
**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

DAR-_____
Appeals Court No. 2026-P-1287

MATTHEW L. FROST,
Petitioner-Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS & ANOTHER,
Respondents-Appellees.

ON APPEAL FROM A JUDGMENT
OF THE SUPERIOR COURT IN WORCESTER COUNTY

**PETITIONER-APPELLANT'S APPLICATION FOR
DIRECT APPELLATE REVIEW**

ASHLEY A. ANDRADE (No. 697189)
ANDRADE LEGAL, LLC
867 Boylston Street
5th Floor, #1119
Boston, Massachusetts 02116
(617) 206-1822
ashley@andrade-legal.com

Counsel for Petitioner-Appellant

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REQUEST FOR DIRECT APPELLATE REVIEW

Petitioner-appellant Matthew L. Frost ("Frost" or "Appellant") timely applies under G. L. c. 211A, § 10(A), and Mass. R. A. P. 11 for direct appellate review of the Worcester Superior Court's judgment (Wrenn, J.) dismissing his post-warrant habeas petition challenging rendition to Ohio. The appeal was docketed in the Appeals Court on September 3, 2026, and this application is filed within the twenty-one-day period prescribed by Mass. R. A. P. 11(a) .

This appeal presents novel questions concerning the Commonwealth's authority to surrender a person conceded not to have been in the demanding State during the charged offenses, on a warrant reciting that he was present and fled, where the Commonwealth, the respondents-appellees in this appeal ("Commonwealth" or "Respondents") defense of that warrant is that he may be surrendered as a nonfugitive instead – a predicate no paper in the packet alleges and the Governor never considered. Massachusetts law provides a mandatory fugitive-rendition route and a separate, discretionary nonfugitive-rendition route under G. L. c. 276, §§ 13–14. In 2022, the Legislature added a further condition for nonfugitive rendition: the acts for which surrender

is sought must be punishable under Massachusetts law if the claimed consequences had occurred here. St. 2022, c. 127, §§ 38-39. No Massachusetts appellate court has construed that condition.

Once fugitivity fails, the four-factor inquiry of *Michigan v. Doran*, 439 U.S. 282 (1978) cannot sustain the Warrant. That inquiry construes the Extradition Clause, which "applies only where the individual sought to be extradited is a fugitive." *Vasquez, petitioner*, 428 Mass. 842, 845 n.3 (1999) A person never present may be surrendered only in the Governor's discretion under § 13, on a rendition demand satisfying § 14, and the habeas court has "an obligation to make certain" that statute is satisfied. *Deur v. Newaygo County Sheriff*, 420 Mich. 440, 449 (1985).

None of that occurred here. The Governor never exercised the discretion § 13 confers. The demand itself alleges neither predicate: it does not say Frost was present in Ohio, and it does not say he committed an act in Massachusetts intentionally resulting in a crime there. The prosecutor's application and affidavit assert presence — the ground the Attorney General conceded is untrue — and no paper in the packet asserts the other. And nothing in the packet makes any evidentiary showing

on the elements of a Massachusetts analogue, as the 2022 punishability condition requires. See *People v. Hinton*, 40 N.Y.2d 345, 353-354 (1976) (construing N.Y. Crim. Proc. Law § 570.16, whose punishability clause the 2022 amendment to § 14 adopts verbatim, to require "some showing of an evidentiary nature establishing every element required under the relevant [asylum-State] penal statute").

The Commonwealth instead argued both fugitive and nonfugitive tracks at once, which concedes that the dispositive fact was contested and that a hearing was required on either. At the habeas hearing, the Commonwealth provided no evidence of presence and, at the hearing, the Assistant Attorney General conceded that Frost likely was not in Ohio during the alleged offenses but then characterized the fugitive recital in the Governor's warrant as a "technical error." See ADD_000036.

The papers are not in order on their face. The Warrant cites a statute that does not exist and a charge the grand jury never returned; rendition demand fails to allege either predicate nor authenticates the indictment and warrant; the only allegation of presence is a county prosecutor's unsworn application for requisition; the

indictment bears no "A true bill" endorsement, as Ohio Rev. Code § 2939.20 requires, alleges venue only in the disjunctive, and identifies no specific location, complainant, act, or transaction in or directed to Ohio; the affidavits contained in the requisition packet were sworn before a notary rather than a magistrate as required by law; identity materials conflict with one another and rest entirely on Massachusetts records; and the § 20C period lapsed without extension. *See, e.g.,* ADD_000013-23.

The Superior Court nonetheless called Frost's non-presence a "technical issue," found evasion in his refusal to return to a State he had never entered, and dismissed the petition without addressing the statutory predicates for nonfugitive rendition. *See* ADD_000007. It answered whether Ohio may prosecute rather than whether Massachusetts may surrender, and it supplied the Governor's missing determination by adopting the Commonwealth's alternative theory by reference. *See id.* (adopting positions advanced by the Respondents in their memoranda requesting dismissal).

That deference has a floor, and this record falls below it. Vasquez recognizes that a requisition "egregiously devoid of even a colorable claim of

legislative jurisdiction" should not be honored. Ohio's sole complainant previously swore in the Business Litigation Session that "all or virtually all" of the relevant events occurred in Massachusetts, then lost its breach of contract claim against Frost, personally, on the merits. ADD_000060; ADD_000086-88; ADD_000093. Ohio's forfeiture specification "relating to all counts" in the indictment now seeks that same Massachusetts contract price. ADD_000021; ADD_000062. Rendition exists to return those who fled. Surrendering a resident who was never in the demanding State, on a Governor's warrant issued as a matter of course under the mandatory route when only the discretionary route could apply, deprives him of the process the statute guarantees and serves no purpose the Extradition Clause or the Uniform Act was enacted to serve.

Pursuant to G. L. c. 211A, § 10, and Mass. R. App. P. 11, Petitioner-Appellant Matthew Frost respectfully requests that the Court allow direct appellate review. This application seeks transfer of the appeal for final resolution by the full Court; it does not seek merits disposition in the application itself.

STATEMENT OF PRIOR PROCEEDINGS

On April 22, 2026, a fugitive-from-justice complaint issued in Clinton District Court, and Frost was arrested at his Clinton, Massachusetts residence on April 30, 2026.

On May 4, 2026, during an emergency bail petition, the Superior Court reduced bail to \$5,000, which he posted, and – at the Commonwealth’s request, despite his refusal to waive rendition – conditioned release on his “[r]eturn to Ohio within two weeks.” On May 19, 2026, the District Court denied his motion to extend that deadline.

On May 20, 2026, Frost filed his first petition for a writ of habeas corpus. On May 20, 2026, Frost filed an Emergency Verified Petition for Writ of Habeas Corpus and Motion for Temporary Stay of Rendition Proceedings in the Worcester County Superior Court (No. 2685CV00787); he challenged the legality of the report-to-Ohio condition, which in effect operated as a constructive rendition. *Frost v. Commonwealth*, No. 2685CV00787 (Mass. Super. Ct. Worcester Cnty).

On May 21, 2026, the Demanding State compiled and executed papers in support of its Application for Requisition. ADD_000018.

On June 1, 2026, the Worcester County Superior Court denied the first petition as premature because no Governor's warrant had issued. Service of the decision was made on June 3, 2026.

After the Superior Court ruling, Appellant continued to seek relief from the pre-warrant reporting condition. He filed a motion in the Clinton District Court to dismiss the Fugitive from Justice Complaint or, in the alternative, to be released on personal recognizance pending issuance of a Governor's Warrant and to vacate any condition requiring him to self-surrender or report to Ohio before such warrant issued. See Def.'s Mot. to Dismiss Fugitive from Justice Compl., *Commonwealth v. Frost*, No. 2668CR000295 (Clinton Dist. Ct. June 29, 2026).

On June 8, 2026, Frost appeared voluntarily in the Clinton District Court to oppose a nonbailable warrant obtained on the Commonwealth's *ex parte* application and moved to dismiss the fugitive from justice action under G. L. c. 276, § 20A, challenging the report-to-Ohio condition and the lapse of the thirty-day period under G. L. c. 276, § 20C; the motion and the condition were continued to June 29, 2026.

Separately, on June 8, 2026, the rendition demand ("Demand") executed by Ohio's governor was transmitted to Governor Healey. On June 12, 2026, Attorney General's Office ("AOG") advised Governor Healey that the Demand satisfied G. L. c. 276, § 14; and, unbeknownst to Frost, the Governor's Warrant ("Warrant") issued on June 22, 2026. ADD_000013-15.

On June 26, 2026, Frost sought emergency relief from the Appeals Court to stay enforcement of the Ohio-reporting condition. *Frost v. Evangelidis*, No. 2026-J-0598 (Mass. App. Ct. June 29, 2026) (single justice) (order denying emergency motion to stay rendition). On June 29, 2026, the single justice denied the stay motion, concluding that Petitioner had not established a likelihood of success on appeal because no Governor's Warrant was before the Appeals Court; once made aware of the Governor's Warrant, the Appeals Court noted that a petition for writ of habeas corpus was now ripe. See *id.*

Also, on June 29, 2026—the date set for the Clinton District Court status hearing and the deadline associated with the disputed report-to-Ohio condition—Appellant appeared at Clinton District Court at approximately 8:30 a.m., before Appellant could be heard by Judge Revelli on his pending motions, Massachusetts

State Police officers arrested him under the Governor's Warrant; he was subsequently arraigned under the Warrant and his motion to dismiss was never argued. *Commonwealth v. Frost*, No. 2668CR000473 (Clinton Dist. Ct.).

On June 30, 2026, Frost filed the verified petition underlying the basis of this appeal, supported by his affidavit and reliable evidence including court records from prior litigation and third-party contemporaneous records covering all 112 days alleged in the indictment—such as call-site records, hotel, toll, and bank records placing him in Massachusetts, Colorado, and Florida, never Ohio— with an emergency motion for a temporary restraining order and stay. ADD_000035–36 (Judge Wrenn noted the extensive evidence provided by Frost at the hearing).

On July 3, 2026, he was released on bail. On July 8, 2026, the Commonwealth filed a motion captioned "Motion to Dismiss Application of Matthew L. Frost for a Writ of Habeas Corpus," pleaded "pursuant to M. G. L. c. 248, § 11," averring that Frost "is in the custody and power of" the Sheriff and "is a fugitive from justice in the State of Ohio" (the "Return"), with an opposition memorandum and Exhibits A–C. ADD_000027–33.

On July 16, 2026, Frost traversed the Return under G. L. c. 248, § 15, denying each of its averments – custody, lawful authority, fugitivity, G. L. c. 248, § 14 compliance, and identity – and filed a supplemental brief and supplemental affidavit pressing the G. L. c. 276, § 13 discretion, G. L. c. 276, § 14 nonfugitive-predicate, and punishability grounds. See ADD_000004.

On July 17, 2026, the court heard argument. No testimony was taken and no additional evidence was presented by the Commonwealth. The Attorney General's Office, representing the Respondents, stated that the Commonwealth was "bound to the four corners of the rendition packet," (ADD_000036); that they "tend[ed] to believe that he likely was not in the state at the time of the alleged offenses," (ADD_000036); and that "the fact that he is referred to as a fugitive in the rendition packet is simply a technical error," the rendition packet having "complied with" G. L. c. 276, § 13 and G. L. c. 276, § 14 "for the nonfugitive rendition" (ADD_000036).

On August 10, 2026, the Superior Court issued a three-page Memorandum of Decision ("Decision") allowing the motion and dismissing the petition; judgment entered August 11, 2026. See ADD_000006–8. The Decision recites

that review is "strictly limited to four issues" under *California v. Superior Court*, 482 U.S. 400, 408 (1987), and *Gay*, petitioner, 406 Mass. 471, 475 (1990); "adopts the positions advanced by the respondents in their memoranda"; states that Frost's absence from Ohio "is not dispositive of the jurisdictional issue relative to the charges, and in any event that issue will be litigated in Ohio, not Massachusetts"; calls the fugitivity challenge a "type of technical issue"; and finds from "the totality" of the package that Frost "is evading the jurisdiction of Ohio" and "by his own admission is refusing to return to Ohio." ADD_000007. It does not mention G. L. c. 276, § 13, the intentional-result nexus or punishability requirement of §§ 13-14, or G. L. c. 248, § 15, and makes no findings on the traversed averments. ADD_000006-8.

Frost filed a timely notice of appeal on August 14, 2026. ADD_000004. The appeal was entered in the Massachusetts Appeals Court on September 3, 2026 (No. 2026-P-1287).

STATEMENT OF FACTS

A. The Massachusetts transaction.

Frost is a lifelong Massachusetts resident. He has never resided, worked, or transacted business in Ohio

and apart from an unrelated overnight stop in Cleveland, Ohio in June 2019 to sleep while driving from Colorado to Massachusetts, he has never been in the State. ADD_000007 (Supreme Court acknowledged this fact at the July 17, 2026 hearing).

On November 17, 2020 – the first day of the charged period in the Indictment – Tina DiGiorgio, a principal of JTM Investments, LLC ("JTM")—Ohio's sole and only complainant-initiated contact with a Colorado-based incubator program for startups in the cannabis industry seeking a company in need of equipment financing, and was then introduced to AABA, Inc. ("AABA"), a Massachusetts-based company of which Frost was the founder and CEO; the first call came into Frost's Massachusetts telephone.

On December 2, 2020, AABA and JTM executed a commercial equipment purchase-and-leaseback agreement for \$545,664.00. ADD_000062. Frost's supporting materials identify AABA's principal place of business in Boston, Massachusetts, a Braintree warehouse containing equipment and machines, and a wire transfer to AABA's Massachusetts bank account. The agreement gave JTM specified ownership-related tax benefits and rights to take possession of the equipment upon default.

ADD_000083 (JTM noted its collateral rights under the "commercial" agreement in the civil complaint filed in Suffolk Superior Court).

After AABA became insolvent and dissolved, AABA attempted to return the equipment to JTM under the parties' agreements and JTM refused possession.

In November 2021, JTM, along with two other co-plaintiffs, sued AABA and Frost in Suffolk Superior Court; the case was transferred to the Business Litigation Session. JTM and DiGiorgio represented that "all or virtually all" events occurred in Massachusetts, that JTM conducted "substantial business" here, and that the transaction "functioned as a loan", and that JTM was a "traditional debt lender". ADD_000062, ADD_000086-88. On those representations it obtained a temporary injunction, which the Suffolk Superior Court later dissolved for failing to allege a likelihood of success on the merits. JTM was not a party to the "fraud in the inducement of a contract for the purchase and sale of securities count its co-plaintiffs asserted. ADD_000080-81.

In June 2022, the BLS dismissed, on the merits, JTM's breach-of-contract claim against Frost individually, reasoning that he had signed the

agreements only on AABA's behalf; it also dismissed JTM's independent fraud claims and its co-plaintiffs' securities fraud-related claim. ADD_000089-98. In approximately May 2023, the BLS dismissed JTM's remaining fraud-in-the-inducement claim against Frost and AABA and its contract claim against AABA. Reconsideration was denied, and no appeal or refiling followed. ADD_000102-104.

In June 2023, JTM pursued securities-related allegations with the Massachusetts Securities Division. Frost responded to a formal subpoena under oath and produced materials, without an ensuing enforcement action.

In March 2024, an Ohio Division of Securities attorney contacted Frost and proposed a voluntary interview in Boston; Frost declined the interview but provided materials he had supplied to Massachusetts regulators; no formal requests or demands were made and no further request or enforcement action followed.

During that time, the parties engaged in settlement discussions, which were ultimately unsuccessful.

On or about June 3, 2024, JTM's remaining civil claims were fully time-barred.

B. The Ohio indictment.

On October 29, 2025, a Greene County grand jury returned a sealed seven-count indictment with a forfeiture specification. Frost did not learn of the indictment for nearly five months because it remained sealed, and he continued to reside openly at his Clinton, Massachusetts address.

The indictment alleges conduct from November 17, 2020 through March 8, 2021. It does not identify a corporation, contract, transaction, or counterparty. Each substantive count uses disjunctive venue language—alleging conduct “in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code.” ADD_000019–22. The indictment’s forfeiture specification seeks “\$545,664.00 in U.S. Currency” “relating to all counts in the indictment,” the same amount as the purchase-and-leaseback price. ADD_000021.

After learning of an Ohio matter, Frost retained Ohio counsel to resolve the matter.

Frost was initially prepared to appear voluntarily in Ohio, approximately 800 miles away, to resolve it. That changed when he learned that the demanding state had made inaccurate filings in an Ohio court, including a representation that Frost “has agreed to assent to the

jurisdiction of this Court from the Commonwealth of Massachusetts"—a position he never took. ADD_000041–42 (explaining that at the July 17, 2026 hearing).

On April 2, 2026, the demanding state obtained a failure-to-appear capias from an Ohio Court for the April 3, 2026 arraignment that had not yet occurred, based on an indictment and summons that the Demanding State admits were never served on Frost. ADD_000043 (explaining that at the July 17, 2026 hearing). An April 6, 2026 motion to recall the capias acknowledged that neither the indictment nor the summons had been served on Frost; the Ohio court then replaced the capias with a warrant on indictment.

Appellant has consistently refused to waive rendition and to waive any jurisdictional and venue objections, or waive rendition.

C. The Warrant and Requisition Papers

The Governor's warrant recites that Frost was present in Ohio at the time of the alleged crimes, is a fugitive from justice, and has taken refuge in Massachusetts. It also lists the forfeiture specification as a separate "crime" and cites "ORC 2941.1471(A)." ADD_000013–14. The Attorney General's June 12 letter refers to Frost as "the above-named fugitive" and certifies that the Demand

satisfies § 14, without identifying the statutory predicate invoked. ADD_000016. Nothing in the requisition packet identifies a determination under G. L. c. 276, § 13. See, e.g., ADD_000017–22.

The rendition demand, dated May 27, 2026, does not allege presence or flight. It states that Frost “intentionally committed an act which resulted in” the crimes in Ohio, without identifying the act or where it occurred. ADD_000017. The demand’s supporting papers refer to Frost as a “fugitive” and the application for requisition asserts that Frost was in Ohio at the time of the offenses and fled to avoid prosecution. See, e.g., ADD_000018.

D. The evidence of non-presence.

On June 30, 2026, Frost filed his second petition for a writ of habeas corpus—the petition at issue in this appeal. See ADD_00001–4. Frost’s verified petition, supporting affidavits, and evidentiary materials—including Massachusetts court records and orders, and contemporaneous third-party records—show that he was not physically present in Ohio during the charged period or in the surrounding weeks and that the underlying events occurred in Massachusetts. ADD_000042–43 (arguing at the July 17, 2026 hearing that Frost had made a clear and

substantial showing of non-presence). JTM's sworn BLS filing further enforced the fact that "all or virtually all" of the events occurred in Massachusetts. ADD_000060; ADD_000086-88.

The Commonwealth offered no witness, affidavit, or record independently placing Frost in Ohio during the charged period. See, e.g., ADD_000024-56.

E. The proceedings and positions below.

The Commonwealth argued that whether Frost was in Ohio "is beyond the scope of this review," ADD_000025, while citing to *Upton* for Frost's burden to prove non-presence (ADD_000025); argued in the alternative that if Frost was not present the nonfugitive clause of § 14 "would certainly apply" and "satisfy the requirements" because an "individual's conduct in Massachusetts can produce criminal effects in another jurisdiction" (ADD_000028); listing Massachusetts "correlates" by chapter range (ADD_000029); and quoted § 14 without the 2022 punishability clause and finding it met (ADD_000031).

At the hearing, the Assistant Attorney General offered no evidence of presence and conceded that she Frost "likely was not in the state at the time of the alleged offenses." ADD_000036.

In its August 10, 2026 decision, the Superior Court nonetheless described Frost's non-presence argument as a "type of technical issue," reasoned that financial crimes can have effects in the demanding state, and found that Frost was a fugitive from justice because he was "evading the jurisdiction of Ohio" by "refusing to return to Ohio." ADD_000007-8. The Decision applied the four *Doran* inquiries, did not address G. L. c. 276, § 13 or the § 14 intentional-result and punishability predicates, and dismissed the habeas petition by adopting the Respondents' memoranda. See ADD_000006-8.

ISSUES OF LAW RAISED BY THE APPEAL

The Appellant seeks direct appellate review, on an expedited consideration, of five issues that were raised and preserved in the Superior Court:

1. Whether, when the Commonwealth concedes that the petitioner was not present in the demanding State, a court may sustain rendition under the ordinary fugitive framework of *Michigan v. Doran* 439 U.S. 282 (1978), without determining the distinct statutory predicates for nonfugitive rendition under G. L. c. 276, §§ 13-14.

2. Whether G. L. c. 276, § 14 permits recognition of a nonfugitive demand without an evidentiary showing that the acts alleged would be punishable in Massachusetts if

the claimed consequences had occurred here, and, if not, what showing satisfies that condition.

3. Whether a petitioner's refusal to self-surrender to the demanding state, and exercise of the right under G. L. c. 276, § 19 to test the legality of surrender, may support a finding of evasion or substitute for the presence-and-flight requirement of fugitivity.

4. Whether a petition for a writ of habeas corpus under G. L. c. 248 may be dismissed under Mass. R. Civ. P. 12(b)(6), notwithstanding Mass. R. Civ. P. 81(a)(1), which excludes habeas proceedings from the Rules of Civil Procedure, without the examination, evidentiary hearing, and disposition required by G. L. c. 248, § 15.

5. Whether surrendering a person never present in the demanding State under a Governor's warrant issued on the mandatory fugitive route, without the discretionary determination required by G. L. c. 276, § 13, deprives that person of liberty without due process under the Fourteenth Amendment and art. 12 of the Declaration of Rights.

ARGUMENT

The Superior Court sustained a Governor's warrant reciting presence, flight, and refuge in the Commonwealth despite Frost's unrebutted evidence of non-

presence and the Commonwealth's concession that he was likely not in the demanding state. By treating presence as a "technical issue," treating Frost's refusal to "return" to a state he was never in as evasion, and deferring to Ohio questions assigned to the Commonwealth by G. L. c. 276, §§ 13-14, the Superior Court left the statutory predicates for surrender unresolved.

A. A Person Never Present in the Demanding State May Be Surrendered Only Under G. L. c. 276, §§ 13-14, and the Superior Court Never Applied Them.

A "fugitive from justice" is a person charged with a crime in the demanding State who thereafter leaves it. *Gay*, 406 Mass. 471, 475 (1990) , *citing Appleyard v. Massachusetts*, 203 U.S. 222, 227 (1906). Physical presence in the demanding State at the time of the alleged offense is essential to the constitutional fugitive-rendition route; constructive presence does not suffice. *Hyatt v. People ex rel. Corkran*, 188 U.S. 691, 712-713 (1903). A Governor's warrant is prima facie evidence of fugitivity, but the presumption may be rebutted by clear and satisfactory evidence of non-presence. *Munsey v. Clough*, 196 U.S. 364, 374-375 (1905); *Upton*, 387 Mass. 359, 363 (1982). Frost offered contemporaneous third-party records to establish non-presence, and the Assistant Attorney

General stated that she tended to believe he likely was not in Ohio during the alleged offenses.

ADD_000036. That constitutes a concession.

