

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.

3/28/2022 e-filed KG

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56(a) of the Massachusetts Rules of Civil Procedure and Rule 9A(b)(5), Plaintiffs move for summary judgment on the Fourth Cause of Action in the Amended Complaint, for a declaratory judgment under G.L. c. 231A, § 1 et seq.

Plaintiffs seek a declaratory judgment that Defendant Carol Mici has failed to comply with her obligations under Chapter 24 of the Acts of 2021, Section 2, line item 8900-0001, which requires the commissioner of correction to “release, transition to home confinement or furlough individuals in the care and custody of the department who can be safely released, transitioned to home confinement or furloughed with prioritization given to populations most vulnerable to

serious medical outcomes associated with COVID-19 according to the Centers for Disease Control and Prevention’s guidelines,” and further requires the Department of Correction to “consider, but . . . not be limited to considering: (1) the use of home confinement without exclusion pursuant to chapter 211F of the General Laws; (2) the expedition of medical parole petition review by superintendents and the commissioner; (3) the use of furlough; (4) the maximization of good time by eliminating mandates for participation in programming for those close to their release dates; and (5) awarding credits to provide further remission from time of sentence for time served during periods of declared public health emergencies impacting the operation of prisons.” Chapter 24 of the Acts of 2021, Section 2, line item 8900-0001.

Plaintiffs further ask that the Court order Defendant Mici to immediately begin releasing, transitioning to home confinement, and furloughing all people in DOC custody who can be safely released, transitioned to home confinement, or furloughed, with prioritization given to populations most vulnerable to serious medical outcomes associated with COVID-19 according to the Centers for Disease Control and Prevention’s guidelines and to persons within six months of release or parole eligibility, and to file weekly status reports on DOC’s progress.

In support of this motion, Plaintiffs submit the following: Plaintiffs’ Memorandum of Law in Support of Motion for Partial Summary Judgment; Statement of Undisputed Material Facts; Declaration of Michael J. Horrel; and Joint Appendix.

Dated: February 3, 2022

Respectfully Submitted,

/s/ David Milton

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on February 3, 2022, by email to the counsel of record.

/s/ Michael Horrell
Michael Horrell

CERTIFICATE OF COMPLIANCE WITH SUPERIOR COURT RULE 9C

I hereby certify that on February 3, 2022 I requested to confer with counsel for Defendant Mici, who declined to do so.

/s/ David Milton
David Milton