

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

Suffolk, ss.

Super. Ct. No. 20-00855-D

**STEPHEN FOSTER, MICHAEL GOMES,
PETER KYRIAKIDES, RICHARD
O'ROURKE, STEVEN PALLADINO,
MARK SANTOS, DAVID SIBINICH,
MICHELLE TOURIGNY, MICHAEL
WHITE, FREDERICK YEOMANS, and
HENDRICK DAVIS**, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CAROL MICI, Commissioner of the
Massachusetts Department of Correction,
GLORIANN MORONEY, Chair
Massachusetts Parole Board, and **THOMAS
TURCO**, Secretary of the Executive Office of
Public Safety and Security,

Defendants.

E-FILED 12/23/2020 CM

PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Mass R. Civ. P. 65(b) and Superior Court Rule 9A(d)(1), Plaintiffs' hereby move for a preliminary injunction ordering Defendants' to take steps to reduce the number of people in the custody of the Department of Correction due to Defendants' deliberate indifference in addressing the risk created by the COVID-19 pandemic. For the reasons detailed in the Memorandum, the Plaintiffs are entitled to preliminary injunctive relief, as they would likely succeed at trial; absent relief, they will suffer irreparable harm not capable of remediation by final judgment; the risk of irreparable harm, in light of the chances of success, outweighs any possible harm to the Defendants; and granting preliminary relief will serve the public interest.

See Commonwealth v. Massachusetts CRINC, 392 Mass. 79, 87-88 (1984). Plaintiffs seek the following relief, in addition to all other relief the Court deems just and proper:

For the duration of the COVID-19 emergency, enjoin Defendants and their agents, officials, employees, and all persons acting in concert with them from:

- a. Housing any prisoner in any correctional facility where the population exceeds the Design/Rated capacity of that institution;
- b. Housing any prisoner in a cell, room, dorm, or other living area that does not meet the minimum size standards established by the Department of Public Health in 105 CMR 451.320-322.
- c. Housing any prisoner in a cell, room, dorm, or other living area where they must sleep, eat, or recreate within six feet of another person.

Further, the Court should order the Defendants to immediately reduce the number of people confined in DOC facilities by at least a sufficient number to ensure compliance with the relief requested above, prioritizing release for members of the medically vulnerable subclass.

Mechanisms for population reduction should include but not be limited to:

- a. Immediate implementation of a home confinement program to consider prisoners at all DOC institutions for possible release on home confinement, regardless of any statutory exclusions, and with a presumption in favor of home confinement for members of the medically vulnerable subclass;
- b. Use of furloughs, including allowing furloughs for longer than the 14 days authorized by G.L. c. 127, § 90A;
- c. Maximizing the award of good conduct deductions, including completion credits and “boost time” under G.L. c. 127, § 129D, and authorizing the award of more such

deductions than is permitted by § 129D, including sufficient credits to accomplish the immediate release of all prisoners who are now within three months of their discharge date, and one year of good time credit for all those currently incarcerated;

- d. Identifying all prisoners who may qualify for medical parole, under G.L. c. 127, § 90A, taking all necessary steps to ensure that a medical parole petition is filed immediately, considering the risk of COVID-19 in making medical parole decisions in accordance with the SJC's directives in *Christie v. Commonwealth*, 484 Mass. 397, 401-402 (2020) and *Commonwealth v. Nash*, 2020 WL 7364784 (December 14, 2020), and granting medical parole to those who qualify as quickly as possible and in no event more than one week after the petition is filed.

Further, the Court should order Defendant Moroney and the Parole Board to:

- a. Consider the dangers posed by COVID-19 to potential parolees when assessing whether their "release is not incompatible with the welfare of society," as required by G.L. c. 27, § 130, and, consistent with the SJC rulings in *Christie v. Commonwealth*, 484 Mass. 397, 401-402 (2020) and *Commonwealth v. Nash*, 2020 WL 7364784 (December 14, 2020), explain in its written decision how it weighed those dangers, on an individualized basis for each petitioner, in making its parole decisions;
- b. Issue written decisions within two weeks of all lifer hearings;
- c. Presumptively grant parole to all parole-eligible individuals unless it makes a determination based on clear and convincing evidence that the person cannot live at liberty without violating the law;

- d. Cease revoking parole for technical violations or issuing parole detainers to hold people in custody pending parole revocation hearings for technical violations or when a court has released the person pending trial on new charges.

In order to promptly effectuate compliance with this relief, Plaintiffs ask that the Court order Defendants to report weekly on the status of implementation.

Plaintiffs' counsel met and conferred with counsel for Defendants on December 23, 2020, who indicated they were opposed to the motion.

Dated: December 23, 2020

Respectfully Submitted,

/s/ Michael J. Horrell

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on December 23, 2020 by email to the counsel of record.

/s/ Michael J. Horrell
Michael J. Horrell