A person not physically present in the demanding state may nevertheless be surrendered under the distinct nonfugitive provisions set forth in G. L. c. 276, §§ 13-14. That route rests on comity, not the Extradition Clause's mandatory command. *People v. Hinton*, 40 N.Y.2d 345, 349-50 (1976). Sections 13-14 require a written demand alleging that the person committed, in Massachusetts or a third State, an act intentionally resulting in a crime in the demanding State; the demand also must satisfy the statutory Massachusetts-punishability condition. G. L. c. 276, §§ 13-14. Section 13 makes any such surrender discretionary.

The Ohio papers identify neither the alleged act nor its location. The Ohio Governor's Demand states only that Frost "intentionally committed an act which resulted in" the charged crimes. ADD_000017. Compare G.L. c. 276, §§ 13-14. The Governor's Warrant proceeds on the mandatory-fugitive theory, and the record does not identify any exercise of said executive authority's discretion under G. L. c. 276, § 13.

ADD_000014–15. That omission is material: courts construing comparable UCEA provisions have treated the Governor's discretionary authority as distinct from mandatory fugitive rendition. *Jenkins v. Garrison*, 265 Ga. 42, 47 (1995); *Koenig v. Poskochil*, 238 Neb. 118 (1991); *People ex rel. Bernheim v. Warden*, 95 Misc. 2d 577, 579–80 (Sup. Ct. 1978).

Vasquez provides the controlling Massachusetts comparison. 428 Mass. 842. There, the fugitive recital in the governor's warrant was inaccurate because the petitioner had never been in Oregon. This Court nevertheless upheld rendition because the Oregon demand and supporting requisition papers specifically alleged that, while outside Oregon, the petitioner committed an act intentionally resulting in the charged crime in Oregon, thereby supplying the statutory nonfugitive predicate; the only outlier being the Governor's warrant. *Vasquez*, 428 Mass. at 844–45. The issue here is whether the Ohio papers, which do not identify the alleged act or its situs, similarly supply the predicate required by §§ 13–14. And they do not. *Cf.* ADD_000013–23. Counsel's assertion that § 14 "would certainly apply" because an individual's conduct "can produce criminal effects in

another jurisdiction" does not establish that the statutory prerequisites were met (ADD_000028).

Doran's four-factor framework governs the constitutional fugitive route and includes fugitivity among the historic facts the asylum court may decide. *Doran*, 439 U.S. at 289. It does not resolve whether the Commonwealth may exercise its separate statutory authority to make a discretionary nonfugitive surrender. As *Vasquez* explains, the Extradition Clause "applies only where the individual sought to be extradited is a fugitive." 428 Mass. at 845 n.3. The Superior Court treated Frost's evidence of non-presence as "not dispositive" because Ohio could litigate jurisdiction. ADD_000007. But Ohio's authority to prosecute and Massachusetts's statutory authority to surrender are different inquiries. Before a nonfugitive surrender may occur, the Commonwealth must determine that §§ 13-14 have been satisfied. *Cf. Strassheim v. Daily*, 221 U.S. 280, 285 (1911) ("Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should

succeed in getting him within its power") (emphasis added).

B. The Punishability Condition of § 14 Was Never Determined.

The 2022 amendment makes Massachusetts punishability a condition of recognizing a nonfugitive demand: the acts for which rendition is sought must be punishable under Massachusetts law if the claimed consequences had occurred here. G. L. c. 276, § 14. The Superior Court made no finding under that provision. Respondents identified Massachusetts statutory "correlates," but the papers do not identify the act or its situs necessary to apply the statutory counterfactual. See *id.*; ADD_000029. *Hinton*, construing materially similar New York language, is persuasive authority that the asylum state must have an evidentiary basis for each element of the applicable asylum-state offense before a nonfugitive surrender may proceed. *People v. Hinton*, 40 N.Y.2d 345, 353-54 (1976). Whether the 2022 amendment imposes the same requirement in Massachusetts is a question of first impression appropriate for direct review.

C. Declining to Waive Rendition Is Not Evasion.

The Superior Court treated Frost's refusal to "return to Ohio to face th[e] charges" as evasion. ADD_000008.

But G. L. c. 276, § 19 gives an arrested person the right to test the legality of surrender before delivery, and G. L. c. 276, § 20D addresses appearance in Massachusetts and surrender upon a Governor's Warrant. Whether a court may treat invocation of those statutory rights as evidence of fugitivity or evasion is a preserved question distinct from the Ohio criminal merits.

D. Chapter 248 Required a Hearing and Findings, Not Dismissal Under Rule 12(b) (6) .

Rule 81(a)(1) excludes habeas proceedings from the Rules of Civil Procedure. Chapter 248 instead requires a return stating the "true and whole cause" of restraint, a traverse and hearing at which the court "shall . . . hear the evidence produced," and remand or discharge. G. L. c. 248, §§ 11, 15, 22-23. The Superior Court heard the evidence and adopted Commonwealth's arguments wholesale without findings on Frost's traversed averments. ADD_000007. That disposition necessarily credited the requisition's rebutted characterizations over Frost's verified petition and substantiated and conceded evidence of non-presence, rather than determining the facts Chapter 248 requires.

**E. Surrendering a Nonfugitive on a Governor's
Warrant Issued Without a § 13 Determination
Deprives Him of Liberty Without Due Process.**

The Extradition Clause prevents an asylum state from becoming "a sanctuary for fugitives from justice of another state." *Puerto Rico v. Branstad*, 483 U.S. 219, 227 (1987), *quoting Doran*, 439 U.S. at 287. That constitutional rationale does not reach a person never physically present in the demanding state. In that circumstance, §§ 13-14 require a written nonfugitive demand, the § 14 punishability determination, and the Governor's discretionary decision. A demand may not be recognized unless those statutory predicates are met.

Here, the Governor of the Commonwealth was never asked to exercise § 13 discretion; the Superior Court supplied the missing determination by adopting Respondents' alternative theory. ADD_00007. That procedure deprived Frost of the discretionary process the nonfugitive statute provides. The Massachusetts civil record is relevant to that threshold surrender decision—not as a merits defense to the Ohio indictment, but because it bears on whether the requisition identifies a qualifying out-of-state act, whether the claimed consequences satisfy § 14, and whether the Governor was presented with the facts necessary to exercise informed

discretion. *Bernheim*, 95 Misc. 2d at 579-580; *Jenkins*, 265 Ga. at 46-47. Although a habeas proceeding challenging rendition is civil in form, the liberty interest warrants due-process protection comparable to that in a criminal proceeding. *Hinnant*, 424 Mass. 900, 904 (1997).

In addition, this Court in *Vasquez* recognizes that a requisition "egregiously devoid of even a colorable claim of legislative jurisdiction" should not be honored, but left open what that requisition would be.

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Three reasons justify direct appellate review.

First, the appeal presents "questions of first impression or novel questions of law which should be submitted for final determination to" this Court. Mass. R. A. P. 11(a)(1). *Vasquez*, decided in 1999, is the last time this Court considered nonfugitive rendition. It recognized that the Extradition Clause – the source of *Doran's* framework– "applies only where the individual sought to be extradited is a fugitive", and that where the Clause governs, surrender is mandatory and neither the executive nor the courts of the Commonwealth retain discretion. 428 Mass. at 845 n.3. But *Vasquez* presented

no occasion to decide what review c. 248 requires when fugitivity is traversed and conceded away: the recital defect there was raised for the first time on appeal, and Oregon's supporting papers certified the § 13 predicate, curing it. 428 Mass. at 844-845. This Court has never addressed that question. Nor has any Massachusetts appellate decision construed the 2022 punishability amendment to § 14, decided whether exercising § 19 rights may constitute evasion, or addressed whether a Rule 12(b)(6) dismissal is available in a c. 248 proceeding. The Appeals Court can decide this case, but direct review will provide a definitive statewide answer without the delay of a later application for further appellate review.

Second, the appeal presents questions under the Constitutions of the Commonwealth and of the United States that were raised below. Mass. R. A. P. 11(a)(2) . The Extradition Clause's fugitive route applies only to a person who fled the demanding state. The application asks whether the Commonwealth may deprive a person it concedes was not physically present in the demanding state of liberty without the requisition alleging the nonfugitive predicate, the punishability determination, and the discretionary executive decision that §§ 13-14

require. U.S. Const. amend. XIV; Mass. Decl. of Rights art. 12; *Vasquez*, 428 Mass. at 845 n.3.

Third, the appeal presents a question of such public interest that justice requires final determination by the full Court. Mass. R. A. P. 11(a)(3). The Commonwealth proposes to surrender a lifelong Massachusetts resident to a state 800 miles from his home, family, and livelihood— and one he has ever entered once in his life during an unrelated drive home from Colorado— to answer for a commercial transaction that Ohio's own complainant swore took place in Massachusetts and had litigated here, on rendition papers that identify no situs, act, element, or consequence in Ohio. The Respondents conceded that Frost was not in Ohio and that the papers assert his presence, yet argued that the Warrant should stand on either route— the fugitive route or, failing presence, a nonfugitive route the papers never invoke and the Governor never considered— because "Section 14 contemplates that an individual's conduct in Massachusetts can produce criminal effects in another jurisdiction." ADD_000027-28, 36. The Superior Court adopted that reasoning by reference, treating presence as a "technical issue" and non-presence as "not

dispositive" because financial crimes can have effects in the demanding State. ADD_000007-8.

A construction under which the §§ 13-14 prerequisites yield to a bare allegation of in-state effect would yield them in every nonfugitive case, and would render §§ 13-14 nugatory. Whether that is what the statute means is a question only this Court can finally answer, and one the trial courts and the Executive need answered now.

CONCLUSION

For the foregoing reasons, Petitioner-Appellant Matthew L. Frost respectfully requests that this Honorable Court assume direct appellate review of the appeal at bar.

Respectfully submitted,

MATTHEW L. FROST
Petitioner-Appellant
By his counsel,

/s/ Ashley A. Andrade
Ashley A. Andrade, BBO #697189
Andrade Legal, LLC
867 Boylston St. 5th Fl. #1119
Boston, Massachusetts 02116
(617) 206-1822
ashley@andrade-legal.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this application complies with Mass. R. A. P. 11, 16(e) , 20(a) , and 21.

This application has been prepared in 12-point Courier New, a monospaced typeface. The brief argument required by Mass. R. A. P. 11(b)(5) does not exceed ten pages of text, as determined by counting the pages of the final formatted application; the remaining portions of the application are not part of that brief-argument limit.

Dated: September 24, 2026

/s/ Ashley A. Andrade

Ashley A. Andrade, BBO #697189
Andrade Legal, LLC
867 Boylston St. 5th Fl. #1119
Boston, Massachusetts 02116
(617) 206-1822
ashley@andrade-legal.com

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2026, I served the Application of the Petitioner-Appellant for Direct Appellate Review by the Electronic Filing System and electronic mail on:

Aaron J. Staudinger, Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108-1698
aaron.j.staudinger@mass.gov

/s/ Ashley A. Andrade

Ashley A. Andrade, BBO #697189
Andrade Legal, LLC
867 Boylston St. 5th Fl. #1119
Boston, Massachusetts 02116
(617) 206-1822
ashley@andrade-legal.com

ADDENDUM

ADDENDUM TABLE OF CONTENTS

Docket Entries -- Frost v. Commonwealth, No. 2685CV00992 (Worcester Super. Ct., current through September 23, 2026)	ADD_000001
Memorandum of Decision on Respondents' Motion to Dismiss Habeas Petition, No. 2685CV00992 (Worcester Super. Ct. Aug. 10, 2026) (Wrenn, J.)	ADD_000006
Judgment of Dismissal, No. 2685CV00992 (Worcester Super. Ct. Aug. 12, 2026)	ADD_000009
Endorsement (ALLOWED) on Respondents' Motion to Dismiss, No. 2685CV00992 (Aug. 11, 2026), with Typed Transcription	ADD_000010
Rendition Packet Excerpts:	ADD_000012
A. Governor's Warrant of Rendition (June 22, 2026) (AGO_01-03)	ADD_000013
B. Letter of the Attorney General Pursuant to G. L. c. 276, § 15 (June 12, 2026) (AGO_04)	ADD_000016
C. Demand of the Governor of Ohio for Rendition (May 27, 2026) (AGO_08) ...	ADD_000017
D. Application for Requisition (May 21, 2026) (AGO_10)	ADD_000018
E. Indictment, State v. Frost, Greene Cty. C.P. No. 2025CR0551 (Oct. 29, 2025) (AGO_13-17)	ADD_000019
Respondent's Opposition to Petition for Writ of Habeas Corpus (Excerpts), No. 2685CV00992 (July 8, 2026)	ADD_000024
Excerpts of Transcript of Rule 12 Hearing, No. 2685CV00992 (July 17, 2026)	ADD_000032
Original Civil Action No. 2184CV02744 filed by Complainant in Suffolk Superior Ct. (November 2021); and transferred to the Business Litigation Session	ADD_000058

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Order of Dismissal Nisi, No. 2184CV02744 (Suffolk Super. Ct., Bus. Litig. Sess. Mar. 2023)	ADD_000101
Judgment of Dismissal (Failure to Comply with Nisi Order), No. 2184CV02744 (May 30, 2023), with Order Denying Reconsideration (July 21, 2023) and Typed Transcription	ADD_000102

2685CV00992 Frost, Matthew L. vs. Commonwealth of Massachusetts et al

- Case Type:
- Civil Actions with Incarcerated Party
- Case Status:
- Open
- File Date
- 06/30/2026
- DCM Track:
- F - Fast Track
- Initiating Action:
- Equity Action involving an Incarcerated Party
- Status Date:
- 06/30/2026
- Case Judge:
-
- Next Event:
- 10/13/2026

All Information Party Event Tickler Docket Disposition

Party Information

Frost, Matthew L.
- Plaintiff

Alias

Party Attorney

- Attorney
- Andrade, Esq., Ashley
- Bar Code
- 697189
- Address
- Andrade Legal
- 867 Boylston St 5th Floor
- Boston, MA 02116
- Phone Number
- (617)206-1822

[More Party Information](#)

Commonwealth of Massachusetts
- Defendant

Alias

Party Attorney

- Attorney
- Kratochvil, Esq., Emma D
- Bar Code
- 713642
- Address
- Massachusetts Office of the Attorney General
- One Ashburton Place 19th Floor
- Boston, MA 02108
- Phone Number
- (617)727-2200

[More Party Information](#)

Sheriff of Worcester County
- Defendant

Alias

Party Attorney

[More Party Information](#)

Evangelidis, Lew
- Other interested party

Alias

Party Attorney

- Attorney
- Kratochvil, Esq., Emma D
- Bar Code
- 713642
- Address
- Massachusetts Office of the Attorney General
- One Ashburton Place 19th Floor

ADD 000001

Boston, MA 02108
 • Phone Number
 • (617)727-2200

[More Party Information](#)

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
07/09/2026 02:00 PM	Civil A	WOR-4th FL, CR 20 (SC)	Hearing on Preliminary Injunction	Wrenn, Hon. Daniel M	Not Held
07/09/2026 02:00 PM	Civil A	WOR-4th FL, CR 20 (SC)	Conference to Review Status	Wrenn, Hon. Daniel M	Held as Scheduled
07/09/2026 02:00 PM	Civil A	WOR-4th FL, CR 20 (SC)	Motion Hearing	Wrenn, Hon. Daniel M	Not Held
07/17/2026 10:00 AM	Civil A	WOR-4th FL, CR 20 (SC)	Rule 12 Hearing	Wrenn, Hon. Daniel M	Decision rendered
09/24/2026 02:00 PM	Civil A	WOR-4th FL, CR 20 (SC)	Motion Hearing	Wrenn, Hon. Daniel M	Rescheduled
10/13/2026 02:00 PM	Civil A	WOR-4th FL, CR 20 (SC)	Motion Hearing	Bell, Hon. Karin	

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	06/30/2026	09/28/2026	90	08/12/2026
Answer	06/30/2026	10/28/2026	120	08/12/2026
Rule 12/19/20 Served By	06/30/2026	10/28/2026	120	08/12/2026
Rule 12/19/20 Filed By	06/30/2026	11/27/2026	150	08/12/2026
Rule 12/19/20 Heard By	06/30/2026	12/28/2026	181	08/12/2026
Rule 15 Served By	06/30/2026	10/28/2026	120	08/12/2026
Rule 15 Filed By	06/30/2026	11/27/2026	150	08/12/2026
Rule 15 Heard By	06/30/2026	12/28/2026	181	08/12/2026
Discovery	06/30/2026	04/26/2027	300	08/12/2026
Rule 56 Served By	06/30/2026	05/26/2027	330	08/12/2026
Rule 56 Filed By	06/30/2026	06/25/2027	360	08/12/2026
Final Pre-Trial Conference	06/30/2026	10/25/2027	482	08/12/2026
Judgment	06/30/2026	06/29/2028	730	08/12/2026
Under Advisement	07/17/2026	08/16/2026	30	08/12/2026

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/30/2026	Attorney appearance On this date Ashley Andrade, Esq. added for Plaintiff Matthew L. Frost		
06/30/2026	Case assigned to: DCM Track F - Fast Track was added on 06/30/2026		
06/30/2026	Original emergency verified petition for writ of habeas corpus and motion for stay of rendition pending meaningful opportunity to contest Governor's warrant	1	  Image
06/30/2026	Civil action cover sheet filed.	2	  Image
06/30/2026	Plaintiff Matthew L. Frost's EMERGENCY Motion and Memorandum of Law in Support of Temporary Restraining Order and Preliminary Injunction Staying Transfer to Ohio	3	  Image
06/30/2026	Plaintiff Matthew L. Frost's Memorandum of Law in Support of Petitioner's Emergency Verified Petition for Writ of Habeas Corpus and Motion to Stay or Rendition Pending Meaningful Opportunity to Contest Governor's Warrant	3.1	  Image

ADD 000002

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/30/2026	Affidavit of Ashley A. Andrade	4	 
06/30/2026	Endorsement on Submission of Emergency Motion and Memorandum of Law in Support of Temporary Restraining Order and Preliminary Injunction Staying Transfer to Ohio (#3.0): Summons and Order of Notice to issue returnable 7/9/26 at 2:00pm in Room 20. E-Document sent on 7/1/2026		  Image
06/30/2026	Endorsement on Submission of Petitioner's Emergency Verified Petition for Writ of Habeas Corpus and Motion for Stay of Rendition Pending Meaningful Opportunity to Contest Governor's Warrant (#1.0): Summons and Order of Notice to issue returnable 7/9/26 at 2:00pm in Room 20. E-Document sent on 67/1/2026		  Image
07/01/2026	Habeas corpus issued as to Matthew L. Frost at Worcester County House of Correction for 07/09/2026 02:00 PM Hearing on Preliminary Injunction, 07/09/2026 02:00 PM Motion Hearing. ZOOM ID: 161 4692 2792 PASSWORD: N/A Habe faxed to WCHC on 7/1/2026		  Image
07/03/2026	Petitioner Matthew L. Frost's EMERGENCY Motion to Admit Him to a Bail Pending Resolution of His Petition for Writ of Habeas Corpus, Pursuant to G.L.C. 248 19	5	  Image
07/03/2026	Endorsement on Motion to admit him to bail pending resolution of his petition for writ of habeas corpus, pursuant to G.L. c. 248, §19 (#5.0): No Action Taken Bail issue was addressed via bail review. e-document sent 07/03/2026. Judge: Sisitsky, Hon. Adam		  Image
07/08/2026	Respondent Lew Evangelidis's Motion to Dismiss Application of Matthew L. Frost for a Writ of Habeas Corpus	6	  Image
07/08/2026	Opposition to To Petition for Writ of Habeas Corpus filed by Lew Evangelidis (Re: P #1) [Impounded]	7	
07/09/2026	Event Result: Hearing on Preliminary Injunction scheduled on: 07/09/2026 02:00 PM Has been: Not Held For the following reason: Converted to a status conference Comments: FTR Hon. Daniel M Wrenn, Presiding		
07/09/2026	Event Result: Motion Hearing scheduled on: 07/09/2026 02:00 PM Has been: Not Held For the following reason: Converted to a status conference Comments: FTR Hon. Daniel M Wrenn, Presiding		
07/09/2026	Event Result: Conference to Review Status scheduled on: 07/09/2026 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Daniel M Wrenn, Presiding		
07/13/2026	Respondent Commonwealth of Massachusetts's Motion to Impound Exhibits to Respondent's Opposition (P #7) filed 7/8/2026	8	  Image
07/14/2026	Endorsement on Motion to Impound Exhibits to Respondent's Opposition Filed July 8, 2026 (#8.0): ALLOWED Duration of impoundment to be set at next hearing date. E-Document sent on 7/15/2026		  Image
07/17/2026	Habeas corpus issued as to Matthew L. Frost at Worcester County House of Correction for 07/17/2026 10:00 AM Rule 12 Hearing. ZOOM ID: 161 4692 2792 PASSWORD: N/A Habe faxed on 7/17/26 to WCHC		  Image
07/17/2026	Matter taken under advisement: Rule 12 Hearing scheduled on: 07/17/2026 10:00 AM Has been: Held - Under advisement Comments: Courtroom 20 FTR Hon. Daniel M Wrenn, Presiding		

ADD 000003

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/17/2026	Petitioner Matthew L. Frost's Submission of Traverse to the Return and Opposition to Respondent's Motion to Dismiss Application for Writ of Habeas Corpus	9	  Image
07/17/2026	Plaintiff Matthew L. Frost's Submission of Supplemental Affidavit of Matthew L. Frost, Petitioner, In Support of Petition for Writ of Habeas Corpus and Motion for Temporary Stay of Rendition Proceedings	9.1	  Image
08/11/2026	Endorsement on Motion to Dismiss Application of Matthew L. Frost for a Writ of Habeas Corpus (#6.0): ALLOWED See Memorandum of Decision (8/10/26). E-Document sent on 8/12/2026		  Image
08/12/2026	ORDER: MEMORANDUM OF DECISION ON RESPONDENTS' MOTION TO DISMISS HABEAS PETITION - ORDER: Based on the above court findings, discussion and analysis, the respondents' motion to dismiss the petition ALLOWED, and the habeas corpus petition is herewith dismissed. Copies mailed 8/12/2026	10	  Image
08/12/2026	JUDGMENT on Defendants, Commonwealth of Massachusetts, Sheriff of Worcester County 12(b) motion to dismiss against Plaintiff(s) Matthew L. Frost. It is ORDERED and ADJUDGED: See Memorandum of Decision (8/10/26) Copies mailed 8/12/2026	11	  Image
08/14/2026	Notice of appeal filed. Applies To: Andrade, Esq., Ashley (Attorney) on behalf of Frost, Matthew L. (Plaintiff); Kratochvil, Esq., Emma D (Attorney) on behalf of Commonwealth of Massachusetts (Defendant), Evangelidis, Lew (Other interested party)	12	  Image
08/14/2026	Petitioner Matthew L. Frost's EMERGENCY Motion for Stay of Rendition Pending Appeal and to Preserve Existing Conditions of Release, and Incorporated Memorandum of Law	13	  Image
08/14/2026	Certification/Copy of Letter of transcript ordered from Court Reporter 07/17/2026 10:00 AM Rule 12 Hearing 7/3/2026 Bail Review on 2685BP00084 (2668CR000473) 5/4/2026 Bail Review 2685BP00054 6/29/2026 Arraignment 2668CR000295 (Clinton District Court)	14	  Image
08/14/2026	Transcript received 2685BP00054 5/4/2026 Courtroom 18 Transcriber Jennifer Ferris		
08/14/2026	Transcript received Transcriber Darlene M. Coppola 7/3/2026 (2685BP00054) 2668CR000473 6/29/2026 2668CR000295 (Clinton District Court)		
08/17/2026	CD of Transcript of 07/17/2026 10:00 AM Rule 12 Hearing received from Hana Copperman.	15	
08/17/2026	Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that all transcripts have been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).		
08/17/2026	Endorsement on Submission of Petitioner's Emergency Motion for Stay of Rendition Pending Appeal and to Preserve Existing Conditions of Release, and Incorporated Memorandum of Law (#13.0): Other action taken Defendants to have 10 days to respond. E-Document sent on 8/17/2026		  Image
08/21/2026	Notice of assembly of record sent to Counsel	16	  Image
08/21/2026	Appeal: Statement of the Case on Appeal (Cover Sheet).	17	  Image
08/21/2026	Docket Note: Assembly of record on appeal emailed to appeal court.		
09/10/2026	Appeal entered in Appeals Court on 09/04/2026 docket number No. 2026-P-1287	18	  Image

ADD 000004

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/15/2026	Event Result: Motion Hearing scheduled on: 09/24/2026 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Daniel M Wrenn, Presiding		

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Court Finding	08/12/2026	

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

**SUPERIOR COURT
CIVIL ACTION**

No. 2585CV-992
JW

MATTHEW L. FROST

v.

