses for approval" in four counties, finding that only three were permissible under applicable residency restrictions. App. 74 (██████ Decl.). After submitting "about 50 addresses" in Citrus County, he was informed by a county sheriff's deputy that there would be "almost no places within the County" where he could live. *Id.*

Another declarant, who could not return to his home after release, reported that the Lake County Sheriff's Office would approve only one address in the entire county. App. 88 (██████ Decl.). Three of his attempts to buy property there were rejected: two because of the county's 2,500' residency restriction, and one because it was "too far into the rural area for a Sheriff's deputy to drive there for an address check." *Id.* Another declarant describes "years of unsuccessful searching" for a permanent place to live before being forced to move more than one hour from his place of work and 45 minutes from his children's home. App. 77 (██████ Decl.). One declarant spent a year and four months living homeless in the woods before he could

find a room to rent, only to be ejected from that room after two months by the management company. App. 71 (██████ Decl.). He has still not been able to find compliant permanent housing and has cycled between living in a motel and being homeless. *Id.*

Law enforcement officers advised two separate declarants, who could not return to their homes upon release, to “buy a tent and live in the woods.” *Id.*; App. 88 (██████ Decl.). Such advice, though perhaps insensitive, is not hyperbole. Approximately 7% of registered sexual offenders living in Florida communities are homeless or transient. App. 8 (Socia Report 2). That number rises as high as 34% in more populous counties like Miami-Dade and Broward. *Id.* As nearly all of south Florida is restricted, “roving encampments” of sex offenders have set up “tents and makeshift shacks” in a few nonrestricted parking lots or slivers of public land in Miami-Dade County. *See* App. 53 (Beth Schwartzapfel & Emily Kassie, *Banished*, Marshall Project (Oct. 3, 2018)).

Homelessness opens registrants to new requirements and penalties. Some county ordinances authorize police officers to arrest sex offenders camping on public lands (*id.*), and offenders who do not have permanent addresses are subject to substantially more frequent reporting requirements. Fla. Stat. § 943.0435(b).

Even when they succeed initially in finding a residence, registrants often are ejected abruptly from their homes by government officials as new features that create exclusion zones appear in their communities, or as towns and counties adopt new and more restrictive ordinances. *E.g.*, App. 76-77 (██████ Decl.). One

landlord, who has housed sex offenders on her properties for the last 19 years, can no longer do so on six properties because ever-more-burdensome ordinances now forbid it. *See* App. 72 (██████ Decl.).

Police informed another declarant, who was convicted more than a decade prior, that he had 14 days to move out of the once-compliant apartment where he had lived for several years because a new park had been established in his neighborhood. *See* App. 68 (██████ Decl.). The officers confronted his landlord and threatened to charge the landlord himself if the registrant remained in the apartment. *Id.* Officers also ejected the same individual from his next residence because a new city ordinance changed the restricted area around a nearby school. *Id.*

For individuals who have been permitted by a grandfathering provision to remain in the longstanding homes in which they have lived since before Florida adopted its sex offense registration scheme, the restrictions are no less burdensome when they look to relocate or travel. *See* App. 75 (██████████ Decl.); App. 77 (██████ Decl.). The burden is particularly acute for registrants who have lived peacefully and without event in Florida for decades, and who simply wish to move to senior living facilities. There are no exceptions for people who require assistance due to age or disability. *See* App. 91 (██████████ Decl.). Elderly registrants typically “must be sent to remote areas, far from family and the resources they need.” App. 80 (██████ Decl.); *see also* App. 66 (██████ Decl.); App. 90 (██████████ Decl.).

Restrictions on where registrants live and travel also hinder their ability to earn an income. They often are forced to find housing in rural areas, which are iso-

lated from jobs and reliable transportation. *See* App. 69-70 (██████████ Decl.). One declarant, who owns a landscape company, lost the pesticide spraying license he had held for eight years, when the State of Florida determined that registrants could no longer have it. *See* App. 92 (██████████ Decl.). Another, who works as a certified translator and presents to academics and instructors on linguistics states that his ability to travel has been chilled by the “patchwork of county and municipal sex offender residency restriction ordinances” due to the lack of clear delineations of where an exclusion zone begins. *See* App. 75 (██████████ Decl.).

In sum, the degree and severity of Florida’s residency restrictions significantly limit petitioner’s freedom “to live and work as other citizens” do. *Clements I*, 59 F.4th at 1216–17 (quoting *Smith*, 538 U.S. at 101, 123). Given petitioner’s status as a sex-offender registrant, almost half of Florida’s residential housing units are off limits to him. In Florida’s most populated counties, the overwhelming majority are—he cannot realistically live in Miami-Dade or Broward. Plus, he is subject to continuing detentions due to twice-annual registration requirements and constantly shifting community landscapes and evolving municipal ordinances. The cumulative effect easily amounts to custody for Section 2254 purposes.