**COMMONWEALTH OF MASSACHUSETTS,
SHERIFF OF WORCESTER COUNTY**

**MEMORANDUM OF DECISION ON RESPONDENTS' MOTION TO DISMISS
HABEAS PETITION**

The petitioner Matthew Frost (Frost) has been charged in an eight-count criminal indictment in the State of Ohio. The matter was scheduled for arraignment in Ohio in June of 2026 and Frost failed to appear for arraignment. The Ohio trial court issued a warrant and then subsequent to that, the State of Ohio, through its Governor Mike DeWine, issued a rendition warrant to the State of Massachusetts, which warrant was reviewed by the Attorney General at the request of the Commonwealth and thereafter certified and presented to the Governor of Massachusetts Maura Healey. Thereafter, Governor Healey issued a Governor's Warrant authorizing the arrest of Frost so that he may be returned to Ohio to face the criminal indictments in that state. 10#

Frost has challenged the validity of the Governor's Warrant pursuant to M. G. L. c. 248, § 6 and 15.

The courts have repeatedly held that once a governor has granted extradition, the scope of judicial inquiry in the asylum state that is here in Massachusetts is strictly limited to four issues: (1) whether the extradition documents, on their face satisfy the formal requirement of the statute; (2) whether the petitioner has been charged with a crime in the laws of the demanding state; (3)

Copies Mailed 8-12-26

ADD 000006

whether the petitioner is the person named in the request for extradition; and (4) whether the petitioner is a fugitive. *California v. Superior Court*, 482 U.S. 400, 408 (1987). In re *Gay*, 406 Mass. 471, 475 (1990).

The extradition package from Ohio and Massachusetts has been provided to the court and the court has reviewed the submission. The court adopts the positions advanced by the respondents in their memoranda requesting dismissal, and notes that after a review of the subject documents, the full requirements set forth above have been met.

Frost has been charged in a validly issued indictment in Ohio, asserting eight counts that sound in fraud and/or financial-type crimes. That type of criminal conduct can involve acts conducted by an individual outside of a particular state that have criminal effect in the state that may result in criminal charges in that affected state. Thus, the fact that the petitioner was not physically present in Ohio when conduct was alleged to have occurred is not dispositive of the jurisdictional issue relative to the charges, and in any event that issue will be litigated in Ohio, not Massachusetts. Facially, the documents issued from Ohio are valid; this is the right individual, that is, the petitioner is the same individual named in the Ohio indictments, and the formal requirements of the Massachusetts statute are met.

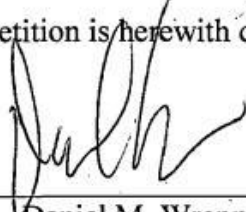
The petitioner also raises the issue that Frost is not a fugitive since, but for one brief overnight hotel stay in Cleveland, Ohio, he has never been present in Ohio and therefore has not fled the state to be classified as a fugitive. This court disagrees. The type of technical issue identified by the petitioner is not reason to vacate the Governor's Warrant. A review of all the documents contained within the extradition package and analyzing the totality of their content establishes that the petitioner is evading the jurisdiction of Ohio in order not to answer the criminal indictments that issued, and therefore it is appropriate for Ohio to utilize the extradition

process to return him to their state to face criminal prosecution. The Commonwealth has appropriately reviewed Ohio's documents and issued a Governor's Warrant to honor Ohio's request. See, *In re: Vasquez* 428 Mass. 842 (1999). The extradition papers submitted by Ohio establish that the defendant engaged in conduct that was criminal in nature in Ohio, valid indictments issued, and the petitioner by his own admission is refusing to return to Ohio to face those charges. This is precisely the type of circumstance that is contemplated by the extradition laws in order that Ohio may enforce its criminal statutes. Accordingly, dismissal of the petition is appropriate in the circumstances.

CONCLUSION

Based on the above court findings, discussion and analysis, the respondents' motion to dismiss the petition **ALLOWED**, and the habeas corpus petition is herewith dismissed.

Date: August 10, 2026



Daniel M. Wrenn
Justice of the Superior Court

JUDGMENT ON MOTION TO DISMISS**Trial Court of Massachusetts
The Superior Court**

DOCKET NUMBER

2685CV00992Dennis P. McManus, Clerk of Courts
Worcester County

CASE NAME

Frost, Matthew L.
vs.
Commonwealth of Massachusetts et al

COURT NAME & ADDRESS

Worcester County Superior Court
225 Main Street
Worcester, MA 01608

JUDGMENT FOR THE FOLLOWING DEFENDANT(S)

Commonwealth of Massachusetts
Sheriff of Worcester County

JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S)

Frost, Matthew L.

11/7

This action came on before the Court, Hon. Daniel M Wrenn, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b),

It is **ORDERED AND ADJUDGED:**

See Memorandum of Decision (8/10/26)

Copies Mailed8-17-26

DATE JUDGMENT ENTERED

08/11/2026

CLERK OF COURTS / ASST. CLERK

X

FILED 7/8

JUL 08 2026

ATTEST: *[Signature]* CLERK

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT

MATTHEW L. FROST
Petitioner,

v.

LEW EVANGELIDIS,
Respondent.

CIVIL ACTION NO. 2685CV992 A

**MOTION TO DISMISS APPLICATION OF MATTHEW L. FROST
FOR A WRIT OF HABEAS CORPUS**

Now comes the Respondent Lew Evangelidis, and pursuant to M.G.L. c. 248, § 11, states
as follows:

1. The Petitioner, Matthew L. Frost, is in the custody and power of, and under the
restraint of, Lew Evangelidis, the Sheriff of Worcester County and/or the Worcester House
of Corrections, in Worcester, Massachusetts.

2. The holding of the Petitioner is authorized by and pursuant to the provisions of
the following: the United States Constitution's Extradition Clause, U.S. Const. art. IV, § 2,
cl. 2; 18 U.S.C. § 3182; the Uniform Criminal Extradition Act, as adopted in Massachusetts,
M.G.L. c. 276, §§ 11-20R; and a lawfully-executed Warrant of the Governor of this
Commonwealth, a true and accurate copy of which is attached hereto as an exhibit.

3. As the attached warrant recounts, it was issued by Governor of this
Commonwealth in response to a request by the Governor of the State of Ohio and upon a
determination that the provisions of the aforementioned sources of law concerning the
interstate rendition and extradition of persons accused or adjudicated of crimes had been

ADD 000010

Handwritten notes:
All und. See Memo. of Decision (8/10/26) Wren J.
E-Documents sent 8/10/26
8/11/26
6+

TYPED TRANSCRIPTION OF HANDWRITTEN ENDORSEMENT
Frost v. Commonwealth, No. 2685CV00992
(Endorsement of Aug. 11, 2026, on Respondents'
Motion to Dismiss, Paper No. 6)

Handwritten margin endorsement (left margin,
first page of motion):

"Allowed. See Memorandum of Decision
(8/10/26).

Wrenn, J. 8/11/26"

Clerk's notations:

"FILED JUL 08 2026 Attest: [signature],
Clerk"

"E-Documents sent 8-12-26"

Transcriber's note: transcription prepared from
the court's scanned image; judge's signature
appears as initials with date.

RENDITION PACKET EXCERPTS

- A. Governor's Warrant of Rendition (June 22, 2026)
(AGO_01-03)
- B. Letter of the Attorney General Pursuant to
G. L. c. 276, s. 15 (June 12, 2026) (AGO_04)
- C. Demand of the Governor of Ohio for Rendition
(May 27, 2026) (AGO_08)
- D. Application for Requisition (AGO_10)
- E. Indictment, State v. Frost, Greene Cty. C.P.
No. 2025 CR 0551 (Oct. 29, 2025) (AGO_13-17)

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

To any Officer authorized to serve warrants in criminal cases within this Commonwealth:

WHEREAS, It has been represented to me by the Governor of the State of Ohio

That MATTHEW LOREN FROST, stands charged with the crime(s) of, Count 1, Securities Fraud, in violation of ORC 1707.44(G) & 1707.99(E); Count 2, False Representation in the Sale of Security, in violation of ORC 1707.44(B)(4) & 1707.99(E) Count 3, Telecommunications Fraud, in violation of ORC 2913.05(A) & 2913.05(B) & 2913.05(C); Count 4, Aggravated Theft, in violation of ORC 2913.02(A)(2) & 2913.02(B)(2); Count 5, Aggravated Theft, in violation of ORC 2913.02(A)(3) & 2913.02(B)(2); Count 6, Securing Writings by Deception, in violation of ORC 2913.43(A) & 2913.43(B)(2); Count 7, Money Laundering, in violation of ORC 1315.55(A)(1) & 1315.99(C); Count 8, Specification for Forfeiture of Property, in violation of ORC 2941.1471(A), which that Governor certifies to be crime(s) under the laws of that State, and that he is a fugitive from justice of said State and has taken refuge in this Commonwealth, and that Governor having, pursuant to the Constitution and Laws of the United States, demanded of me that I shall cause the said accused to be arrested and delivered to Investigator/Special Deputy Ryan A. Whittaker of the Greene County Prosecutor's Office and/or other authorized Deputies representing the Greene County Sheriff's Department and/or authorized agent(s), the agent of the Governor of the State requesting the return who is duly authorized to receive the said person into custody and convey said person back to that State:

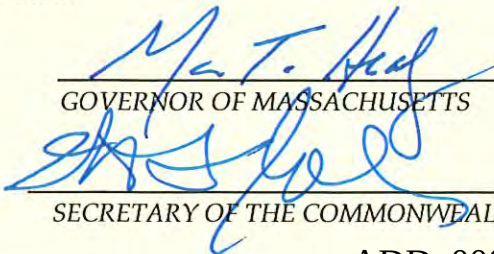
AND WHEREAS, the said representation and demand are accompanied by certain documents whereby the said accused is shown to have been duly charged with the said crime, to have been present in the State at the time of the commission of the alleged crime, to be a fugitive from justice, and to have taken refuge in this Commonwealth, all of which documents are duly certified by that Governor to be authentic and duly authenticated:

WHEREFORE, you are required to arrest and secure the said accused wherever found within this Commonwealth, and afford such opportunity to sue out a writ of HABEAS CORPUS as is prescribed by the laws of this Commonwealth, and to thereafter deliver this person into the custody of the agent of that requesting State for the purpose of being taken back there pursuant to the said requisition; all of which shall be without charge to this Commonwealth; and also to return this warrant and make return to the Secretary of the Commonwealth of all your proceedings had there under and of all facts and circumstances relating thereto:

AND all officers authorized to serve warrants in criminal cases within this Commonwealth are hereby required to afford all needful assistance in the execution hereof.

IN WITNESS WHEREOF, I have hereunto signed my name and caused the GREAT SEAL of the Commonwealth to be hereunto signed, this 22nd day of June, 2026.




GOVERNOR OF MASSACHUSETTS

SECRETARY OF THE COMMONWEALTH

AGO_01

ADD 000013

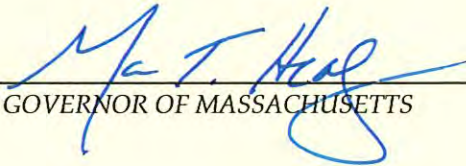
THE COMMONWEALTH OF MASSACHUSETTS

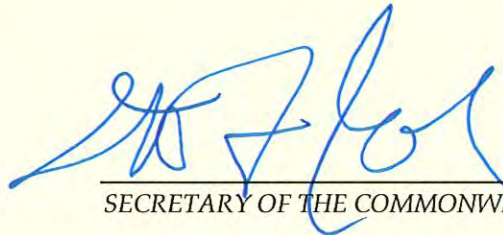
EXECUTIVE DEPARTMENT

As GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS, I do hereby certify that I have honored the requisition of the Governor of the State of Ohio for the surrender of **MATTHEW LOREN FROST**, fugitive from justice of said last-named State, and have issued a warrant for the fugitive's delivery to Investigator/Special Deputy Ryan A. Whittaker of the Greene County Prosecutor's Office and/or other authorized Deputies representing the Greene County Sheriff's Department and/or designated agent(s), agent whose authority to receive said fugitive is annexed hereto.

IN WITNESS WHEREOF, I have hereunto signed my name and caused the GREAT SEAL of the Commonwealth to be affixed, at the Capitol, in Boston, this 22nd day of June, 2026.




GOVERNOR OF MASSACHUSETTS


SECRETARY OF THE COMMONWEALTH

RETURN OF SERVICE OF GOVERNOR'S WARRANT

Commonwealth of
Massachusetts**RETURN OF SERVICE**

INDIVIDUAL'S NAME

DATE OF BIRTH

DEMANDING STATE

I certify that the above named individual has been arrested and brought before the
_____ Division of the [District] [Boston Municipal] Court, a court of
record of this Commonwealth.

DATE OF RETURN

CASE NUMBER

SIGNATURE OF OFFICER

TITLE OF PERSON MAKING RETURN

INSTRUCTIONS FOR OFFICER SERVING WARRANT

- (1) Fill out an application for criminal complaint and attach the original Governor's Warrant. Use complaint code 269/19/A (Fugitive from Justice on Gov's Warrant).
- (2) When the Clerk assigns a case number, enter it in the box above. Fill out all remaining information in the Return of Service section.
- (3) After signing this form, mail it to the Secretary of the Commonwealth at the following address:

One Ashburton Place, Room 1719, Boston, MA 02108

- (4) If there is a pending fugitive from justice charge associated with this individual, notify the District Attorney's Office of the new case number associated with the Governor's Warrant.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

June 12, 2026

Her Excellency Maura Healey
Governor of the Commonwealth
State House, Room 54
Boston, Massachusetts 02133

**Re: Demand for Rendition from the State of Ohio
FROST, MATTHEW L. (DOB: [REDACTED])**

Dear Governor Healey:

Pursuant to your request and in accordance with G.L. c. 276, §15, we have reviewed the demand for rendition and supporting documentation that the Governor of Ohio served on you in connection with the above-named fugitive. Based on our review, we hereby notify you that the demand satisfies the legal requirements of G.L. c. 276, §14 and is therefore **SUFFICIENT**.

We also have reviewed the Board of Probation report on this fugitive and find that the fugitive does not have any pending cases in the Commonwealth of Massachusetts.

A copy of the Board of Probation and Outstanding Warrant Check report is enclosed.

Please let us know if we can be of any further assistance in responding to this demand for rendition.

Respectfully,

Andrea Joy Campbell
Attorney General

/s/ Emma Kratochvil

Emma Kratochvil
Assistant Attorney General
Criminal Bureau

STATE OF OHIO
Executive Department

OFFICE OF THE GOVERNOR

Columbus

**REQUISITION AND AGENT AUTHORIZATION FOR
MATTHEW LOREN FROST**

The Honorable Maura T. Healey, Governor of the State of Massachusetts:

WHEREAS, I, Mike DeWine, Governor of Ohio, certify that the requisition application and supporting documents accompanying this requisition which concern **MATTHEW LOREN FROST** (hereinafter "the Accused"), meet all necessary requirements of Ohio law; and

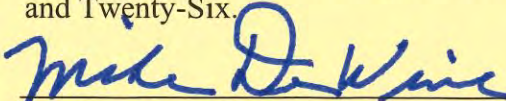
WHEREAS, the Accused stands charged by Indictment in Greene County, Ohio, with the crime(s) of: Count 1, Securities Fraud, in violation of ORC 1707.44(G) & 1707.99(E); Count 2, False Representation in the Sale of Security, in violation of ORC 1707.44(B)(4) & 1707.99(E); Count 3, Telecommunications Fraud, in violation of ORC 2913.05(A) & 2913.05(B) & 2913.05(C); Count 4, Aggravated Theft, in violation of ORC 2913.02(A)(2) & 2913.02(B)(2); Count 5, Aggravated Theft, in violation of ORC 2913.02(A)(3) & 2913.02(B)(2); Count 6, Securing Writings by Deception, in violation of ORC 2913.43(A) & 2913.43(B)(2); Count 7, Money Laundering, in violation of ORC 1315.55(A)(1) & 1315.99(C); Count 8, Specification for Forfeiture of Property, in violation of ORC 2941.1417(A), and

WHEREAS, it has been represented to me that the Accused intentionally committed an act which resulted in the aforementioned crimes in the State of Ohio, and is now under either civil or criminal arrest in the custody of Worcester County Sheriff's Office, in the City of West Boylston, in the County of Worcester, in the State of Massachusetts.

NOW THEREFORE, in accordance with the Constitution and laws of the United States, I hereby request that you issue a Warrant for the arrest of the Accused, and that your Warrant provide that the Accused be delivered to Investigator/Special Deputy Ryan A. Whittaker of the Greene County Prosecutor's Office and/or other authorized Deputies representing the Greene County Sheriff's Department, as the appointed agents for the State of Ohio.



IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus, this 27th day of May in the year Two Thousand and Twenty-Six.


Mike DeWine, Governor

ATTEST:


Frank LaRose, Secretary of State

AGO_08

ADD 000017

APPLICATION FOR REQUISITION

Greene County, Ohio
May 21, 2026

TO HIS EXCELLENCY, THE GOVERNOR:

SIR: I have the honor to request that you issue a requisition upon the Governor of the State of Massachusetts for the apprehension and rendition of fugitive MATTHEW LOREN FROST.

Said Fugitive stands **CHARGED** with the commission of the crime(s) Securities Fraud, O.R.C. §1707.44(G), 1707.99(E); False Representation in the Sale of Security, O.R.C. §1707.44(B)(4), 1707.99(E); Telecommunications Fraud, O.R.C. §2913.05(A), 2913.05(B), 2913.05(C); Aggravated Theft, O.R.C. §2913.02(A)(2), 2913.02(B)(2); Aggravated Theft, O.R.C. §2913.02(A)(3), 2913.02(B)(2); Securing Writings by Deception, O.R.C. §2913.43(A), 2913.43(B)(2); Money Laundering, O.R.C. §1315.55(A)(1), 1315.99(C); Specification for Forfeiture of Property, O.R.C. §2941.1417(A), committed on or about November 17, 2020 through March 8, 2021. Along with this application for requisition are certified copies of the Indictment, Warrant, Supporting Affidavits, Photographs, Fingerprints, copies of statutes violated.

I HEREBY CERTIFY that said fugitive was in said County and State at the time of the commission of said offense(s), and who, to avoid prosecution, fled from the jurisdiction of the State of Ohio and is now believed to be located in Worcester County, Massachusetts after having been under civil or criminal arrest in Clinton, Massachusetts. MATTHEW LOREN FROST was originally arrested in Clinton, Massachusetts on April 30, 2026 and has posted bond.

I FURTHER CERTIFY that the facts stated in this application are true, and I believe that the prosecution of this fugitive would result in his conviction of the crime(s) charged.

I FURTHER CERTIFY that the ends of public justice require the arrest and return of this fugitive to Ohio for trial, and this extradition is not sought for the purpose of collecting debt, enforcing a civil remedy, or to answer any private claim whatsoever.

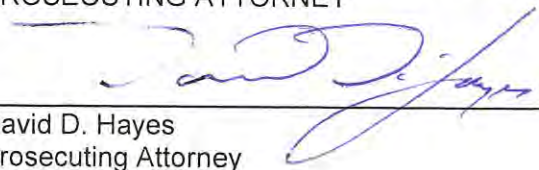
I FURTHER CERTIFY that there has not been, so far as I am aware, any former application for a requisition for the same person, for the same offense which is the basis of this application.

I FURTHER CERTIFY that the reputations of the persons making the requisition are good.

I designate Investigator/Special Deputy Ryan A. Whittaker of the Greene County Prosecutor's Office, and/or other authorized Deputies representing Greene County, Ohio as the proper persons to be the appointed agent(s) of this State and certify that they have no private or personal interest in the arrest and return of said fugitive other than proper compensation for their services.

Respectfully Submitted,

OFFICE OF THE GREENE COUNTY, OHIO
PROSECUTING ATTORNEY


David D. Hayes
Prosecuting Attorney

FILED

2025 OCT 30 PH 2:49

AJ WILLIAMS
COMMON PLEAS COURT
GREENE COUNTY, OHIO

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

STATE OF OHIO,

Plaintiff

VS.

CASE NO. 2025CR0551

INDICTMENT

MATTHEW LOREN FROST
8 GRIGGS ST., APT.#15
BOSTON, MA 02134
DOB: [REDACTED]
SSN: XXX-XX-[REDACTED]

JUDGE TORNICHIO

Defendant.

On the term September/October 2025
October 29, 2025

Count One

The Jurors of the Grand Jury of the State of Ohio, within and for the body of Greene County, on their oaths, in the name and by the authority of the State of Ohio, do find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, did, in purchasing or selling securities, knowingly engage in any act or practice that was, in Chapter 1707, declared illegal, defined as fraudulent, or prohibited and the value of the funds or securities involved in the offense or the loss to the victim is one hundred fifty thousand dollars or more in violation of Ohio Revised Code §1707.44(G), 1707.99(E), Securities Fraud, a felony of the first degree.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Two

The Grand Jurors do further find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, did knowingly make or cause to be made a false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for the purpose of selling any securities in this state and the value of the funds or securities involved in the offense or the loss to the victim is one hundred fifty thousand dollars or more in violation of Ohio Revised Code §1707.44(B)(4), 1707.99(E), **False Representation in the Sale of Security**, a felony of the first degree.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Three

The Grand Jurors do further find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, having devised a scheme to defraud, did knowingly disseminate, transmit, or cause to be disseminated or transmitted by means of a wire, radio, satellite, telecommunication, telecommunications device, or telecommunication service any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud and the violation occurred as part of a course of conduct involving other violations of division (A) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code and the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is one hundred fifty thousand dollars or more but less than one million dollars in violation of Ohio Revised Code §2913.05(A), 2913.05(B); 2913.05(C), **Telecommunications Fraud**, a felony of the second degree.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Four

The Grand Jurors do further find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, did with purpose to deprive the owner, who is the victim, of property or services, to wit: U.S. currency \$545,664.00, knowingly obtain or exert control over either the property or services beyond the scope of the express or implied consent of the owner or person authorized to give consent and the property or services stolen is valued at one hundred fifty thousand dollars or more and less than seven hundred fifty thousand dollars in violation of Ohio Revised Code §2913.02(A)(2), 2913.02(B)(2), **Aggravated Theft**, a felony of the third degree.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Five

The Grand Jurors do further find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, did with purpose to deprive the owner, who is the victim, of property or services, to wit: \$545,664.00, knowingly obtain or exert control over either the property or services by deception and the property or services stolen is valued at one hundred fifty thousand dollars or more and less than seven hundred fifty thousand dollars in violation of Ohio Revised Code §2913.02(A)(3), 2913.02(B)(2), **Aggravated Theft**, a felony of the third degree.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Six

The Grand Jurors do further find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, did, by deception, cause the victim to execute a writing that disposed of or encumbered property, or by which a pecuniary obligation was incurred and the value of the property or the obligation involved was one hundred fifty thousand dollars or more in violation of Ohio Revised Code §2913.43(A), 2913.43(B)(2), **Securing Writings by Deception**, a felony of the third degree.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Seven

The Grand Jurors do further find and present:

Matthew Loren Frost, on or about the 17th day of November, 2020 through the 8th day of March, 2021, in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County, Ohio aforesaid, did conduct or attempt to conduct a transaction knowing that the property involved in the transaction was the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity in violation of Ohio Revised Code §1315.55(A)(1), 1315.99(C), **Money Laundering**, a felony of the third degree.

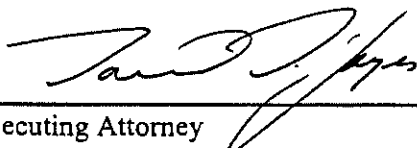
Specification for Forfeiture of Property - §2941.1417(A)

The Grand Jurors further find and specify that:

Mathew Loren Frost is the owner and/or possessor of \$545,664.00 in U.S. Currency which is contraband and/or property derived from or through the commission or facilitation of the offense, and/or is an instrumentality the offender used or intended to use in the commission or facilitation of the offense and is subject to forfeiture pursuant to 2941.1417(A), 2981.02, and 2981.04 of the Revised Code relating to all counts in the indictment.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

**DAVID D. HAYES
GREENE COUNTY
PROSECUTING ATTORNEY**



Prosecuting Attorney



First Assistant Prosecuting Attorney

This Bill of Indictment found upon testimony and sent before the
Grand Jury at the request of the Prosecuting Attorney



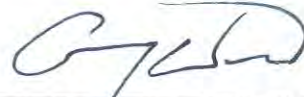
Grand Jury Foreperson or Deputy Foreperson

The State of Ohio, Greene County.

I, the undersigned, Clerk of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the original indictment, with the endorsements thereon, now on file in my office.

WITNESS my hand and the seal of said Court, at Greene County, Ohio on this 22nd day of May, 2026.

A.J. Williams, Clerk of Courts
In the Common Pleas Court of Greene
County, Ohio
Greene County, Ohio



By: Deputy Clerk

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT

MATTHEW L. FROST
Petitioner,

v.

LEW EVANGELIDIS,
Respondent.

CIVIL ACTION NO. 2685CV992

RESPONDENT’S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Now comes the Respondent, Lew Evangelidis, and hereby submits this opposition to the Petition for Writ of Habeas Corpus (the “Petition”) filed by the Petitioner, Matthew L. Frost. As argued in this opposition, the Petition should be dismissed where the Petitioner is a fugitive from the State of Ohio, charged with multiple crimes in violation of the laws of Ohio, and he is lawfully in custody pursuant to a Governor’s Warrant pending his return to Ohio pursuant to the procedures for interstate rendition and extradition provided for by law. As established below, the review offered by the instant proceeding is limited, and the Petitioner has presented no valid grounds for this Court to order his release or otherwise grant his request for a Temporary Restraining Order, Preliminary Injunction, or other relief.

I. PROCEDURAL BACKGROUND¹

On October 30, 2025, indictments were filed in Greene County, Ohio charging the

¹ Relevant background documentation, aside from that which was issued by this Court, are attached to the Petition. A copy of the warrant issued by Massachusetts Governor Maura Healey is attached to the accompanying Return as an Exhibit A (Governor’s Warrant, bates 01-03). A copy of the Requisition Application Packet is attached as Exhibit B (bates 04-58). The bates stamp format of both Exhibits is “AGO_##.” The Petitioner’s full Social Security Number has been redacted from the attached Exhibits where appropriate. The unredacted Exhibits have been provided to counsel for the Petitioner, Attorney Andrade.

proceedings appear to be regular, is conclusive evidence of the right to remove the prisoner to the state from which he fled” (quoting Davis’s Case, 122 Mass. 324, 328 (1877))). Here, the Petitioner can provide no reason to conclude otherwise. The Petitioner bears the burden of proving by clear and convincing evidence that extradition is not proper. *See Gay*, 406 Mass. at 474; South Carolina v. Bailey, 289 U.S. 412, 422 (1933). This burden cannot be met by “mere contradictory” evidence but, instead, requires “clear and satisfactory” evidence that one or more of the requirements for extradition has not been satisfied. Upton, 387 Mass at 363.

2. Whether the Petitioner was present in Ohio at the time of the alleged commission of the offenses is beyond the scope of this review.

In the present case, the Petition claims that the Petitioner is not a fugitive, by their definition, a factual argument of whether or not the Petitioner was physically present in Ohio during the alleged conduct. This argument is without merit. As required, the Governor’s Warrant certified that the Petitioner was in the demanding state at the time of the commission of the offenses. (Exhibit B, Letter from Attorney David Hayes to Governor DeWine, bates 10). The question of whether the Petitioner was indeed physically present in the State of Ohio is the kind of factual inquiry that this Court is barred from performing. *See Doran*, 439 U.S. at 287-288, Superior Court of California, 482 U.S. at 407. However, as discussed below, the Petitioner need not have visited the State of Ohio to be criminally charged under their statute and to be subject to extradition under Massachusetts statute. *See M.G.L. c. 276, § 14.*

3. The documentation establishes that the Petitioner is a fugitive.

The Petitioner is not entitled to relief based on his claim that he is not a fugitive for purposes of the Massachusetts extradition statute.⁵ This issue must be resolved in the

⁵ The Petitioner limits his argument to a challenge regarding his status as a fugitive for purposes of the extradition statute and that the rendition papers are not in order. (Petitioner’s Emergency Verified Petition for Writ of Habeas Corpus and Motion for Stay of Rendition Pending Meaningful Opportunity to Contest

Respondent's favor.

“For extradition clause purposes, a ‘fugitive’ is one who is charged with committing a crime in a State and who subsequently leaves that State, for whatever reason. Once having been charged and having fled the State, that person remains a fugitive until the charges against him are dropped.” In re Gay, 406 Mass. at 475 (citation omitted). The law is clear that a governor’s warrant constitutes prima facie evidence of an individual’s status as a fugitive, and it is his burden “to show by clear and satisfactory evidence that he was not a fugitive.” Upton, 387 Mass. at 363 (stating further that “once the papers are shown to be regular on their face, he burden rests on [the individual] to prove that he was not in the demanding state at the time of the offense”); *see also In re Gay*, 406 Mass. at 474-75 (“The fact that the Governor has issued an extradition warrant in this case provides prima facie evidence that this requirement, and all other applicable statutory prerequisites to extradition, have been met. To refute this showing, [the individual] must produce ‘clear and satisfactory’ evidence that he is not in fact ‘substantially charge[d]’ with a violation of [the demanding state’s] law.” (citation omitted) (quoting Upton, 387 Mass. at 363)). The SJC has further maintained as follows:

It is well settled that “the court will not discharge a defendant arrested under the governor’s warrant [in extradition proceedings] where there is merely contradictory evidence on the subject of presence in or absence from the state, as habeas corpus is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused.” And it is undoubtedly true that whether the [individuals] were fugitives from justice was a question of fact for the Governor to determine upon evidence satisfactory to him. Strict common law evidence was not necessary before the Governor or before the court reviewing his decision.

Governor’s Warrant, Paper #1, and Memorandum of Law in Support of Petitioner’s Emergency Verified Petition for Writ of Habeas Corpus and Motion to Stay or Rendition Pending Meaningful Opportunity to Contest Governor’s Warrant, Paper #3.1) Accordingly, the Petitioner is not entitled to relief based on any of the other issues this Court may review. (The Petitioner bears the burden of proving by clear and convincing evidence that extradition is not proper. *See Gay*, 406 Mass. at 474; *South Carolina v. Bailey*, 289 U.S. 412, 422 (1933)). In any event, the Petitioner would not be entitled to relief on any of the other claims for the reasons addressed below.

Murphy, 321 Mass. at 210 (citations omitted) (quoting Munsey v. Clough, 196 U.S. 364, 375 (1905)).

Here, as a matter of law, the Petitioner can offer nothing to overcome the above presumption of fugitivity created by the issuance of the Massachusetts Governor's Warrant. The documents included in the rendition demand from Ohio allege the commission of a crime in that state and assert that the Petitioner was present there. This Court is not the proper venue for the Petitioner to challenge fugitivity. Notably, the UCEA provides that "[t]he guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for interstate rendition accompanied by a charge of crime in legal form as provided in [M.G.L. c. 276, § 14] shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime." M.G.L. c. 276, § 20H. The same can be said of other alleged infirmities in the demanding state's case against the Petitioner. *See, e.g., Gay*, 406 Mass. at 475 ("To allow plenary review in the [sending] state of issues that can be fully litigated in the [receiving] state would defeat the plain purposes of the summary and mandatory procedures authorized by Art. IV, sec. 2.") (quoting Doran, 439 U.S. at 290); Maldonado, 364 Mass. at 361-62, 365-66.

4. The Petitioner's argument that he was never present in Ohio has no bearing on the sufficiency of the Governor's Warrant and is unsupported by law.

Despite the legal authority which requires this Court find that the Petitioner is a fugitive, it must be noted that Massachusetts statute explicitly states that a 'nonfugitive' individual may still be properly subjected to rendition:

No demand for the interstate rendition of a person charged with crime in another state shall be recognized by the governor unless it be in writing alleging either that the person demanded was present in the demanding state at the time of the commission of the alleged crime, or that such person committed in this commonwealth or in a third state an act intentionally resulting in a crime in the demanding state only when the acts for which

the demand for interstate rendition is sought would be punishable by the laws of the commonwealth, if the consequences claimed to have resulted therefrom in the demanding state had taken effect in this commonwealth...

M.G.L. c. 276, § 14.

The Supreme Judicial Court has made clear that the Commonwealth has the ability to render defendants who have never been to the demanding state. *See In re Vasquez*, 428 Mass. 842, 847 (1999) (“No reason in law, expediency or comity has been suggested why extradition should be limited to those who were physically in the state at the time the crime was committed”) (quoting *Cassis v. Fair*, 126 W.Va. 557, 563 (1944)). In *Vasquez* the court reasoned that “a State is not deprived of jurisdiction over every criminal case in which the defendant was not physically present within the State's borders when the crime was committed.” *Id.* at 848. The court expounded on the “effects” doctrine, which provides that “[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect.” *Id.* at 848-849 (quoting *Strassheim v. Daily*, 221 U.S. 280, 285). The “effects” doctrine is effectively codified in Massachusetts statute at M.G.L. c. 276, § 14 (stating that a proper demand for interstate rendition can allege that the petitioner “committed in this commonwealth or in a third state an act intentionally resulting in a crime in the demanding state”).

However, if this Court were to accept that the Petitioner was not physically present in the State of Ohio at the time of the alleged commission of the offenses, the “nonfugitive” clause of M.G.L. c. 276, § 14 would certainly apply and satisfy the requirements for his rendition. Section 14 contemplates that an individual’s conduct in Massachusetts can produce criminal effects in another jurisdiction. As a matter of public policy, if the alleged conduct was legal in Massachusetts, the Governor can deny the rendition of a fugitive to a demanding state where that

same conduct is criminalized.⁶

Contrary to the Petitioner's argument, the Ohio requisition documents have identified acts that would be punishable under Massachusetts law had the alleged acts or consequences occurred here. The Ohio charges against the Petitioner have clear statutory correlates in Massachusetts. The Petitioner is charged in Ohio with securities fraud, false representation in the sale of a security, telecommunications fraud, aggravated theft (two counts), securing writings by deception, and money laundering. The Requisition Application sent to Massachusetts provided copies of the applicable Ohio statutes (Exhibit B, bates 32-50). For the Court's consideration, the Massachusetts statutory correlates are the following: Securities Violation or Fraud (M.G.L. c. 110A, § 101-417), Larceny (M.G.L. c. 266, § 30), Larceny by False Pretenses (M.G.L. c. 266, § 30-34), Larceny by False Pretenses Relating to Contracts (M.G.L. c. 266, § 33), and Money Laundering (M.G.L. c. 267A § 2).⁷ Massachusetts statute allows for the prosecution of fraud and theft that may arise from business dealings and that may have transpired over means of electronic communication. There is no public policy reason to shield the Petitioner from rendition based on the type of criminal conduct alleged by the State of Ohio on the basis that he was not physically present in Ohio.

There is plenty of evidence that the State of Ohio meant to seek rendition of the Petitioner regardless of whether he was physically present in Ohio during the commission of the alleged offenses. Ohio Governor DeWine certified the following: "that the Accused intentionally committed an act which resulted in the aforementioned crimes in the State of Ohio, and is now

⁶ For example, the "consequences" provision serves to prevent the surrender of an individual who engages in "legally-protected health care activity" that may be illegal in other states. *See* M.G.L.A. c. 276, § 14.

⁷ The Massachusetts Larceny statute sections 30-34 capture the conduct considered by the Ohio statutes for telecommunications fraud, securing writings by deception, and aggravated theft. M.G.L. c. 266, § 30-34.

under either civil or criminal arrest in the custody of Worcester County Sheriff's Office..."

(Exhibit B, Letter from Governor DeWine to Governor Healey, bates 08). In addition, each count of the Ohio indictments against the Petitioner included the following language: "Matthew Loren Frost... in the county of Greene or by some manner enumerated in Section 2901.12 of the Ohio Revised Code whereby proper venue is placed in Greene County aforesaid..." (Exhibit B, bates 13-17). Ohio Revised Code Section 2901.12 "Venue of criminal cases," provides several plausible statutory avenues by which the Petitioner could be properly charged with committing crime in Ohio while not physically present in the state at the time of the conduct.⁸ The language of the indictments captures all possible scenarios of the Petitioner's location. The underlying fact of whether the Petitioner was present in Ohio has no bearing on the sufficiency of the indictments nor on the Governor's Warrant and as discussed above, his location is a factual question into which this Court may not inquire. In this way, the Petitioner cannot circumvent rendition by merely claiming to have never stepped foot in Ohio.

5. The documents provided by the Governor of Ohio were legally sufficient.

The remaining three issues appropriate for review in a habeas proceeding will be

⁸ O.R.C. §2901.12(C) states: "When the offense involved the unlawful taking or receiving of property or the unlawful taking or enticing of another, the offender may be tried in any jurisdiction from which or into which the property or victim was taken, received, or enticed."

O.R.C. §2901.12(F) states: "When an offense is considered to have been committed in this state while the offender was out of this state, and the jurisdiction in this state in which the offense or any material element of the offense was committed is not reasonably ascertainable, the offender may be tried in any jurisdiction in which the offense or element reasonably could have been committed."

O.R.C. §2901.12(I)(1) states: When the offense involves a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, the offender may be tried in any jurisdiction containing any location of the computer, computer system, or computer network of the victim of the offense, in any jurisdiction from which or into which, as part of the offense, any writing, data, or image is disseminated or transmitted by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, or in any jurisdiction in which the alleged offender commits any activity that is an essential part of the offense.

discussed in turn.⁹ The documentation supplied by the Ohio Governor was legally sufficient. As to such documentation, the UCEA provides as follows:

No demand for the interstate rendition of a person charged with crime in another state shall be recognized by the governor unless it be in writing alleging either that the person demanded was present in the demanding state at the time of the commission of the alleged crime, or that such person committed in this commonwealth or in a third state an act intentionally resulting in a crime in the demanding state, or that such person has escaped from confinement or has broken the terms of his bail, probation or parole, nor unless such demand is accompanied by a copy of an indictment found, or of an information supported by affidavit, in the demanding state, or by a copy of an affidavit made before a magistrate of such state, and by a copy of the warrant which was issued thereon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof in the demanding state. The indictment or information, or the affidavit made before the magistrate who issued the warrant, shall substantially charge the person demanded with having committed a crime under the law of the demanding state, and the copy of the indictment, information, affidavit, judgment of conviction or sentence shall be authenticated by the executive authority of such state.

M.G.L. c. 276, § 14.

The requirements of the above statute were met. As the papers appended to this opposition illustrate, the demand from Ohio was in writing. The request for rendition packet alleged that “said fugitive was in [Greene County, Ohio] at the time of the commission of said offense(s), and who, to avoid prosecution, fled from the jurisdiction of the State of Ohio and is now believed to be located in Worcester County, Massachusetts” (Exhibit B, Application for Requisition letter from Attorney David Hayes to Governor DeWine, bates 10). The packet was accompanied by copies of both the indictments in Ohio and the warrant on indictment issued when the defendant failed to appear for arraignment. (Exhibit B, bates 13-17, and Exhibit B, bates 18-19).

Ohio’s Governor certified the rendition packet and underlying records within the packet

⁹ Of the four reviewable issues, the Petitioner limits his argument to a challenge regarding his status as a fugitive for purposes of the extradition statute and that the rendition papers are not in order. Accordingly, the Petitioner is not entitled to relief based on any of the other issues this Court may review.

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COMMONWEALTH OF MASSACHUSETTS
 WORCESTER, S.S. SUPERIOR COURT DEPARTMENT
 OF THE TRIAL COURT

* * * * *
 MATTHEW L. FROST * Docket No. 2685CV00992
 *
 V. *
 *
 COMMONWEALTH OF MASSACHUSETTS, *
 ET AL. *
 *
 * * * * *

RULE 12 HEARING
 BEFORE THE HONORABLE DANIEL M. WRENN

APPEARANCES:

For the Plaintiff, Matthew L. Frost:
 Andrade Legal
 867 Boylston Street, 5th Floor
 Boston, Massachusetts 02116
 By: Ashley Andrade, Esq.

For the Defendants, Commonwealth of Massachusetts, et al.:
 Massachusetts Office of the Attorney General
 One Ashburton Place, 19th Floor
 Boston, Massachusetts 02108
 By: Emma Kratochvil, AAG

For the Defendants, Commonwealth of Massachusetts, et al.:
 Worcester County District Attorney's Office
 225 Main Street, Room G-301
 Worcester, Massachusetts 01608
 By: Mark Relation, ADA

Worcester, Massachusetts
 Courtroom 20
 July 17, 2026

Proceedings recorded by Court Personnel.
 Transcript produced by Approved Court Transcriber
 Hana Copperman, eScribers, LLC

1 they perceive out there on the horizon. I hope I've given you
2 that guidance. If they choose to act on that, then you'll have
3 an opportunity. You're a very good writer, so you'll have an
4 opportunity to put it in writing and articulate your positions,
5 and you'll get a full hearing on it.

6 MS. ANDRADE: Okay.

7 THE COURT: All right.

8 MS. ANDRADE: Thank you.

9 THE COURT: Again, I didn't want to cut you off, but the
10 issue really isn't ripe today. Right?

11 MS. ANDRADE: Right.

12 THE COURT: All right. All right. So I guess we've gone a
13 long way around to say you're not expecting Mr. Frost, and we
14 can proceed forward without him.

15 MS. ANDRADE: Yes, your Honor.

16 THE COURT: All right. So it's the Defendant's motion.
17 I'll hear you.

18 MS. KRATOCHVIL: All right, your Honor. So I laid out in
19 my opposition the limited scope of review for a habeas petition
20 and the four issues that are open for review on the habeas, on
21 any habeas petition for facing rendition. And the two that I
22 want to highlight here are the fugitive status of the
23 Petitioner. And it's our position that the State of Ohio
24 certified that Mr. Frost was a fugitive from justice, and it --
25 the issue of whether or not he was physically present in the

1 State of Ohio at the time of the commission of the alleged
2 crimes is essentially not relevant to rendition and to even the
3 crimes he's facing. The charges are fraud, wire fraud,
4 telecommunications fraud.

5 THE COURT: I guess part of your point is these are
6 financial crimes that one can commit over a laptop in another
7 country.

8 MS. KRATOCHVIL: Exactly.

9 THE COURT: And still be violating the laws of a state.

10 MS. KRATOCHVIL: Exactly. And there is no statute or legal
11 precedent that bars Ohio from criminally charging someone who
12 has never been to that state. So from our perspective, he is --
13 the charges against him are proper.

14 THE COURT: But I think her argument's a little more, or
15 his argument's a little more nuanced. He's saying that your
16 papers, on their face, recite that he was present, recite that
17 he left, and recite that he won't come back, and that the
18 governor of Ohio and the governor of Massachusetts have relied
19 on that fact, that status, in issuing their warrants. And they
20 rely on that because the statute contemplates that, that there's
21 a different mechanism for a nonfugitive.

22 MS. KRATOCHVIL: And your Honor, I point to *In re Vasquez*,
23 which is 428 Mass. 842.

24 THE COURT: Yes.

25 MS. KRATOCHVIL: I believe that *In re Vasquez* is directly

1 on point in this case. In that case, the governor's warrant, as
2 in this case, stated that the petitioner or the defendant had
3 been in the State of Oregon at the time of the alleged crimes,
4 but then within the rendition packet, there was another line
5 that stated that the petitioner had done an act outside the
6 jurisdiction, resulting in a crime in the jurisdiction of
7 Oregon. And the Vasquez Court found that the statement that the
8 petitioner had been outside Oregon or that the statement that
9 the petitioner had been in Oregon was the kind of technical
10 defect in the rendition packet that can be cured by the other
11 supporting documents in the rendition packet, which I believe is
12 exactly what we have here. We have the one affidavit that
13 states Mr. Frost was in Ohio at the time of the alleged crimes,
14 and then elsewhere in the rendition packet, there are references
15 to acts committed in the Commonwealth that resulted in crimes.

16 THE COURT: But don't you also have an affidavit from Mr.
17 Frost himself where he recites that -- he recites he was never
18 in Ohio, but for a sleepover in Cleveland unrelated to any of
19 this. He didn't even know where this county was. But he had
20 been contacted about the indictment. He had retained and paid a
21 retainer to a lawyer. There were discussions with the district
22 attorney's office out there, if that's the right entity. And
23 there was an agreement that he would come, proceed through
24 arraignment, have a reasonable bail set, and be allowed to go
25 back to Massachusetts and participate virtually for a period of

1 time. And then the DA changed course. Now, Mr. Frost alleges
2 that it had something to do with the goings on in the BLS. But
3 then he decided, well, I'm not going to come.

4 MS. KRATOCHVIL: That is my understanding.

5 THE COURT: Isn't that of import?

6 MS. KRATOCHVIL: For my limited purpose for the habeas
7 petition, I am bound to the four corners of the rendition
8 packet.