C. The State’s legal arguments are not persuasive

The State barely responds to the evidence that we have mustered here. Instead, it asserts (Br. 11) that “the residency requirements” for sex offenders under Florida law do not “change the analysis” when they are added to the mix with “the registration and reporting requirements.” Quoting from the Sixth Circuit’s decision

in *Corridore*, the State takes the position (Br. 12) that “a series of collateral consequences doesn’t equal the ‘in custody’ requirement because none of the items in that series are severe restraints on the petitioner’s liberty.” That is so, in the State’s view, because “collateral consequences” of a conviction, even taken together, cannot ever “render a petitioner ‘in custody’” after a formal term of parole or imprisonment is concluded. Br. 12 (citing *Maleng v. Cook*, 490 U.S. 488 (1989)).

That is incorrect. It is irrelevant whether Florida labels its registration scheme as criminally punitive or civilly collateral. Some punishments, like fines or forfeitures, are obviously “insufficient to meet the ‘in custody’ requirement.” *United States v. Ross*, 801 F.3d 374, 380 (3d Cir. 2015). Conversely, “the ‘in custody’ requirement may be satisfied by constraints other than criminal punishment” (*Munoz v. Smith*, 17 F.4th 1237, 1242 (9th Cir. 2021)), such as pretrial detention or civil immigration detention (*Boumediene v. Bush*, 553 U.S. 723, 780 (2008)). As the Eleventh Circuit said in *Clements I*, the distinction the state now attempts to draw simply “is [not] helpful” because “custody under the habeas statutes does not require criminal punishment.” 59 F.4th at 1216 n.7.

Indeed, the Supreme Court has stressed that rather than turning to “stifling formalisms,” habeas review must “be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Hensley*, 411 U.S. at 350 (quoting *Harris v. Nelson*, 394 U.S. 286, 291 (1969)). Thus, the question posed by Section 2254’s custody requirement is only and simply whether the petitioner “suffers [a] present restraint from a conviction”

entered by a state court. *Garlotte v. Fordice*, 515 U.S. 39, 45 (1995). That is a functional inquiry, and a petitioner may be “‘in custody’ under his [state] conviction” even after his technical “sentence [is] nominally completed” (*id.*), and even without a criminal sentence at all (*Boumediene*, 553 U.S. at 779-780).

The State is thus wrong to say that federal courts lack jurisdiction to review continuing restraints on liberty resulting from a criminal conviction, simply because they continue after “punishment” has ended. The core lesson of *Jones* and *Hensley* is precisely the opposite: The in-custody requirement extends beyond the jailhouse gates—and beyond any other narrow, chain-gang conception of physical custody—to reach instances where a person, because of a state-court criminal judgment, is subject to substantial ongoing restraints on liberty or freedom of movement, no matter the source. See *Jones*, 371 U.S. at 239; *Hensley*, 411 U.S. at 351.

Maleng is not to the contrary. To start, *Maleng* was openly addressed by the Court in *Clements I*. See 59 F.4th at 1211-12. The Court there rejected the notion that *Maleng* controlled, reasoning that AEDPA’s enactment in 1996 changed the legal landscape and that sex offense registration laws like Florida’s require application of the Supreme Court’s “‘in custody’ precedent to a fairly new reality.” *Id.* at 1212 & n.4.

In any event, *Maleng* is unhelpful to the State. To be sure, the Supreme Court there stated that “once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual ‘in custody’ for the purposes of a habeas attack upon it.” 490

U.S. at 492. But that was a statement about the nature of the specific collateral consequences at issue in that case, not a categorical statement that collateral consequences can never amount to custody.

It's no surprise, then, that the collateral consequences described in *Maleng* have nothing in common with the lifelong burdens that come with a sex offender conviction in Florida. The defendant in *Maleng* attempted to challenge the validity of a fully served 1958 conviction solely on the basis that that conviction, by operation of state law, was used to enhance a 1978 sentence for assault. 490 U.S. at 489-90. The Court rejected that effort, explaining that the petitioner "suffer[ed] no present restraint" whatsoever from the prior conviction. *Id.* at 492.

Other examples of collateral consequences discussed in *Maleng*, such as "inability to vote, engage in certain businesses, hold public office, or serve as a juror," were much the same. *Id.* at 491-92. None can be understood to substantially burden a person's freedom of movement, and none bears a direct relationship to the crime of conviction such that they would be properly understood as a continuation of the State's remedial response to a person's offense conduct.

At bottom, the State's argument distinguishing punishment from collateral consequences is a red herring. The cumulative burdens of sex offender registration and residency restrictions substantially limit petitioner's freedom to do all the things than ordinary citizens are permitted to do, and that is all he must establish for habeas jurisdiction to lie. *See Clements I*, 59 F.4th at 1214.

CONCLUSION

The Court should hold that it has jurisdiction under 28 U.S.C. § 2254 because petitioner Louis Matthews Clements is “in custody” as a result of the Florida sex-offender registration regime.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that on January 5, 2025, the foregoing was filed with the Clerk of the Court by using the CM/ECF system, and that service was accomplished on all counsel of record by that system.

/s/ Michael B. Kimberly