9 THE COURT: Right.

10 MS. KRATOCHVIL: At the time that I received the governor's
11 warrant, I understand that all of the BLS and Clinton District
12 Court activities had been pending or ongoing, but at the time I
13 received the packet, I was the AAG --

14 THE COURT: But one of the reasons why In re Vasquez says
15 what it says is the purpose is to get a person who's refusing to
16 go back to the charging state to the charging state, so they can
17 substantively argue things like venue, jurisdiction, McCarthy
18 type issues, O'Dell type issues there, not here. And my point
19 about his factual recitation is it's clear he's not going back
20 to Ohio. And so what other way does Ohio have but to require
21 him to go back?

22 MS. KRATOCHVIL: That is also acquisition. And your Honor,
23 I am sympathetic to Mr. Frost's affidavit. I tend to believe
24 that he likely was not in the state at the time of the alleged
25 offenses. I, in my opposition, I was simply presenting the

1 perspective that --

2 THE COURT: I think we're all sympathetic to his plight.
3 But the question is, he's got to go to Ohio to do that is your
4 point?

5 MS. KRATOCHVIL: Yes. To face the charges there and any
6 challenge that they have to jurisdiction must be held in Ohio.

7 THE COURT: I mean, I have questions about if I held a
8 hearing on jurisdiction on Ohio statute, and I issued a ruling,
9 what does Ohio care what I think? I don't see them. This isn't
10 something that is going to be given full faith and credit. I
11 don't have any jurisdiction over Ohio crime. Thankfully. I got
12 my hands full with Massachusetts crimes.

13 MS. KRATOCHVIL: I believe you do.

14 THE COURT: But I don't see that it would be of any value
15 to me to participate in a, I mean, it's interesting, but it
16 would be of little value, ultimately, if I were to make a
17 decision on it, I think.

18 MS. KRATOCHVIL: I agree, your Honor. And I -- I would
19 still hold that words like return to Ohio, even if we assume
20 that the Petitioner has never been to Ohio, that kind of
21 language, return to Ohio, I would consider a technical defect
22 like the type considered by Vasquez, which, in Vasquez, the
23 Petitioner had also never been to the demanding state even once.
24 So I think Vasquez is directly on point, and you yourself, your
25 Honor, have acknowledged that you have no ability to challenge

1 Ohio's jurisdiction over someone charged with a crime there.

2 THE COURT: All right. All right. Anything else you'd
3 like to tell me?

4 You both wrote excellent briefs.

5 MS. KRATOCHVIL: No, your Honor.

6 THE COURT: They were comprehensive, and they addressed --
7 it's always helpful when you get the right four elements. So
8 thank you for that. All right. Petitioner.

9 MS. ANDRADE: Thank you. Your Honor, going to Vasquez,
10 Vasquez is significantly different than this case. On Vasquez
11 the demand was restated appropriately. It mentioned situs
12 intentional -- the intentional result nexus, the requirements
13 under Section 13 --

14 THE COURT: We have -- you have -- they have the right guy
15 you're not contesting that Matthew Frost is some different
16 Matthew Frost than is named in the Ohio indictments?

17 MS. ANDRADE: I'm assuming he's the same one, given the
18 purchase and leaseback agreement being the same amount, but
19 that's the only concrete fact there.

20 THE COURT: You've litigated this in the BLS.

21 MS. ANDRADE: Yes.

22 THE COURT: Right? For years.

23 MS. ANDRADE: Right. But --

24 THE COURT: And you're going to sit here and tell me that
25 this isn't the same Matthew Frost that was in the BLS and is

1 charged in Ohio?

2 MS. ANDRADE: Well, I'm, no, I'm not going to do that, your
3 Honor. I'm saying that the only concrete fact that we have been
4 given is that 545,664, which aligns directly.

5 THE COURT: But you won't even admit that he's the Matthew
6 Frost that they're -- that he's the subject of the indictment?

7 MS. ANDRADE: No, we -- no, we concede that point.

8 THE COURT: All right. So he is --

9 MS. ANDRADE: It's just that the --

10 THE COURT: He is the Matthew Frost in the indictment?

11 MS. ANDRADE: Yes.

12 THE COURT: They've got the right fellow?

13 MS. ANDRADE: Yes.

14 THE COURT: All right. You agree that indictments issued
15 out of a grand jury in Ohio on a statute that's on the books in
16 Ohio. Now, I understand you challenge whether he can rightfully
17 be indicted, whether he's got the right jurisdiction, venue,
18 whether they can meet the elements. But there's a statute in
19 Ohio that they chose, multiple, and they put it before a grand
20 jury, and a grand jury issued an indictment. You don't contest
21 that?

22 MS. ANDRADE: I don't contest that they got a grand jury to
23 get an indictment, no.

24 THE COURT: Right. Right. So the issue -- I'm just trying
25 to narrow the scope, because in your opposition, you challenge

1 everything.

2 MS. ANDRADE: Yeah.

3 THE COURT: But some of it isn't, I mean, your real
4 challenge is this is a nonfugitive issue.

5 MS. ANDRADE: Right.

6 THE COURT: And that substantively, we have strong defenses
7 to this, as evidenced by the fact that we were successful in the
8 BLS. That's what you're saying in your papers, in part.

9 MS. ANDRADE: Yes, but the civil action is obviously not
10 relevant for these purposes.

11 THE COURT: I agree with that. The State of Ohio, even in
12 the face of a BLS decision, has a right, as a sovereign state,
13 to enforce what they perceive to be their criminal laws. And
14 they presumably have done that. I mean, the central issue is is
15 he going to -- he's going to have to litigate it at some point.
16 And the question is, where is he going to do it? I can't
17 litigate that.

18 MS. ANDRADE: Correct.

19 THE COURT: He's got to.

20 MS. ANDRADE: And what -- what is being litigated, he will
21 litigate the indictment, and a motion to dismiss will be filed.
22 He has counsel in Ohio. But for purposes of rendition, in using
23 the rendition statute, for --

24 THE COURT: But they can't arraign him until he gets there.
25 I mean, he agreed to go back.

1 MS. ANDRADE: At one point, well, he voluntarily --

2 THE COURT: That's his own affidavit.

3 MS. ANDRADE: -- agreed to appear, but then he never
4 conceded jurisdiction. And there is a filing.

5 THE COURT: Look. I read his affidavit, right, in the
6 original petition.

7 MS. ANDRADE: Right.

8 THE COURT: And he says, I paid 25,000 dollars to a lawyer.
9 He was -- we made some arrangements for me to go to Ohio, be
10 arraigned. There was discussion about a bracelet. There was
11 discussion about me participating virtually thereafter. And
12 there was going to be a bail that I could make. I think it was
13 2,500 dollars or something like that. And then something
14 happened that caused the DA to say, no, we're looking for a
15 million dollars, and we're not agreeing to virtual
16 participation.

17 MS. ANDRADE: That -- there was a combination of different
18 factors, and there was --

19 THE COURT: But that's what he said, right?

20 MS. ANDRADE: Right. Right.

21 THE COURT: Right.

22 MS. ANDRADE: That's what he stated. And he also stated
23 that he had never conceded jurisdiction. And there was a filing
24 made by the State stating that the Defendant had assented to the
25 jurisdiction of Ohio from Massachusetts courts. Which, I mean,

1 what Defendant would do that?

2 THE COURT: Well, jurisdiction is something you can
3 challenge at any juncture.

4 MS. ANDRADE: Correct. But there is, like, a --

5 THE COURT: He could get -- he could get convicted, and on
6 appeal he could challenge jurisdiction. If they don't have
7 jurisdiction --

8 MS. ANDRADE: Correct.

9 THE COURT: -- it's a void. It's not void. It's a void --
10 it's a void conviction. They'd have to, I mean, be dismissed if
11 they didn't have jurisdiction.

12 MS. ANDRADE: Correct.

13 THE COURT: So you got to go to Ohio to do that.

14 MS. ANDRADE: Right. But there is also another aspect of
15 territorial jurisdiction, like, the territorial nexus. And it
16 is not up -- Ohio should make the case for rendition. They're
17 not complying with rendition. The rendition statute is
18 something separate that -- Mr. Frost will address the action in
19 Ohio. He is working with an attorney to address that. But for
20 purposes of rendition, a state needs -- there is requirements
21 that a state must follow. And if he's deemed a fugitive, then
22 there's a mandate. There's the Extradition Act. There's not
23 much that can be done there if he's deemed a fugitive.

24 THE COURT: Right.

25 MS. ANDRADE: But here, he has provided everything. He has

1 provided clear and satisfactory evidence showing contemporaneous
2 records that he was never in Ohio during the charged offense and
3 the weeks before and after.

4 THE COURT: But you agree that he agreed to go back. They
5 set an arraignment date, and then he didn't show up for the
6 arraignment date. And that's when the process of a warrant,
7 ultimately resulting in Governor Healy, after consultation with
8 the attorney -- with the AG in Massachusetts, issuing a
9 governor's warrant.

10 MS. ANDRADE: He agreed to voluntarily appear.

11 THE COURT: Right.

12 MS. ANDRADE: But he never signed anything. He was never
13 properly -- he was never served. And that is what the State of
14 Ohio does concede that in their filing. And I've provided that
15 to the Court. He wasn't served the indictment or the summons.
16 And in fact, there was dates floating around. You have one, you
17 have April 1st in one. You have April 2nd in another, April
18 3rd, like.

19 THE COURT: Well, it sounds like the arraignment date was
20 April 3.

21 MS. ANDRADE: Well there is --

22 THE COURT: And he didn't appear.

23 MS. ANDRADE: Well, the State filed a motion, and they
24 called it a -- they mentioned April 2nd as the arraignment date.

25 THE COURT: Okay. So the bottom line is there was an

1 arraignment date set. He didn't show up, whether it was 1st,
2 2nd or 3rd.

3 MS. ANDRADE: He did not show up, no.

4 THE COURT: Right. So --

5 MS. ANDRADE: The court did not have jurisdiction over him.
6 And that is his position. In order for there to be a capias in
7 a warrant from a court, that court has to have jurisdiction over
8 someone.

9 THE COURT: Why can't he go -- he can go to Ohio and make
10 that pitch.

11 MS. ANDRADE: And he is addressing it with his attorney.
12 And he, whether it be virtually or another way, he wants to get
13 this dismissed. He doesn't want an indictment hanging over him.
14 He doesn't want a fugitive from justice charge in his CORI as
15 he's looking for a new job, which he lost his other one because
16 he had to spend five days in -- locked up, and it just -- this
17 has been -- there's no -- his due process rights have been
18 completely violated with this, with what is going on right now,
19 because he is a nonfugitive. And there has been no compliance
20 with the statute under Section 13 that states that the governor
21 has the discretion to review and determine whether the acts
22 intentionally resulted in a crime. There's an intentional
23 result nexus that's required under Section 13.

24 And on top of that, there's the punishability. There's a
25 statute in New York that has, that is exactly like

1 Massachusetts. And the Hinton case is illustrative of that. In
2 Hinton, there the Court found that the complaint, the criminal
3 complaint, which stated that he was, and it included similar
4 language to what is included in the indictment, that the
5 defendant was in the county or about the county or points to
6 another statute, enumerated in a statute, in whatever statute.
7 It was very similar to what's happening here with the
8 indictment. And the Court found that wasn't sufficient. All of
9 the documentation --

10 THE COURT: Under your best case scenario, if the Court
11 were to agree with you and find that he was a nonfugitive, the
12 State of Ohio and the Commonwealth could correct that.

13 MS. ANDRADE: The State of Ohio would have to bring a new
14 demand and do it correctly.

15 THE COURT: I understand, but they -- there's a mechanism
16 for them to correct that.

17 MS. ANDRADE: There is a mechanism.

18 THE COURT: Right. You understand that at some point, the
19 State of Ohio will be able to force your client to go back to
20 Ohio.

21 MS. ANDRADE: I understand that they, if they file a
22 demand, the correct demand and proceed that way, I understand
23 that and follow the actual rendition statute, yes, my client
24 would have to go to Ohio. And he --

25 THE COURT: Right.

1 MS. ANDRADE: -- again, is still addressing this with his
2 with his attorney there.

3 THE COURT: And the substantive issues that you raise in
4 detail in your materials are going to be addressed in an Ohio
5 court by an Ohio judge with an Ohio prosecutor arguing against
6 it, right?

7 MS. ANDRADE: Right.

8 THE COURT: Okay.

9 MS. ANDRADE: I mean, it's not -- the substantive points I
10 raised here would be addressed, the jurisdiction, the venue, all
11 of that, which, you know, Abouammo was just decided by the
12 Supreme Court. And it essentially states that contemplated
13 effects isn't enough. Where did the crime occur is what
14 matters.

15 THE COURT: No, but that --

16 MS. ANDRADE: And then you --

17 THE COURT: But that's an issue that Ohio has to address.

18 MS. ANDRADE: Exactly. Yes. Venue is an issue for them to
19 raise. I mention it because the Respondents had mentioned venue
20 in their -- in their brief, and they were using that as a
21 support for purposes of well, the charging documents state that
22 he could be here or there. But that's not sufficient. The
23 charging document, the -- there are cases, when there's a
24 nonfugitive, that the charging document even if -- even an
25 indictment which, I mean, you're going to a grand jury, and

1 you're telling a crime occurred here, and they issue an
2 indictment, and the person was never there. I mean, it does
3 not --

4 THE COURT: But we don't -- but you're going to -- we get
5 those motions not infrequently down in 18. We got a McCarthy
6 motion. We got a O'Dell motion. And it says, you know, there
7 was improper presentation of the grand jury. It affects the
8 grand jury's integrity. We want it dismissed. McCarthy.
9 He's -- there's not probable cause to believe that he committed
10 the crime. We get it dismissed.

11 MS. KRATOCHVIL: Your Honor.

12 THE COURT: I mean, that's going to be litigated in Ohio.

13 MS. ANDRADE: That would be litigated in Ohio, right?

14 THE COURT: Not here.

15 MS. ANDRADE: And that will be raised in Ohio.

16 THE COURT: Okay.

17 MS. ANDRADE: But for purposes of this, they need a --

18 THE COURT: We got to get him to Ohio to do that.

19 MS. ANDRADE: What?

20 THE COURT: We got to get him to Ohio to do that.

21 MS. ANDRADE: We have an attorney in Ohio that will be
22 putting together a motion to dismiss and proceeding that way.
23 For purposes of rendition, they can't use the rendition statute
24 by calling him a fugitive from justice, and I don't want to, you
25 know, I don't want to raise any, you know, it's suspicious that

1 the prosecutor himself had signed, and it wasn't even an
2 affidavit. It was in the application.

3 So it was in the application that he had stated that
4 Matthew Frost was in the State of Ohio, in the County of Ohio,
5 left to avoid prosecution. But that itself, that language, it's
6 in the application. And separately, he has an affidavit stating
7 that what's in the application he had made in good faith.

8 That's not sufficient for purposes of the warrant. A
9 warrant was issued based off of that statement. A good faith
10 statement that he was in the state, that that's all there is.
11 Not even the demand is properly -- and it doesn't mention what
12 the fugitive or nonfugitive predicates.

13 THE COURT: So I've asked you a few questions. Didn't mean
14 to take you off argument. Is there anything else you'd like to
15 tell?

16 MS. ANDRADE: I mean, I think I have, I think I've written
17 it all in my brief. Is there anything else that?

18 THE COURT: I don't have any focus questions at this point.

19 MS. ANDRADE: Okay.

20 THE COURT: All right. Thank you.

21 MS. KRATOCHVIL: Your Honor, if I may just respond to a
22 couple of items here?

23 THE COURT: Yeah.

24 MS. KRATOCHVIL: It is the Commonwealth's position that it
25 is not the single affidavit found within the rendition packet

1 that comprises the rendition.

2 THE COURT: It's the totality.

3 MS. KRATOCHVIL: It is the totality. The indictments
4 issued by the Ohio grand jury, every single count listed, and
5 their description of the charges that Matthew Loren Frost, on or
6 about x date in the County of Green, or by some manner
7 enumerated in Section 2901.12 of the Ohio Revised Code. Section
8 2901.02 of the Ohio Revised Code states that you can be found--

9 THE COURT: Your point is the Ohio Code doesn't require
10 presence to --

11 MS. KRATOCHVIL: Correct.

12 THE COURT: -- commit the crime, and therefore, while they
13 recite presence, if you look at the totality of the conduct,
14 it's clear, from their perspective, he violated the statute.
15 That's sufficient.

16 MS. KRATOCHVIL: That's correct, your Honor. And it is the
17 Commonwealth's statute that the rendition packet complied with
18 our State statute, Chapter 276, Sections 13 and 14, for the
19 nonfugitive rendition, and the fact that he is referred to as a
20 fugitive in the rendition packet is simply a technical error.
21 The statute has been complied with.

22 THE COURT: I guess your bottom line is the purpose of
23 these statutes, from state to state, is to identify individuals
24 who are refusing to answer for crimes in another state, and
25 they're trying to evade that. And that's what he's doing here.

1 He's in Massachusetts. He's refusing to go to Ohio. He's
2 trying to evade Ohio's authority to bring him before the State
3 to answer to criminal charges that have been properly indicted.

4 MS. KRATOCHVIL: That's correct, your Honor.

5 THE COURT: Yeah. And that's the purpose, the overall
6 purpose of these statutes. It's been met. We should honor that
7 and process him back to Ohio.

8 MS. KRATOCHVIL: Yes.

9 THE COURT: All right.

10 MS. KRATOCHVIL: Thank you.

11 THE COURT: If this case, if I deny the motion to dismiss,
12 what happens next?

13 MS. ANDRADE: Mr. Frost is working with an attorney in Ohio
14 to proceed with, you know, dismissing that indictment. But
15 again, it's --

16 THE COURT: No, no. I don't -- I don't want to know what's
17 happening in Ohio. What's your next step?

18 MS. ANDRADE: Our next step is we're seeking that the --
19 the Court quash the governor's next step.

20 THE COURT: So that would be the next step. You'd file a
21 motion to quash the governor's warrant?

22 MS. ANDRADE: Yes.

23 THE COURT: Governor Healy's warrant?

24 MS. ANDRADE: Yes, because it did not comply with the --

25 THE COURT: Okay. I, no, that's -- I understand. You

1 don't have to tell me why, but that's what you'd do.

2 MS. ANDRADE: Okay.

3 THE COURT: Right. If I allow the motion to dismiss,
4 right --

5 MS. KRATOCHVIL: Meaning he would not have to be rendited,
6 because it's my motion to dismiss.

7 THE COURT: Right? That's why I looked at you.

8 MS. KRATOCHVIL: Sorry, your Honor.

9 THE COURT: If I allow -- I didn't mean to. If I allow
10 your motion to dismiss, then the petition, the habeas petition
11 is dismissed, and he's left on bail, because there's been
12 litigation in the Clinton District Court on the fugitive
13 warrant, right, and he's out on bail?

14 MS. KRATOCHVIL: Yes.

15 THE COURT: So he'd be left to --

16 MS. ANDRADE: We'd be appealing it.

17 THE COURT: Appealing what?

18 MS. ANDRADE: We'd be appealing the motion to dismiss the
19 appeal.

20 THE COURT: No, that's fine. You appeal it. I don't mind
21 getting appealed. Trial court judges get appealed all the time.
22 You can appeal whatever you want. My point is, if this petition
23 gets dismissed, then the only process in place that relates to
24 Mr. Frost is his fugitive status in Clinton. And that's been
25 litigated, bail, but is there a condition that he go back to

1 Ohio?

2 MS. KRATOCHVIL: I may defer to ADA Mark Relation on the
3 status of that condition.

4 MR. RELATION: Your Honor, I might be mistaken, but I
5 believe that the understanding with the current bail status is
6 that it is pending this matter.

7 THE COURT: All right. Well, that was -- that was, kind
8 of, the awkward purpose of my question.

9 MS. KRATOCHVIL: Okay.

10 THE COURT: So if this gets dismissed, he's out on bail.
11 And the question of what, if any, additional conditions would be
12 attached to that would go back to Clinton, and presumably they'd
13 address whether or not there'd be a requirement that he go back
14 by a date certain or whether he'd be, you know, his bail would
15 be revoked, and he'd be -- Ohio would send an escort to bring
16 him back.

17 MR. RELATION: I believe that's correct. And there had
18 been in the past bail conditions, including a requirement that
19 he report to Ohio.

20 THE COURT: Right. I think it was Judge Revelli. Or it
21 might have been a different judge, the woman that was a clerk in
22 Gardner.

23 MS. ANDRADE: Brown.

24 THE COURT: Judge Brown. Yeah. They both had something to
25 do with it. You agree with that?

1 MS. ANDRADE: Judge Revelli?

2 THE COURT: No. That he'd have to address his fugitive
3 conditions in Clinton if this is dismissed.

4 MS. ANDRADE: Yes.

5 THE COURT: All right. All right. Anything else that
6 anybody wants to tell me at this point?

7 MS. ANDRADE: I do want to -- I guess I want to close off
8 with the Smolin case, which the Supreme Court case, and reading
9 that, it does feel like there is that type of level of
10 gamesmanship where the Court saw it, you know, Justice Stevens
11 saw it, and he wrote a blistering dissent. And at the end of
12 the day, the father, who was deemed -- who was deemed to have
13 kidnaped under the Parental Kidnaping Act was forced to be
14 extradited to Louisiana. Ultimately is what they found, but
15 it's because he was already in Louisiana.

16 So and -- I'm not sure if your Honor knows some of the
17 details of that case, where the father had gotten a decree from
18 the California court, and it was he -- they granted him full
19 custody. In the meantime, he had -- the mother of the children
20 had moved to Florida -- to Louisiana, got a competing degree
21 after that, even though the courts in California had
22 jurisdiction over the custody arrangement. Got a competing
23 decree in Louisiana, and after the father had picked up the
24 children in Louisiana and was physically in the state and left,
25 kidnaping charges were pressed. So it's that type of

1 gamesmanship where the Court saw the wrong. But because of the
2 mandate under the Extradition Act, because he is --

3 THE COURT: I don't know what you mean by gamesmanship.

4 MS. ANDRADE: I mean, the gamesmanship being the other
5 parent was trying to avoid the jurisdiction of California, and
6 that is why they got a competing -- they got a court in
7 Louisiana for to --

8 THE COURT: Interesting, you'd raise that argument.

9 MS. ANDRADE: I do raise it.

10 THE COURT: It's interesting that you'd be the one. I
11 would expect them to be telling me about that, but --

12 MS. ANDRADE: But -- but the difference there --

13 THE COURT: If there's any gamesmanship going on, I'm not
14 saying there is, but the argument for gamesmanship is on your
15 side, not theirs.

16 MS. ANDRADE: My client has -- he was appearing at every
17 hearing. I mean, today, I told him --

18 THE COURT: No, no. I don't think --

19 MS. ANDRADE: I gave him wrong information.

20 THE COURT: He didn't appear in Ohio. My point is, he
21 hasn't appeared in Ohio. He's trying not to avoid it.

22 MS. ANDRADE: He hasn't appeared. He hasn't appeared in
23 Ohio. But here the courts were stuck because of the mandate.
24 The mandate required that the father who was present and left,
25 he was a fugitive from justice under the Extradition Act. He

1 had to go. There was no other choice. Like, the mandate forced
2 him to go back.

3 THE COURT: I understand. You're arguing -- we're
4 repeating argument.

5 MS. ANDRADE: Yes, but the mandate here, there's no mandate
6 here when he's deemed a nonfugitive.

7 THE COURT: I just find it curious, the argument. That's
8 all.

9 So logistically, I'm going on vacation starting next week.
10 Yes, I know. But I'm going to be out for a while, so I expect
11 to have something probably written before I leave.

12 I don't use computers very well, and so I don't type my own
13 stuff. So I use a judicial secretary. And I hate to admit
14 this, but I actually dictate. You folks don't even know what a
15 dictation machine is, right? And so she won't get it till
16 Monday, and then I'm out for a while, so you may not get
17 something for a bit. It's not because I'm not being diligent.
18 It's just it's -- it's not going to, and I will be away, so I
19 can't even get it to do. I'll try my best to figure that out,
20 but if you don't see anything, it's not that I've forgotten
21 about you. It's just that I'm on vacation.

22 And you may want to think about using that lag time to
23 bring some resolution. And your client ultimately, at some
24 point, is going to Ohio. He may not like that, but at some
25 point, I just don't see that -- even if you win this, he --

1 there are procedural remedies that are going to cure. He's
2 refusing to go to Ohio right now. You -- you say he has valid
3 reason. But I mean, there's processes in place that can get him
4 there, and so that reality should be forcefully expressed to
5 him. And the least harmful way of doing that for him, you
6 should think about. You understand?

7 MS. ANDRADE: Yes, your Honor.

8 THE COURT: Yeah. All right. Thank you all.

9 MS. ANDRADE: Thank you.

10 MS. KRATOCHVIL: Thank you, your Honor.

11 MR. RELATION: Thank you, your Honor.

12 (Hearing concluded at 10:45 a.m.)
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C E R T I F I C A T I O N

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August 8, 2026

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PHOENIX, AZ 85020
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1 COMMONWEALTH OF MASSACHUSETTS - COUNTY OF SUFFOLK

2
3 SUPERIOR COURT DIVISION

4
5
6
7 CANNAPRENEUR PARTNERS LLC)
8 CP HOLDINGS LLC)
9 JTM INVESTMENTS LLC)
10 BOSNART AG)
11 Plaintiffs)
12)

13 v.)

14)
15 AABA INC.)
16 FROST INC.)
17 MATTHEW FROST)
18 ASHLEY ANDRADE)
19 Defendants)
20)

21
22 COMPLAINT

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

NOV 18 2021

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

COMPLAINT

21-2744D

23
24 *Introduction*

25 This is a Complaint for damages and rescission of an investment in a privately-held
26 business. The Plaintiffs all allege fraud in the inducement of investment contracts,
27 fraud in the inducement of other contracts such as loans, and other acts of fraud by the
28 named personal Defendants Matthew Frost ("Mr. Frost") and Ashley Andrade ("Ms.
29 Andrade"). The Plaintiffs allege that they were induced to participate in AABA Inc.
30 through these acts of fraud. Those alleged acts are detailed after each Plaintiff's
31 relationship to the Defendants is recited below.

32
33 *Parties*

34 ¶1. Cannapreneur Partners LLC ("Cannapreneur") is a limited liability
35 company organized under the laws of Delaware and conducting business in

ADD 000058

1 the Commonwealth as a foreign limited liability company, having a principal
2 place of business at 110 Turnpike Road #114, Westborough MA 01581.

3 — 2. CP Holdings LLC (“CP Holdings”) is a limited liability company organized
4 under the laws of the Commonwealth of Massachusetts and having a principal
5 place of business at 110 Turnpike Road #114, Westborough MA 01581. CP
6 Holdings is a wholly-owned subsidiary of Cannapreneur.

7 — 3. JTM Investments LLC (“JTM”) is a limited liability company organized
8 under the laws of Ohio, having a principal place of business at 3378 Fairwood
9 Drive, Beavercreek, Ohio 45432 and conducting substantial business in the
10 Commonwealth through its local nominee and agent, Tina DiGiorgio (“Ms.
11 DiGiorgio”).

12 4. Bosnart AG (“Bosnart”) is a privately-held Swiss company of a corporate
13 form analogous to a limited liability company, conducting substantial business
14 in the Commonwealth through its agent, Artjoms Tarasenoks (“Mr.
15 Tarasenoks”), whose business address in the Commonwealth is 265 Franklin
16 Street #1702, Boston MA 02110.

17 5. AABA Inc., a corporation also known as, and doing business as, Anna
18 (“Anna”), is a corporation organized under the laws of Delaware and
19 conducting business in the Commonwealth as a foreign corporation, having a
20 registered agent for service of process at 1277 Commonwealth Ave #304,
21 Boston MA 02134.

22 6. Frost Inc. (“Frost Inc.”) is a corporation organized under the laws of the
23 Commonwealth of Massachusetts, having a registered agent for service of
24 process at 47 Harvard Avenue #701, Boston MA 02134.

1 7. By virtue of Articles of Charter Surrender filed with the Secretary of the
2 Commonwealth on February 22nd, 2019, Frost Inc. is a wholly-owned
3 subsidiary of Anna, having surrendered its Articles to Frost on that date.

4 8. Matthew Frost ("Mr. Frost") is a natural person having a residence in the
5 Commonwealth of Massachusetts at 1277 Commonwealth Ave #304, Boston
6 MA 02134.

7 9. Mr. Frost is the named President, Treasurer, Secretary, Assistant Secretary,
8 and Vice President of Anna. Mr. Frost is the named President, Treasurer,
9 Secretary, CEO, and Director of Frost Inc.

10 10. Ashley Andrade ("Ms. Andrade") is a natural person domiciled in the
11 Commonwealth of Massachusetts having an address at 1277 Commonwealth
12 Ave #304, Boston MA 02134. Ms. Andrade is a named Director of Anna.

13
14 *Jurisdiction*

15 11. This Court enjoys personal jurisdiction over all parties because:

- 16 a) All Plaintiffs have conducted considerable business, for years,
17 throughout the Commonwealth;
- 18 b) All Plaintiffs have conducted considerable business with all
19 Defendants in the County of Suffolk;
- 20 c) All Defendants are either domiciled in the County of Suffolk, have a
21 principal place of business in the County of Suffolk, or have a
22 registered agent for service of process in the County of Suffolk;
- 23 d) All or virtually all of the events recited in this Complaint occurred in
24 the County of Suffolk.

25 12. This Court enjoys subject-matter jurisdiction over this Complaint because:

- 1 a) No other Court enjoys original jurisdiction over this Complaint;
- 2 b) If the Plaintiffs are successful, they are virtually certain to recover in
- 3 considerable excess of this Court's jurisdictional damages threshold;
- 4 c) This is a complaint for damages reciting breach of contract, fraud,
- 5 and other theories well within the subject matters this Court may hear.
- 6

7 *Factual Background*

8 13. Anna is, purportedly, in the business of developing and deploying

9 machines whose purpose is to allow customers to purchase age-gated products

10 (such as alcohol or adult-use cannabis) from a vending machine. These

11 machines were intended primarily for use in the legal adult-use cannabis

12 market, at least according to Anna's investment circulars and marketing

13 materials. (These devices generally, the "Machines.")

14 14. The Machines are protected by a patent, originally issued to Frost Inc.,

15 known to the United States Patent & Trademark Office by the patent number

16 10,949,901 (the "Patent"). A true copy of the Patent's USPTO record is filed

17 herewith as **Exhibit C**.

18 15. Upon information and belief, the Patent is now under the effective control

19 of Anna, by virtue of the charter surrender filed by Frost Inc. A true copy of

20 the charter surrender is filed herewith as **Exhibit D**.

21 16. JTM, Cannapreneur, and Bosnart have all invested in Anna in various

22 forms. JTM and Bosnart are traditional debt lenders, and Cannapreneur has

23 invested in Anna by purchasing its common stock outright.

1 17. This Complaint will first recite the background by which each Plaintiff
2 came to be an investor in Frost, and then describe the various acts of fraud
3 committed against all Plaintiffs.
4

5 *JTM and Anna*

6 18. JTM invested in Anna in the form of a loan, memorialized by two separate
7 agreements: a "REVENUE SHARING AGREEMENT" (the "Revenue
8 Sharing Agreement," an "EQUIPMENT LEASE" (the "Equipment Lease")
9 and a "PURCHASE AND LEASEBACK AGREEMENT" (the "Purchase
10 Agreement;" true copies of all such documents filed together herewith as
11 **Exhibit A**).

12 19. In combination, the Revenue Sharing Agreement and the Equipment Lease
13 functioned as a loan for the purchase of equipment, whose principal amount
14 was set forth in the Purchase Agreement. Through these agreements, JTM lent
15 Anna \$545,664.00 for the express purpose of purchasing several Machines,
16 from a third-party vendor. (That vendor is not a party to this action.) Anna's
17 repayment schedule called for repayments in the amount of \$35,000.00 per
18 month.

19 20. Between the Revenue Share and the Equipment Lease, JTM's expected
20 return, had Anna fulfilled any of its obligations under any of its agreements,
21 would have come to \$818,496.72: the return of the principal under the
22 Purchase Agreement, plus the expected profits from the Revenue Share
23 agreement.

1 21. The Purchase Agreement had the function of a standard leaseback
2 agreement: JTM purchased the Machines and immediately leased them back to
3 Anna.

4 22. The Purchase Agreement provided that, among other things, the Machines
5 were “in good condition and repair,” were “owned by [Anna] free and clear of
6 any liens,” and were “appropriate for the uses to which [they were] currently
7 being put by [Anna].”

8 23. Those Machines never existed, either at the time of execution of the
9 Purchase Agreement or at any other time. All Defendants were aware at all
10 times that such Machines did not exist, and, upon information and belief, the
11 Defendants knew that they never intended to purchase any Machines with
12 JTM’s money.

13 24. Various devices produced by Frost and provided to its “customers” were
14 non-functional mock-ups, which was not disclosed to any Plaintiff prior to
15 making their respective investments.

16 25. The Revenue Sharing Agreement, the Purchase Agreement and the
17 Equipment Lease were executed more or less simultaneously, on December
18 2nd, 2020.

19 26. JTM was induced to execute the Equipment Lease and the Revenue
20 Sharing Agreement by the express promises of Anna, Mr. Frost, and Ms.
21 Andrade that the proceeds of JTM’s loan would be used for the purpose of
22 acquiring and placing additional Machines, above and beyond the Machines
23 Anna had purportedly already deployed to its “customers” (no such Machines
24 yet actually existed, unbeknownst to the Plaintiffs) in order to create a flow of
25 revenue by March of 2021.

1 27. Anna quickly fell into arrears under the Equipment Lease and the Revenue
2 Sharing Agreement, and was never able to provide any evidence that the
3 Machines described in the Purchase Agreement existed.

4 28. JTM was induced to provide an extension on all of the operative
5 agreements to Anna, to defer collections actions, and to delay filing even this
6 Complaint based upon repeated promises by Mr. Frost and Ms. Andrade that
7 the Machines existed and functioned, that Anna was engaged in
8 "crowdfunding" to accelerate JTM's returns under the various operative
9 agreements, and that Anna was always on the verge of closing lucrative deals
10 with cannabis dispensaries around the country, as further elaborated upon
11 below.

12 29. Anna never engaged in any form of "crowdfund."

13
14 *Cannapreneur/CP Holdings and Anna*

15 30. Meanwhile, Cannapreneur had become a shareholder of Anna through
16 series of documents, executed more or less simultaneously on May 5th, 2020,
17 collectively referred to herein as the "Stock Purchase Agreement." Individual
18 documents within the complete set of documents constituting the Stock
19 Purchase Agreements shall have the names provided for them in Exhibit E, as
20 cited below.

21 31. The Stock Purchase Agreement contains agreements styled a "Common
22 Stock Purchase Agreement," a schedule of disclosures, an "Investor Right's
23 [sic] Agreement," a "Consulting Services Agreement," and various related
24 agreements. These documents were all executed more or less simultaneously,
25 all reference each other, and altogether constitute essentially one transaction.

1 A true copy of the complete binder of documents constituting the Stock
2 Purchase Agreement is filed herewith as **Exhibit E**.

3 32. The Stock Purchase Agreement called for 305,364 shares of the combined
4 5,000,000 shares of common stock authorized by Anna's articles of
5 incorporation to be transferred to Cannapreneur (via CP Holdings) upon
6 Cannapreneur's payment of the purchase price of \$375,000, which
7 Cannapreneur did promptly pay.

8 33. The proper notations were made in the corporate books and records of
9 Anna.

10 34. As part of the Stock Purchase Agreement, two principals of Cannapreneur
11 were named to Anna's Board of Directors, were named as Directors on Anna's
12 Secretary of State filings, and held the further title of "Investment Directors,"
13 a concept created under the Stock Purchase Agreement.

14 35. The Board of Directors positions were separate legal concepts, and had
15 separate obligations and responsibilities, as the "Investment Directors"
16 positions.

17 36. At no time did Cannapreneur's principals, Michael Scott ("Mr. Scott") or
18 Todd Sullivan ("Mr. Sullivan") (not parties to this action), resign their
19 positions as Directors of Anna.

20 37. Almost immediately after receiving Cannapreneur's investment in the
21 form of the purchase price called for under the Stock Purchase Agreement, Mr.
22 Frost and Andrade virtually ceased all communications with them. Anna's
23 regularly-scheduled board meetings became intermittent and then ceased
24 occurring altogether.

1 38. As a shareholder, Cannapreneur and CP Holdings have been entitled to,
2 among other things, basic inspection rights as a matter of law, and as written
3 into the plain text of the Stock Purchase Agreement.

4 39. Cannapreneur was induced to invest in Anna by the same sorts of
5 representations about Anna's glowing future, as elaborated upon further below,
6 as JTM.

7
8 *Bosnart and Anna*

9 40. Bosnart invested in Anna via a convertible note in August of 2019.

10 41. The note was structured as a typical convertible note. It recited ordinary
11 loan terms, having an interest rate of 8% annually on a principal amount of
12 \$100,000.00, with a stated maturity date of August 30th, 2021. Instead of being
13 repaid, however, the note could convert into common stock of Anna at a
14 significant discount upon the occurrence of certain events, such as future
15 financing rounds.

16 42. Bosnart's convertible note includes, both in the plain text of the note and
17 under the legal rights of any holder of securities in the Commonwealth, basic
18 inspection rights.

19 43. As with most investors who elect to participate in an early-phase company
20 like Anna through a convertible note, it was always Bosnart's preference that
21 its note ultimately convert, rather than being repaid. Bosnart, like the other
22 Plaintiffs, had been led to believe that Anna stood on the verge of deploying
23 the Machines.

24 44. Bosnart, like the other Plaintiffs, had been induced into its investment in
25 Anna by a series of lavish promises, followed by excuses, followed by silence.

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The Anna Misrepresentations

45. The Plaintiffs came to Anna through different paths, as described more fully above. Some came as lenders, others as investors, but all came to Anna through a series of false insinuations, wild promises, unrealized promises, outright lies, and a string of increasingly implausible excuses for Anna’s failure to deliver evidence of even a single working Machine, culminating in Mr. Frost’s ceasing all communication whatsoever with most of his investors, and Ms. Andrade’s appearing only to make occasional, transparently frivolous legal threats in order to dissuade the Plaintiffs from filing this Complaint.

46. All of the Plaintiffs were induced into their investments with Anna through, more or less, the same kinds of promises.

47. All of the Plaintiffs, for example, received roughly identical versions of Anna’s “pitch deck,” a slide presentation which outlined Anna’s business model, the potential value of the Machines, and a timetable for their delivery.

48. The version of the pitch deck which was presented to JTM is attached hereto as **Exhibit F**. All Plaintiffs received essentially identical versions of this pitch decks prior to making their respective investments, and all Plaintiffs made their respective investments in reliance upon the representations made in that pitch deck.

49. Virtually every objective representation made in the pitch deck was false. For example, the eighth slide in the pitch deck states as follows:

anna.features

- **anna** is the **only** automatic merchant solution **approved** by regulators for the secure fulfillment of cannabis products.
- **Integrates** with all major cannabis POS systems
- **Offers customers cutting edge payment tech with "pin-on-glass"**
- Dynamic pricing and promotions to highlight specific products
- Streamline transactions w/ **anna.app**'s fully-integrated online ordering
- **AI-powered decision support + upsell features**
- Custom sales reports on product mix, trends, and inventory mgmt.



50. No regulator has ever approved the Machines for any purpose - indeed, no regulator has ever seen a functioning Machine. And neither has any Plaintiff.

51. No Machine has ever integrated with any major cannabis POS (point-of-sale) system. Indeed, the hasty mock-up produced by Mr. Frost in the waning days of his extensive fraud was unable even to properly total up transactions or track the products ordered - i.e., the best known "prototype" of the Machine was slightly less functional than a vintage hand-operated cash register.

52. No customer has ever used a Machine.

53. No client of Frost ever received more than these non-functional, or barely-functional, mock-ups.

54. No Machine has ever provided any pricing or promotional support, or supported any transactions at all.

55. Anna has never used any artificial intelligence software.

1 56. The subsequent slide claims that then-"Active customers" of Anna
2 included notable legal adult-use cannabis brands such as Starbuds, Strawberry
3 Fields, and Kindlove (not parties to this action).

4 57. Needless to say, none of those brands has ever received a functioning
5 Machine. Kindlove received an older demonstration model which did not
6 function as described. Upon information and belief, such non-functional
7 demonstration models are the only Machines ever produced.

8 58. Further investigation continues to find that every business who the
9 Defendants have claimed as customers have received only non-functional
10 "prototypes" of the Machines. As such, there were no "customers" for
11 Machines - because no Machines were ever produced.

12 59. An email from Kindlove's authorized representative confirming this
13 information is filed herewith as **Exhibit B**. Plaintiffs are working in good faith
14 to produce affidavits from Kindlove and all other non-parties.

15 60. The slide deck identifies Mr. Frost as the "Founder & CEO" of Anna.

16 61. The slide deck identifies Ms. Andrade as "COO / Legal."

17 62. The fourteenth slide in the slide deck states a very clear, proposed use-of-
18 funds for any investor's investment (the below excerpt from JTM's slide deck
19 is representative, down to the penny, of the use-of-funds promises made to all
20 Plaintiffs):
21

anna.investment

➤ How the money will be spent

1. Dispensary hardware (24): \$281,988.48

➤ All hardware will be assembled and shipped by 12/31/20

2. Buildout finalized anna v4 design: \$263,676

➤ The cost to fully outsource anna's production to its manufacturing partner

Total: \$545,664.48

Item	Price per
anna unit	\$ 5,667.00
spectral payout recycler	\$ 1,000.00
touchscreen	\$ 979.00
magnetic wraps	\$ 800.00
jetpack	\$ 649.99
door (parts + labor)	\$ 600.00
final assembly	\$ 500.00
mini-PC	\$ 488.98
card reader	\$ 349.00
printer	\$ 249.00
speaker + amplifier	\$ 199.00
camera	\$ 79.99
barcode scanner	\$ 69.99
antenna	\$ 49.99
microphone	\$ 39.99
usb adapter	\$ 27.99
Total	<u>\$11,749.52</u>



63. The “anna v4 design” refers to a hypothetical final version of the Machines, which was never built.

64. Rather than spending money on “dispensary hardware,” which “will be assembled and shipped by 12/31/20” (emphasis added), that money has gone elsewhere. The manufacturer who had been contracted to make the Machines, JOFEMAR USA (“Jofemar,” not a party to this action) readily confirmed to the Plaintiffs that Anna is hundreds of thousands of dollars in arrears on payments to produce the Machines, not including its arrears to JTM and the other Plaintiffs.

65. The pitch deck also links to a YouTube video with the URL <https://www.youtube.com/watch?v=kx1zQ56zsps>¹, which makes similar extravagant and false promises, and even depicts a customer using a fictional Anna interface to order a product from a fictional Machine.

¹ A stable copy of this video, and an archived version of this URL, have been preserved for discovery purposes.

1 66. No device featured in that promotional video actually functions as
2 advertised.

3 67. Mr. Frost and Ms. Andrade both participated in drafting and disseminating
4 these and the related, continuous acts of fraud described further below.

5 68. In early 2021, Anna's investors began to grow restless. Having been
6 promised dozens of fully-functional Machines generating revenue from actual
7 customers before the close of 2020, they began to exercise their inspection
8 rights, calling for basic financial statements, updates on the status of the
9 Machines, and eventually, calling merely for some demonstration that any
10 Machine exists or functions as alleged.

11 69. Throughout 2021, communications from Mr. Frost and Ms. Andrade
12 became less and less frequent. Scheduled conference calls would end with
13 promises to deliver basic financial documents, sales contracts, agreements
14 with Jofemar, and other basic documents to which all Plaintiffs were entitled
15 both by both law and contract.

16 70. Plaintiffs made these requests in writing, by phone, by text message,
17 indeed by every means of communication at their disposal as replies from Mr.
18 Frost and Ms. Andrade tapered off.

19 71. The Defendants participated in a handful of conference calls with their
20 investors in 2020, almost all of which ended with a promise to provide such
21 documentation always "tomorrow," "next week," never to materialize - or,
22 when they did, incomplete, incorrect, or simply fictional financial statements
23 or documents would be materialized.

24 72. All in all, six of the eight board meetings that board members Mr. Sullivan
25 and Mr. Scott requested on Cannapreneur's behalf were canceled or skipped

1 altogether without explanation. The two others ended with promises to
2 transmit financials and related documents to the Plaintiffs in due time - and, of
3 course, these never materialized in anything but summary form.

4 73. As late as March of 2021, Ms. Andrade was continuing to participate in
5 these ongoing delay tactics, sending messages like the following to
6 Cannapreneur:

7
All,

Hope everyone had a great weekend. Apologies for not getting back to you with follow-up items--we got tied up getting all the pieces ready for our prototype delivery tomorrow.

You can find the purchase & leaseback agreement [here](#) [REDACTED] We'll be sending out the other documents requested at the board meeting later today.

Best,

Ashley

—
Ashley Andrade
COO & Legal | anna
(978) 618-5414
ashley@tryanna.com
tryanna.com



8
9 74. The complete correspondence presented above (redacted for sensitive
10 information, which Plaintiffs are prepared to submit to this Court unredacted
11 for its review *in camera*) is filed herewith as **Exhibit F**; it is merely
12 representative of dozens or hundreds of such emails, text messages, and other
13 such communications of a vague and unconvincing nature.

14 75. Needless to say, “the other documents requested” did not appear “later
15 today” (that email is dated March 9th, 2021), and the board meeting referenced
16 therein was rescheduled, and rescheduled again, without explanation, and
17 ultimately never took place.

1 76. All Plaintiffs requested copies of Anna's tax returns for 2019, and then for
2 2020. These were never provided.

3 77. All Plaintiffs requested evidence that any Machines existed or functioned.
4 The closest that they received was a demonstration of a device which, as stated
5 above, had slightly less functionality than a cash register.

6 78. All Plaintiffs requested evidence that Anna had any customers, such as
7 what Anna had promised in the pitch deck were its *current* customers. No such
8 evidence ever materialized. Upon contacting these purported customers
9 directly, the Plaintiffs discovered that those customers had merely once or
10 twice entertained pitches from Anna.

11 79. Sensing that their cover had been blown, the Defendants switched to more
12 aggressive delaying tactics. In July of 2021, Mr. Frost contacted Mr. Sullivan
13 and Mr. Scott with an offer to simply buy out investors like Cannapreneur at
14 par value. This seemed like a promising means to extract themselves from a
15 total loss, and so Cannapreneur at first entertained the offer. Mr. Frost
16 promised "something in writing Monday (7/12)."

17 80. This offer, of course, never materialized. It simply bought Mr. Frost more
18 time.

19 81. At the final meeting with Cannapreneur that Mr. Frost ever attended, held
20 on August 24th of 2021, Mr. Frost stated that he would upload all of the
21 requested information directly to Cannapreneur, including extremely detailed
22 information such as bank statements. "Before I leave my desk," Mr. Frost
23 promised.

24 82. Upon information and belief, Mr. Frost has left his desk since August 24th
25 of 2021.

1 83. The promised information never materialized.

2 84. Mr. Frost stated in that meeting that Anna had achieved revenues of
3 \$540,000 in 2020. According to a spreadsheet that Mr. Frost uploaded on
4 August 26th, Anna's 2020 revenue number was \$347,000. A true copy of this
5 document is filed herewith as **Exhibit G**.

6 85. Upon information and belief, both numbers are fictional and the document
7 presented as Exhibit G is entirely fraudulent.

8 86. Plaintiffs reasonably believe that Exhibit G represents a totally fraudulent
9 document because, as Ms. Andrade has freely admitted (elaborated upon
10 below), Anna is completely out of money, and is in arrears even to its own
11 employees.

12 87. Mr. Scott and Mr. Sullivan resigned from Anna's Board on August 26th,
13 2021.

14 88. The Defendants' stalling tactics took a turn for the bizarre when, on
15 September 22nd, 2021, Mr. Frost wrote the following to the Plaintiffs
16 (highlights for emphasis not in original):
17

On Sep 22, 2021, at 10:06 AM, Matthew Frost <matthew@tryanna.com> wrote:

All –

The Board and shareholder majority, in the best interest of the company, have voted to dissolve AABA, INC.

The Certificate of Dissolution, effective 9/20/2021, will be mailed by the state of Delaware. I will scan & share a copy once it arrives.

Everything has been documented in this month's Board minutes [REDACTED]

Procedurally – the next steps surround the business's bankruptcy filings. By the start of next week all shareholders, employees, and creditors of the business will be notified and provided 60 days, by law, to make any claims of debts owed by the business.

In short -- Tina owns the hardware, then any other assets will be sold to pay a) backed employee wages b) open convertible notes and c) remaining creditors.

I've canceled the weekly check-ins -- these were scheduled for strategically moving the business forward and are no longer needed.

Tina -- I will reach out to you by the end of the day with locations and contact information for securing all hardware.

Best,
Matt

—
Matt Frost
Founder & CEO | Anna
(339) 832-0881
matthew@tryanna.com
tryanna.com

anna

89. No “Certificate of Dissolution” is on file with the Secretary of State for the State of Delaware as of November 3rd, 2021.

90. Anna (AABA, Inc.) has not been dissolved in Massachusetts as of November 3rd, 2021.

91. No bankruptcy filing exists on any bankruptcy docket in any district in New England for Anna (AABA, Inc.), Mr. Frost, or Ms. Andrade.

92. “Tina” (Ms. DiGiorgio, the principal of JTM) never received any information demonstrating the location or existence of Machines.

93. Upon information and belief, none of the steps recited in Mr. Frost’s email of September 22nd, 2021 ever took place. They were merely attempts to further dissuade the Plaintiffs from filing the instant Complaint.

ADD 000075

1 94. If such a dissolution was filed, it was fraudulent. Anna never entered into
2 winding-up or made good on any of its debts, or made any attempt to resolve
3 any of the liabilities against it prior to dissolving.

4 95. If such a bankruptcy petition was filed, no notice of the same was ever sent
5 to any creditors of Anna - such as the creditor-Plaintiffs.

6 96. When confronted over this more-or-less incomprehensible declaration
7 either of dissolution or of bankruptcy by Mr. Frost with a preservation demand
8 sent by Cannapreneur's counsel (the undersigned) on September 23rd, 2021,
9 Ms. Andrade somehow outperformed Mr. Frost's message with vague threats
10 of transparently frivolous litigation:
11



Ashley Andrade

to me, Matthew ▾

Christopher,

Thu, Sep 23, 7:41 PM ☆ ↩ ⋮

With all due respect, any claim against me is meritless and lacks consideration.

I was never paid wages for hours worked. I was never paid for overtime. I also never received the shares I was entitled to per my agreement. The only funds I received were reimbursements for either interest-free loans I personally provided to anna (which are documented) or expenses I paid on anna's behalf (which again are all documented).

Quite the contrary—I've accumulated debt by covering expenses owed by anna—debt that has yet to be reimbursed by the way. Your threat to hold me personally liable is nonsensical and would only expose your clients to liability for breach of contract and liability under the FLSA, state wage act, and potentially the Massachusetts Fair Employment Practices Act seeing as I was the only worker (not to mention only female at the company) not getting paid—something your clients were well aware of a year ago.

12 Likewise, your fraud claim lacks all merit. The company ran out of money. Believe it or not, hardware costs money. Software developers cost money. Customized hardware costs more money. In fact, warehousing that hardware is expensive. Hosting and licensing all software for that hardware is expensive. For five months now, Matt has been covering both expenses himself through personal loans and credit cards. Never once have your clients inquired how a company that is insolvent is still managing to make payments. I suppose it just makes more sense to cry baseless allegations of fraud.

Lastly, Matt is not an attorney—and mistakenly filed the dissolution when he should have filed for bankruptcy instead. That will get fixed. A mistake/error does not constitute fraud. But don't you worry—I know how much your clients want to get their hands on Matt's 2015 Nissan Altima. I'm sure it will look great next to their Teslas— unless they have a separate garage for assets seized from struggling entrepreneurs/founders.

13 Best,
Ashley

14

ADD 000076

1 97. A true copy of this complete email is filed herewith as **Exhibit H**.

2 98. All Plaintiffs sent repeated requests and demands for information to these
3 Defendants. With excuses ranging from traffic to a “phone overheating” to
4 friends’ weddings to doctors appointments, this information never appeared. A
5 representative of such communications is filed herewith as **Exhibit I**.

6 99. Ms. Andrade is a licensed attorney.

7 100. Ms. Andrade’s threats are of such a transparently frivolous nature (Ms.
8 Andrade, for example, threatens employment-related litigation against persons
9 who have never employed her in any capacity, and states that Cannapreneur’s
10 claim that she participated in fraud against Cannapreneur “lacks
11 consideration”) that they could not possibly serve any legal purpose except to
12 forestall and delay the instant litigation - consistent with the tactics that Mr.
13 Frost and Ms. Andrade employed throughout 2021 to simply buy more time.

14 101. Upon information and belief, Ms. Andrade’s transparently frivolous legal
15 threats are solely in furtherance of the various frauds that Mr. Frost and Ms.
16 Andrade have perpetrated against all Plaintiffs.

17 102. Needless to say, the “mistakenly filed” dissolution was, to the Plaintiffs’
18 knowledge, never filed.

19 103. The decision to file for bankruptcy was never “fixed.”

20 104. Regardless, any such filing - whether threatened or actually made - would
21 be in violation of the operative agreements as to all Plaintiffs. In addition to
22 the right to participate in the winding-up and dissolution of the Company
23 under both Massachusetts and Delaware law enjoyed by all Plaintiffs,
24 Cannapreneur enjoys the contractual right to approve or reject any such
25 purported terminal phase of Anna.

1 105. Anna's acts of fraud - both in their inducement of all parties' various
2 investments in Anna, and in stringing their investors along for years with
3 fictional Machines that never materialized, in consciously fabricating false
4 financial documents and simply hiding others, in the string of broken promises
5 and reassurances that never turned into action - have caused objective,
6 material economic harms to all Plaintiffs.

7 106. Conscious acts of fraud by Mr. Frost have caused objective, material
8 economic harms to all Plaintiffs.

9 107. Conscious acts of fraud by Ms. Andrade have caused objective, material
10 economic harms to all Plaintiffs.

11 108. Anna has defaulted on every debt instrument now or ever held by all
12 Plaintiffs.

13 109. Anna has consciously disregarded the information rights, whether by
14 contract or by law, held by all Plaintiffs.

15 110. Anna continues to defraud all Plaintiffs and the general public through
16 continuous acts of fraud.

17 111. No Machine which functions remotely near to the promises made by
18 Anna has ever been produced. The Plaintiffs cannot determine what their
19 various investments have been used for by Anna absent further discovery,
20 which in part motivates the filing of this action. Upon information and belief,
21 the Plaintiffs' funds were used solely for purposes constituting corporate waste,
22 and Plaintiffs were induced to provide all such funds through fraud.

23 112. As if this weren't enough, Anna's only verifiable asset - the Patent - is
24 now imperiled because the Defendants have failed to even pay the modest
25 attorney fees to their intellectual property counsel (not a party to this action

1 and not a participant in any of the events recited above, except for filing the
2 Patent) which would be required to maintain the Patent's continued usefulness
3 or to file applicable child patents.

4 113. The Defendants have allowed the Patent to slip towards obsolescence in
5 the hopes that its eventual uselessness for lack of maintenance will deprive the
6 Plaintiffs of any hope of recovering anything from Anna.

7 114. The Defendants' conscious election not to maintain the Patent constitutes
8 corporate waste, is done only in furtherance of fraud, and serves no legitimate
9 business purpose other than to defray the Plaintiffs' ability to recover through
10 this Complaint.

11 115. Every act and omission made by every Defendant described above was
12 made in lieu of simply producing a Machine for inspection - indeed, the
13 Plaintiffs move for preliminary injunctive relief, instead of requesting *ex parte*
14 attachment of the Machines, in part because they cannot verify in good faith to
15 this Court that any Machine actually exists.

16 116. Every act and omission made by every Defendant described above was
17 made in lieu of simply exporting ready-made financial documents from
18 Anna's accounting software.

19 117. Every act and omission made by every Defendant described above was
20 made in conscious furtherance of fraud and were not mistakes or simply the
21 foibles of risky startup culture.

22
23 **COUNT ONE**

24 **FRAUD IN THE INDUCEMENT**

25 (All Plaintiffs as to all Defendants)

1
2 118. The Plaintiffs restate each of the above allegations as if specifically set
3 forth at this point.

4 119. The Defendants induced all Plaintiffs to invest in, or lend money to, Anna
5 by fraud.

6 120. These acts of fraud were willful.

7 121. All Plaintiffs actually invested in, or lent money to, Anna.

8 122. Mr. Frost, personally, made innumerable fraudulent representations in
9 order to induce all Plaintiffs to invest in, or lend money to, Anna.

10 123. Ms. Andrade, personally, made innumerable fraudulent representations in
11 order to induce all Plaintiffs to invest in, or lend money to, Anna.

12 124. Wherefore the Plaintiffs claim harm.

13
14 **COUNT TWO**

15 **FRAUD IN THE INDUCEMENT OF A CONTRACT FOR THE PURCHASE**

16 **AND SALE OF SECURITIES**

17 (Cannapreneur, CP Holdings, and Bosnart as to all Defendants)

18
19 125. The Plaintiffs restate each of the above allegations as if specifically set
20 forth at this point.

21 126. The Stock Purchase Agreement is an “investment contract” and/or a
22 “security” within the meaning of the laws of the Commonwealth of
23 Massachusetts.

24 127. Bosnart’s convertible note is an “investment contract” and/or a “security”
25 within the meaning of the laws of the Commonwealth of Massachusetts.

1 128. The Defendants induced all Plaintiffs to participate in contracts for the
2 purchase and sale of securities by fraud.

3 129. These acts of fraud were willful.

4 130. Cannapreneur, CP Holdings, and Bosnart all actually executed contracts
5 for the purchase and sale of Anna securities in reliance upon consciously-
6 fraudulent statements.

7 131. Wherefore, the Plaintiffs claim harm.

8
9 **COUNT THREE**

10 **BREACH OF CONTRACT**

11 (All Plaintiffs as to all Defendants)

12
13 132. The Plaintiffs restate each of the above allegations as if specifically set
14 forth at this point.

15 133. The Defendants are in breach of the Stock Purchase Agreement,
16 Bosnart's convertible note, the Revenue Sharing Agreement, the Equipment
17 Lease, and any interim contracts which may have been made along the way
18 (such as informal agreements not to commence litigation in exchange for a
19 buy-out).

20 134. All of these breaches have caused objective, material economic harms to
21 all Plaintiffs.

22 135. Mr. Frost personally breached every operative agreement recited in this
23 Agreement, to the extent that he, personally, is a party to such agreements.

24 136. Wherefore, the Plaintiffs claim harm.

1 **COUNT FOUR**

2 **FRAUD**

3 (All Plaintiffs as to Mr. Frost and Ms. Andrade)

4
5 137. The Plaintiffs restate each of the above allegations as if specifically set
6 forth at this point.

7 138. Mr. Frost and Ms. Andrade engaged in innumerable acts of fraud for
8 which they are personally responsible, including every false promise made
9 along the way, and including doctoring or fabricating financial instruments in
10 order to deprive their creditors or investors of their legal rights.

11 139. All Plaintiffs have suffered considerable and ongoing economic harms
12 from these conscious acts of fraud.

13 140. Wherefore, the Plaintiffs claim harm.

14
15 **COUNT FIVE**

16 **CORPORATE WASTE**

17 (All Plaintiffs as to all Defendants)

18
19 141. The Plaintiffs restate each of the above allegations as if specifically set
20 forth at this point.

21 142. The Defendants have engaged in various reckless acts of corporate waste
22 serving no legitimate business purpose, such as diverting invested funds for
23 seemingly any purpose *except* the purposes for which it was promised.

1 143. The Defendants have allowed the Patent to lapse, and have failed to take
2 even trivially inexpensive and simple steps to protect it in order to deprive the
3 Plaintiffs of recovery and in order to dissuade litigation.

4 144. The Defendants have misspent Anna's money, including invested money,
5 for no legitimate business reason.

6 145. These acts of corporate waste have:

- 7 a) Substantially devalued the investments of Cannapreneur and Bosnart;
- 8 b) Have completely dissipated any collateral which JTM might
9 otherwise be able to attach or recover through the instant litigation;
- 10 c) Have totally deprived JTM of all commercial benefit to its contract
11 with Anna.

12 146. Wherefore, the Plaintiffs claim harm.

13
14 **COUNT SIX**

15 **BREACH OF FIDUCIARY DUTIES**

16 (Cannapreneur, CP Holdings, and Bosnart as to all Defendants)

17 147. The Plaintiffs restate each of the above allegations as if specifically set
18 forth at this point.

19 148. By virtue of their respective investment instruments, Cannapreneur (via
20 CP Holdings) and Bosnart are shareholders of Anna.

21 149. Anna is a closely-held corporation.

22 150. Mr. Frost and Ms. Andrade owed duties of loyalty, good-faith and fair
23 dealing, and other fiduciary duties to Cannapreneur and/or CP Holdings, and
24 Bosnart.

1 151. Mr. Frost and Ms. Andrade have violated all such duties through their
2 continuous acts of fraud described above.

3 152. These acts of fraud have caused objective, material economic harms to
4 Cannapreneur and/or CP Holdings, and Bosnart.

5 153. Wherefore, the Plaintiffs claim harm.

6
7 WHEREFORE the Plaintiffs claim harm and pray that this honorable Court:

8 A. Grant it the preliminary injunctive relief for which it moves with the filing
9 of this Complaint;

10 B. Order the Defendants to comply with the Plaintiffs' inspection rights by
11 producing all financial documents of any kind related to Anna, including bank
12 statements;

13 C. Grant the Plaintiffs damages in an amount to be determined at trial,
14 including their attorneys' fees and costs and any punitive damages which may
15 be attributable to the various acts of conscious fraud by Mr. Frost and Ms.
16 Andrade;

17 D. Grant the Plaintiffs such further relief as this Court deems just and
18 equitable.

19
20 Respectfully submitted, all Plaintiffs, *via their*
21 *undersigned counsel:*

22

23 Christopher Ray, Esq.

Nov 10 2021

ADD 000084

1
2
3
4
5
6
7
8

/s/ Christopher Ray esq.
Ray-at-Law PLLC
100 State Street 9th Floor
Boston MA 02109
P: +1 508 309 5950
E: christopher@rayatlaw.com
F: 603 589 1209

5

1 **COMMONWEALTH OF MASSACHUSETTS - COUNTY OF SUFFOLK**
2
3 **SUPERIOR COURT DIVISION**
4

5
6 _____)
7 CANNAPRENEUR PARTNERS LLC)
8 CP HOLDINGS LLC)
9 JTM INVESTMENTS LLC)
10 BOSNART AG)
11 Plaintiffs)
12)
13 v.)
14)
15 AABA INC.)
16 FROST INC.)
17 MATTHEW FROST)
18 ASHLEY ANDRADE)
19 Defendants)
20 _____)
21

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

NOV 18 2021

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

COMPLAINT

22 **AFFIDAVIT**

23 **IN SUPPORT OF EX PARTE MOTION FOR PRELIMINARY INJUNCTION**

24
25 Comes now Tina DiGiorgio, the executive officer and authorized representative of
26 Plaintiff JTM INVESTMENTS LLC, who affirms the following under the pains and
27 penalties of perjury:

- 28 1. My name is Tina DiGiorgio. I am the executive officer and an authorized
29 representative of JTM INVESTMENTS LLC, the Plaintiff.
30 2. I have the legal authority to produce this affidavit on behalf of that Plaintiff.
31 3. I have personal knowledge of all facts stated in the Complaint, in the *ex*
32 *parte* Motion, and all exhibits, addenda, and related documents.
33 4. I have a good-faith belief in the truth of every allegation made in the
34 Complaint, in the *ex parte* Motion, and all exhibits, addenda, and related
35 documents.

1 5. I know Mr. Frost personally, even if I have only communicated with him
2 remotely.

3 6. I know Ms. Andrade personally, even if I have only communicated with her
4 remotely.

5 7. I have communicated with Mr. Frost on many occasions.

6 8. I have communicated with Ms. Andrade on many occasions.

7 9. I have a good-faith belief that Mr. Frost has engaged in considerable acts of
8 fraud and dilatory conduct designed to prevent me from pursuing the instant
9 litigation.

10 10. I have a good-faith belief that Ms. Andrade has also engaged in
11 considerable acts of fraud and dilatory conduct designed to prevent me from
12 pursuing the instant litigation.

13 11. I have a good-faith belief that, if the Defendants have the opportunity to
14 dissipate the remaining assets of Anna, they will do so.

15 12. I have a good-faith belief that the Defendants have the necessary
16 connections in the adult-use cannabis industry to find a ready, willing and able
17 buyer for the Patent, who they will have no qualms about inducing into such a
18 purchase through fraud.

19 13. I have a good-faith belief that the relief requested in the *ex parte* Motion is
20 limited to enjoining the Defendants from taking actions they are not entitled to
21 take according to my agreements with Anna, and so does it not prejudice any
22 party to this action.

23 14. This Affidavit was prepared with the assistance of counsel, but it
24 represents a complete and accurate statement of my personal knowledge and
25 good-faith beliefs in this matter.

1

2 Signed, under the pains and penalties of perjury:

3

DocuSigned by:

Tina DiGiorgio

8B5529AAAF3A495

4

Print name: Tina DiGiorgio

5

Title: Member

6

Date: 11/3/2021

NOTIFY

✓ 6/24

29

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, ss.

SUPERIOR COURT
2184CV02744-BLS2

CANNAPRENEUR PARTNERS LLC, CP HOLDINGS LLC,
JTM INVESTMENTS LLC, AND BOSNART AG

NOTICE SENT (2)
06.27.22

v.

AABA INC., FROST INC., MATTHEW FROST, AND ASHLEY ANDRADE

**MEMORANDUM AND ORDER ON
DEFENDANTS' MOTION TO DISMISS**

Plaintiffs have made different kinds of investments in AABA, Inc. They allege that AABA's business is to develop and deploy vending machines that can lawfully be used to sell cannabis and other products only to people above a certain age. Cannaprenuer Partners LLC invested in AABA indirectly, by having its wholly-owned subsidiary CP Holdings LLC purchase AABA stock. JTM Investments LLC entered into equipment leasing and equipment purchase and leaseback arrangements with AABA. Bosnart AG loaned money to AABA under a convertible note.

The four plaintiffs assert claims for fraud in the inducement, breach of contract, fraud, corporate waste, and breach of fiduciary duties. Defendants have moved to dismiss all claims against them under Mass. R. Civ. P. 12(b)(6). In deciding this motion, the Court has assumed that the facts alleged in the complaint are true, drawn all reasonable inferences from those allegations in Plaintiffs' favor, and not considered factual assertions by the Defendants that conflict with or otherwise fall outside of the allegations in the complaint.¹

The Court will dismiss counts two, four, five, and six, and parts of counts one and three, as follows:

- The Court will dismiss all six of Cannapreneur's claims for lack of standing; Cannapreneur never invested in and does not own any stock in AABA, and has no other standing to seek relief.

¹ See, e.g., *Rafferty v. Merck & Co., Inc.*, 479 Mass. 141, 147 (2018) (court must assume allegations are true and draw inferences in favor of plaintiffs in deciding 12(b)(6) motion to dismiss); *General Motors Acceptance Corp. v. Abington Cas. Ins. Co.*, 413 Mass. 583, 584 (1992) (materials outside the pleadings generally may not be considered in reviewing rule 12(b)(6) motion).

- It will dismiss the contract claims in count three against Matthew Frost, Ashley Andrade, and Frost, Inc., because they are not parties to any contract at issue here.
- The Court will dismiss the claim by Bosnart for breach of contract against AABA, because the facts alleged in the complaint do not plausibly suggest that AABA has breached its contract with Bosnart.
- The Court will not dismiss the breach of contract claims by JTM Investments and CP Holdings against AABA, however. Those claims seek damages on behalf of JTM and to enforce CP Holding's alleged contractual inspection rights. They do not seek to enforce rights that belong to AABA.
- The Court will dismiss the claims for corporate waste and breach of fiduciary duty, in counts five and six, because they may only be brought as a derivative action on behalf of AABA (a point that Plaintiffs seem to concede), neither JTM nor Bosnart has standing to sue on behalf of AABA, and these claims by CP Holdings cannot be restated as being derivative in nature because the complaint does not allege with sufficient particularity that a demand on the Board to bring these claims would be futile.
- Finally, the Court will dismiss most, but not all, of the claims for fraud. The Plaintiffs' contracts do not contain anti-reliance provisions that would bar any of the fraud claims. The fraudulent inducement claim by JTM against AABA and Mr. Frost is stated with sufficient particularity, so the Court will deny the request to dismiss that part of count one. But the remaining fraud claims have not been stated with particularity. The Court will therefore dismiss the fraud claims in counts one, two, and four by CP Holdings and Bosnart against all Defendants; JTM's claim in count one for fraud in the inducement against Frost, Inc., and Ms. Andrade; and JTM's further claim in count four for fraud against all Defendants.

In sum, the Court will dismiss all claims against Frost, Inc., and Ashley Andrade, as well as most but not all of the claims against AABA, Inc., and Matthew Frost.²

² Plaintiffs' argument that the motion to dismiss was ineffective as to AABA, Inc., and Frost, Inc., because they were not represented by counsel has become

1. Choice of Law Issues. The parties have spent lots of time, energy, and pages of their legal memorandum arguing about whether Plaintiffs' claims are governed by Massachusetts law or by Delaware law.

For the most part, the Court need not resolve this issue because no party has shown that there is any material difference between Massachusetts and Delaware law with respect to the issues raised in Defendants' motion to dismiss. See, e.g., *Kaufman v. Richmond*, 442 Mass. 1010, 1012 (2004) (rescript) ("It is a fundamental choice of law principle that only actual conflicts between the laws of different jurisdictions must be resolved. ... Choice of law analysis is unnecessary when that choice will not affect the outcome of the case.").³

The one exception concerns the prerequisites for a shareholder being able to file a derivative action on behalf of a corporation.

Under Delaware law, a corporate shareholder may not bring a derivative action unless they make "a demand on the corporation to institute such an action" or show "that demand would be futile." *Kaplan v. Peat, Marwick, Mitchell & Co.*, 540 A.2d 726, 730 (Del. 1988). "A stockholder can bypass the demand requirement if he 'can allege with sufficient particularity that demand is futile and should be excused due to a disabling conflict by a majority of the directors to consider the demand.'" *McElrath v. Kalanick*, 224 A.3d 982, 990 (Del. 2020), quoting *City of Birmingham Ret. and Relief Sys. v. Good*, 177 A.3d 47, 55 (Del. 2017).

In contrast, under Massachusetts law "there is no longer a futility exception to the demand requirement" in cases governed by c. 156D, "even if the board members are not independent and disinterested." *Johnston v. Box*, 453 Mass. 569, 578 n.15 (2009). That is because in 2004 the Legislature imposed "a

moot. When Defendants served their motion to dismiss, the motion indicated that Matthew Frost was trying to appear pro se on behalf of the two corporate defendants. Which he cannot do. See *Varney Enterprises, Inc. v. VMF, Inc.*, 402 Mass. 79, 80 (1988) (corporation cannot appear pro se). Since then, however, Attorney Ashley Andrade filed a notice of appearance on behalf of AABA, Frost, Inc., and Mr. Frost. The Court denied Plaintiffs' motion to disqualify counsel on April 13, 2022. The corporate defendants are therefore now properly represented by counsel.

³ The Court notes, however, that the parties' choice of Delaware law to govern their contracts does not determine which State's law governs Plaintiffs' tort claims, even though they arise from the same set of facts. See *USB Financial Services, Inc. v. Aliberti*, 483 Mass. 396, 405 n.12 (2019).

universal demand requirement on shareholder derivative suits” by enacting G.L. c. 156D, § 7.42. See *Halebian v. Bero*, 457 Mass. 620, 625 (2010).

Since AABA is a Delaware corporation, questions about its internal affairs—including whether a shareholder may bring a derivative action on behalf of the corporation—are governed by Delaware law. See *Johnston*, 453 Mass. at 578 (substantive requirements of Rule 23.1 demand requirement governed by law of state of incorporation); *Cannonball Fund, Ltd. v. Dutchess Capital Mgmt., LLC*, 84 Mass. App. Ct. 75, 93 (2013) (standing to bring derivative action governed by law of place of incorporation); see generally *Harrison v. NetCentric Corp.*, 433 Mass. 465, 471 (2001) (“the state of incorporation dictates the choice of law regarding the internal affairs of a corporation”).

2. Cannapreneur’s Claims. Cannaprenuer Partners LLC lacks standing to be part of this lawsuit. Though paragraph 16 of the complaint alleges that Cannapreneur invested in AABA by purchasing common stock, the rest of the complaint shows that is not true. Paragraph 32 says that Cannapreneur made this investment “via CP Holdings,” which is alleged (in ¶ 2) to be a wholly-owned subsidiary of Cannapreneur. And the Common Stock Purchase Agreement that is attached to the complaint as Exhibit E⁴ establishes that this investment in and stock purchase agreement with AABA was actually made and entered into by CP Holdings, LLC, not by Cannapreneur. Since Cannapreneur itself never invested in and does not own any stock in AABA, it has no standing to assert any of the claims in Plaintiffs’ complaint.

3. Contract Claims. The claims for breach of contract by JTM Investments and CP Holdings against AABA survive the motion to dismiss. The other contract claims do not.

3.1. Contract Claims against Frost, Andrade, and Frost, Inc. Plaintiffs claim that all four defendants breached certain contracts. But AABA is the only defendant that is a party to any of these contracts. JTM entered into a Revenue Sharing Agreement, Equipment Lease, and Purchase and Leaseback Agreement with AABA. CP Holdings entered into a Common Stock Purchase

⁴ Paragraph 15 of the complaint says that a charter surrender filed by Frost Inc. is attached to the complaint as Exhibit D. That is incorrect. Exhibit D to the complaint is a copy of the same Common Stock Purchase Agreement, between CP Holdings and AABA, that is included in Exhibit E.

Agreement with AABA. And Bosnart entered into a contract titled Convertible Promissory Note with AABA.⁵

Plaintiffs may not sue Frost, Andrade, or Frost, Inc., for breach of contract because they were not parties to any of the contracts at issue here. See *Perry v. Hayes*, 215 Mass. 296, 297 (1913). Though Matthew Frost evidently signed these contracts on behalf of AABA, that does not make him a party to the contracts or mean that he can be held liable for their breach. *Porshin v. Snider*, 349 Mass. 653, 655 (1965); *Connolly v. Rogers*, 292 Mass. 140, 144 (1935); *Marshall v. Stratus Pharmaceuticals, Inc.*, 51 Mass. App. Ct. 667, 672–673 (2001). And the complaint does not allege facts plausibly suggesting that Frost or Andrade may be held liable for AABA's alleged breaches of contract on a piercing-the-veil theory.⁶

3.2. Contract Claims against AABA.

3.2.1. Bosnart's Contract Claim. The facts alleged in the complaint do not plausibly suggest that AABA has breached any obligations under its Convertible Promissory Note agreement with Bosnart. The Court will therefore dismiss Bosnart's claim for breach of contract.

The note provides that Bosnart would loan AABA \$100,000, that interest would accrue on that loan amount at the non-compounding rate of eight percent per year, and that starting August 30, 2021, Bosnart could convert its right to repayment of the loan plus interest into an equity interest in AABA, if certain identified events were to occur. The note also provides that AABA was not allowed to repay any part of the principal or outstanding interest before that

⁵ The first two contracts with JTM and the contract with CP Holdings are attached to, and thus are part of, the complaint. See Mass. R. Civ. P. 10(c). The purchase and leaseback agreement with JTM and the convertible note contract with Bosnart are attached to the Affidavit of Matthew Frost in Support of Motion to Dismiss. The Court may consider these contracts in deciding the motion to dismiss because Plaintiffs relied upon them in framing the complaint and expressly refer to both contracts in the complaint. See *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 n.4 (2004) (document relied upon in framing complaint); *Berkowitz v. President & Fellows of Harvard College*, 58 Mass. App. Ct. 262, 270 n.7 (2003) (document referenced in complaint).

⁶ To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege facts that, if true, would "plausibly suggest[] ... an entitlement to relief." *Lopez v. Commonwealth*, 463 Mass. 696, 701 (2012), quoting *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

date without written consent of "the Required Purchasers," as that term is defined in a separate Convertible Note Purchase Agreement.

Significantly, the note further provides that AABA had no obligation to pay the principal or interest that it owed to Bosnart after that date unless "the Required Purchasers" made a written demand for such payment.

Since the complaint does not allege that any such written demand for payment was ever made, it does not plausibly suggest that AABA has breached its repayment obligations under the note. Nor does the complaint identify any other manner in which AABA allegedly breached this note.

3.2.2. JTM's Contract Claim. In contrast, JTM Investments has stated a viable claim for breach of contract. The facts alleged in the complaint plausibly suggest that AABA breached obligations to buy and install machines (which allegedly would have resulted in JTM earning a share of profits under the Revenue Sharing Agreement) and to repay amounts advanced by JTM under the Purchase and Leaseback Agreement as allegedly required under its contracts with JTM. And since JTM's claim against AABA is predicated on alleged injury to JTM alone, Defendants' argument that JTM lacks standing to assert this claim is without merit.

3.2.3. CP Holdings' Contract Claim. It does not appear that CP Holdings is seeking any compensatory damages under its contract claim against AABA. Instead, CP Holdings alleges that the Common Stock Purchase Agreement gives it certain contractual rights to inspect books and records of AABA, and that AABA has denied access to those books and records. This appears to be the only breach of contract asserted by CP Holdings.

CP Holdings may bring this claim to enforce its alleged inspection rights as a direct action on its own behalf. A corporate shareholder may bring a direct or individual action, and is not required to sue derivatively on behalf of the corporation, if they allege "a wrong involving a contractual right of a shareholder, such as the right to vote, or to assert majority control, which exists independently of any right of the corporation." *Moran v. Household Int'l, Inc.*, 490 A.2d 1059, 1070 (Del. Ch.), *aff'd*, 500 A.2d 1346 (Del. 1985).

4. Derivative Claims. Defendants argue that the claims for corporate waste and breach of fiduciary duty may be asserted only as derivative claims on behalf of AABA because the alleged harm was not suffered by the plaintiffs individually. They also argue that CP Holdings may not convert these claims to derivative

claims because it failed to plead with particularity any good reason for failing to demand that AABA's board bring these claims.

Plaintiffs do not disagree with Defendants' argument that the corporate waste and breach of fiduciary duty claims seek to remedy harm to AABA. Plaintiffs have therefore waived any argument that these claims allege that the Plaintiffs suffered an injury that is "independent of any alleged injury to the corporation" Cf. *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1039 (Del. 2004) (corporate shareholder may bring direct action to remedy harm suffered by shareholder that is independent of any injury to corporation). Arguments not raised in opposition to a motion to dismiss are waived. See *NES Rentals v. Maine Drilling & Blasting, Inc.*, 465 Mass. 856, 860 n.8 (2013); *Roby v. Superintendent, Mass. Corr. Inst., Concord*, 94 Mass. App. Ct. 410, 412 (2018), rev. denied, 483 Mass. 1102 (2019).

Since JTM and Bosnart are not shareholders of AABA, they may not assert claims to remedy harm allegedly suffered by AABA.

Though CP Holdings is a shareholder of AABA, the facts alleged do not plausibly suggest that it is entitled to convert these claims into a derivative action on behalf of AABA. Under Delaware law, a corporate shareholder may not bring a derivative action unless they make "a demand on the corporation to institute such an action" or show "that demand would be futile." *Kaplan v. Peat, Marwick, Mitchell & Co.*, 540 A.2d 726, 730 (Del. 1988). "A stockholder can bypass the demand requirement if he 'can allege with sufficient particularity that demand is futile and should be excused due to a disabling conflict by a majority of the directors to consider the demand.'" *McElrath v. Kalanick*, 224 A.3d 982, 990 (Del. 2020), quoting *City of Birmingham Ret. and Relief Sys. v. Good*, 177 A.3d 47, 55 (Del. 2017). The complaint does not allege any facts suggesting either that CP Holdings made a demand on AABA to assert these claims against Frost and Andrade, or that such a demand would be futile and therefore should be excused. The allegations that Plaintiffs demanded but did not receive certain information from Defendants do not plausibly suggest that it would have been futile to demand that AABA's board bring suit.

5. Fraud Claims. Though Defendants' argument that the various fraud claims are barred by contract is unconvincing, most of the fraud claims must be dismissed for lack of sufficient particularity in pleading. JTM Investments' claim for fraud in the inducement is the only fraud claim that survives the motion to dismiss.

5.1. Integration Clauses versus Non-Reliance Clauses. Defendants' argument that the fraud claims are barred by contractual agreements not to rely upon prior oral representations is without merit. The contract provisions upon which Defendants rely are integration or merger clauses, not non-reliance or anti-reliance provisions.

The legal principle invoked by Defendants is sound. Contract provisions stating that a party has not relied upon any representations that are not set forth or embodied in the written contract will bar any claim for fraud based on prior representations that are not included in the contract. See *Cone v. Ellis*, 59 Mass. App. Ct. 748, 749–752 (2003); *Greenery Rehab. Group, Inc. v. Anaramian*, 36 Mass. App. Ct. 73, 75–76 (1994); *Prairie Capital III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 50–51 (Del. Ch. 2015). “[A] party cannot promise ... that it will not rely on promises and representations outside of the agreement and then shirk its own bargain in favor of a ‘but we did rely on those other representations’ fraudulent inducement claim.” *Prairie Capital, supra*, at 50, quoting *Abry Partners V, L.P. v. F&W Acq. LLC*, 891 A.2d 1032, 1057 (Del. Ch. 2006).

But Defendants have not identified any contractual provision in which a plaintiff has disavowed any reliance on prior representations that are not included in their written contract.

The provisions that Defendants quote merely provide that the written contractual terms embody the parties' entire agreement. They do not disclaim reliance on other representations. Merger or integration clauses like this do not bar claims of fraudulent inducement or other claims of fraud based on representations that are not incorporated in the contract. See *Greenleaf Arms Realty Trust I, LLC v. New Boston Fund, Inc.*, 81 Mass. App. Ct. 282, 287–290 (2012); *McDonald's Corp. v. Easterbrook*, 2021 WL 351967, at *6 (Del. Ch. Feb. 2, 2021); *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 141 (Del. Ch. 2009).

5.2. Particularity. Fraud claims must be alleged with particularity. See Mass. R. Civ. P. 9(b). This means that a plaintiff must support a fraud claim with allegations that make clear “the identity of the person(s) making the representation, the contents of the misrepresentation, and where and when it took place,” as well as “the materiality of the misrepresentation, [their] reliance thereon, and resulting harm.” *Equipment & Systems for Industry, Inc. v. NorthMeadows Constr. Co., Inc.*, 59 Mass. App. Ct. 931, 931–932 (2003) (rescript). But the rule does not require a plaintiff “to set out in detail all of the facts” that support a claim for fraud, or otherwise “to plead detailed evidentiary matter.”

Lazzaro v. Holladay, 15 Mass. App. Ct. 108, 111 (1983), quoting *Smith & Zobel*, Rules Practice § 9.2 (1974).

JTM's claim in count one for fraud in the inducement against AABA and Mr. Frost is stated with sufficient particularity. The complaint alleges (in paragraphs 22-24) that AABA and Frost made specific factual representations in the Purchase and Leaseback Agreement that were false. The complaint plausibly suggests that JTM relied on those allegedly false representations to its detriment. Though Frost was not a party to this contract, corporate officers and representatives are personally liable for tortious activity in which they personally participate, even if they were acting on behalf of the corporation. See, e.g., *Refrigeration Discount Corp. v. Catino*, 330 Mass. 230, 235 (1953) (defendant could be held liable for conversion of property even though he was acting as corporation's general manager and for its benefit); *Townsend, Inc. v. Beaupre*, 47 Mass. App. Ct. 747, 751-752 (1999) (corporate officer is liable for tort committed by the corporation that employs him if he personally participated in tort, such as by directing, controlling, approving, or ratifying the act). The complaint adequately alleges that Frost personally participated in this alleged fraudulent inducement.

In contrast, JTM has not stated a viable claim for fraud in the inducement against Ms. Andrade. The allegation that JTM was also induced to enter into its contracts with AABA by express promises or representations made by Andrade is not made with sufficient particularity. JTM does not specify the contents of Andrade's alleged misrepresentations, where or when they took place, or how they were material.

JTM's claim for fraud in count four, and all of the fraud claims asserted by the other plaintiffs, also fail for lack of particularity. Though the complaint alleges that each of the Plaintiffs received similar "pitch decks," it does not say who prepared or disseminated the pitch decks, specify when each Plaintiff received them, or allege facts suggesting that the decks were a material part of each Plaintiff's decision making, that each Plaintiff relied upon them, or that each Plaintiff suffered damages as a result. The even more general allegations of fraud sprinkled throughout the complaint that are even more amorphous. Conclusory allegations of fraud do not satisfy the particularity requirement of Rule 9(b).

ORDERS

Defendants' motion to dismiss is **denied in part** with respect to (1) the claim in count one of the complaint for fraud in the inducement by JTM Investments LLC against AABA, Inc., and Matthew Frost, and (2) the claims in count three by JTM Investments and CP Holdings, LLC, for breach of contract against AABA, Inc. The motion is **allowed in part** with respect to all other claims by JTM Investments and CP Holdings, and with respect to all claims by Cannapreneur Partners LLC and Bosnart, AG.

A Rule 16 scheduling conference will take place on August 2, 2022, at 2:00 p.m.



Kenneth W. Salinger

Justice of the Superior Court

17 June 2022

02.09

✓ 6/24

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

THE TRIAL COURT
SUPERIOR COURT DEPARTMENTCANNAPRENEUR PARTNERS, LLC,
CP HOLDINGS, LLC,
JTM INVESTMENTS, LLC,
BOSNART AG,

Plaintiffs,

AABA, INC.,
FROST, INC.,
MATTHEW FROST,
ASHLEY ANDRADE,

Defendants,

NOTICE SENT (2)
06.27.22 DC

CIVIL ACTION NO. 2184-CV-02744 BLS 2

E-FILED 02/04/2022 (NJ)

**DEFENDANTS' COMBINED MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF JOINT MOTION TO DISMISS PLAINTIFFS' UNVERIFIED
COMPLAINT**

1. Defendants AABA, Inc. d/b/a anna ("AABA"), Frost, Inc., Matthew Frost and Ashley Andrade (collectively, "Defendants") respectfully move to dismiss the unverified Complaint of plaintiffs Cannapreneur Partners, LLC ("Cannapreneur"), CP Holdings, LLC ("CP Holdings"), JTM Investments, LLC ("JTM") and Bosnart AG ("Bosnart") (collectively, "Plaintiffs").

PRELIMINARY STATEMENT

2. Each of the claims asserted in Plaintiffs' unverified Complaint are either unsupported by the facts alleged, directly barred, or negated by the exhibits to the pleading itself, including express terms of certain operative agreements, or otherwise defected for failure to comply with basic statutory procedural requirements. Accordingly, even when viewed with all reasonable inferences in Plaintiffs' favor, the allegations set forth in this Complaint still fail to state a claim on which relief can be granted, and the Complaint should be dismissed in its entirety.

Allowed in part and denied in part. See Memorandum and Order.



17 June 2021

ADD 000099

TYPED TRANSCRIPTION OF HANDWRITTEN ENDORSEMENT
No. 2184CV02744-BLS2 (Suffolk Super. Ct.)
(Endorsement on Defendants' Combined Motion to
Dismiss)

Handwritten endorsement (foot of first page of motion):

"Allowed in part and denied in part.

See Memorandum and Order.

[signature: Kenneth W. Salinger]

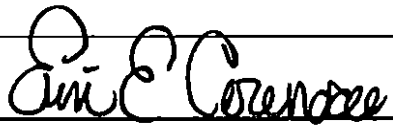
17 June 2022"

Transcriber's note: the handwritten year is partially illegible; it is conformed to the accompanying Memorandum and Order dated June 17, 2022 (Salinger, J.).

5/15

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ORDER FOR ENTRY OF DISMISSAL NISI		DOCKET NUMBER 2184CV02744	Trial Court of Massachusetts The Superior Court	
CASE NAME: Cannapreneur Partners LLC et al vs. AABA Inc et al			John E. Powers III, Acting Clerk of Court Suffolk County Civil	
TO: File Copy			COURT NAME & ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108	
The above entitled action came on before the court, Hon. Kenneth W Salinger, and there upon was reported settled by counsel of record. It is ORDERED that an AGREEMENT FOR JUDGMENT or STIPULATION OF DISMISSAL, be filed in the Clerk's office by 05/15/2023. If said Agreement or Stipulation is not filed by said date the Clerk is hereby directed to prepare, sign and enter Judgment dismissing the Complaint, and all other claims, without prejudice and without statutory costs.				
DATE ISSUED 03/10/2023	ASSOCIATE JUSTICE Hon. Kenneth W Salinger	ASSISTANT CLERK Beatriz E Van Meek	 SESSION PHONE# (617)788-8152	

JUDGMENT OF DISMISSAL FAILURE TO COMPLY WITH NISI ORDER		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER	2184CV02744	John E. Powers III, Acting Clerk of Court Suffolk County Civil	
CASE NAME	Cannapreneur Partners LLC et al vs. AABA Inc et al	COURT NAME & ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108	
The case having been reported settled and an order having been entered, and no agreement for judgment or stipulation of dismissal having been filed, It is ORDERED AND ADJUDGED: Any and all remaining claims are hereby dismissed without prejudice. The complaint is dismissed as to all parties and all claims, without prejudice and without costs, entered on parties pursuant to Mass. R. Civ. P. 58(a) and notice sent to parties pursuant to Mass. R. Civ. P. 77(d). JUDGMENT ENTERED ON DOCKET <u>MAY 30th 2023</u> PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a) AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS			
DATE JUDGMENT ENTERED	05/30/2023	CLERK OF COURTS/ ASST. CLERK	

7/19

DV

Christopher Ray esq. (MA# 692261 / NH# 268806)
100 State Street 9th Floor
Boston MA 02109

e: christopher@rayatlaw.com
p: +1 508 309 5950

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

CANNAPRENEUR PARTNERS, LLC,)
CP HOLDINGS, LLC,)
FTM INVESTMENTS, LLC,)
BOSNART AG,)

Plaintiffs,)

CIVIL ACTION NO. 2184-CV-02744

BLS2

AABA, INC.,)
FROST, INC.,)
MATTHEW FROST,)
ASHLEY ANDRADE,)

Defendants,)

**PLAINTIFF'S MOTION TO RECONSIDER NON-FINAL DISMISSAL
WITHOUT PREJUDICE (MRCP 9D)**

NOW COME the Plaintiffs who ask the Court to Reconsider pursuant to Mass. R. Civ. P. 7(b) and in accordance with Superior Court Rule 9D, the without-prejudice dismissal of the above-captioned matter and to docket a Case Management Conference so that the parties may reconvene under a modified tracking order calendar.

The Plaintiff respectfully moves this court to reconsider, the no-prejudice dismissal and to rule the Court's Dismissal filed pursuant to M. R. Civ. P. 41(a)(1)(i). The Plaintiff is seeking the court's ruling, because the Court issued its dismissal on the basis that the Parties would fully resolve this matter through ongoing settlement discussions. Such discussions have not yielded an agreement, and the Parties are unable to return to this Court asking it to convert the dismissal to one with prejudice as their dispute remains fully unresolved.

Despite Plaintiff's outreach to the Defendants to finalize the terms of their agreement, Defendants have once again become unresponsive. The Plaintiffs' ability

**TYPED TRANSCRIPTION OF HANDWRITTEN ENDORSEMENT
No. 2184CV02744-BLS2 (Suffolk Super. Ct.)
(Endorsement on Plaintiff's Motion to Reconsider
Non-Final Dismissal Without Prejudice, filed
July 17, 2023)**

Handwritten endorsement (foot of first page of motion):

"Denied without prejudice to re-file after
a thorough Rule 9C conference.

[signature]

7/21/23"

Additional handwritten notation (top of first page): "7/19"

Transcriber's note: transcription prepared from the court's scanned image; the judge's signature is illegible in the scan.