COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk, ss. No. SJC-12926

COMMITTEE FOR PUBLIC COUNSEL SERVICES and
MASSACHUSETTS ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS,
Petitioners,

v.

CHIEF JUSTICE OF THE TRIAL COURT, et al.,
Respondents.

MOTION FOR RECONSIDERATION OR MODIFICATION OF DECISION

On April 3, 2020, this Court concluded that due to the "urgent and unprecedented" COVID-19 pandemic, "a reduction in the number of people who are held in custody is necessary." *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, 484 Mass. 431, 445 (2020) (*CPCS v. Trial Court*). The Court therefore implemented certain remedial measures and mandated weekly reporting by the Special Master, based on a recognition that "further response" might be necessary to address "this rapidly-evolving situation." *Id.* at 453. Fourteen days later, and despite substantial efforts by the Special Master and many Respondents, further response is necessary.

Five prisoners have now died from COVID-19. The true extent of the outbreak is a mystery—because the Department of Correction and the Sheriffs are

scarcely testing anyone—but at least 180 incarcerated individuals and at least 138 corrections staffers are infected.[1]

Meanwhile, 449 individuals have reportedly been released due to this Court's decision. Those releases should be applauded. But because they coincide with a dramatic rise in infections, there can be no credible claim that the current pace of releases will suffice to curb the spread of COVID-19, and with it the risk of more illness and death, in the Commonwealth's carceral settings. Of the over 7,700 incarcerated people in DOC custody on April 6, only *11 people* have been released pursuant to this Court's order and the overall population reduction is only 168 people, or 2.17%. That is not nearly enough to mitigate this looming disaster. Petitioners therefore move for reconsideration and modification, pursuant to Mass. R. App. P. 27, to correct misapprehensions of law and fact that stand in the way of remedial measures that will save more lives.

With respect to the law, this Court's pronouncements concerning stays of sentences needlessly created a barrier to achieving the levels of prisoner releases that will be necessary to mitigate the outbreak. On April 3, the Court held that it did not have the power to authorize trial courts to grant stays absent a pending appeal or motion for a new trial. *CPCS v. Trial Court*, 484 Mass. at 436, 450-451. That holding should be reconsidered. Given the "exceptional circumstances" of the

[1] Petitioners are tracking Respondents reports here: https://data.aclum.org/sjc-12926-tracker/.

pandemic, staying sentences falls squarely within the Court's inherent authority, *Commonwealth v. Charles*, 466 Mass. 63, 74-75 (2013), and does not implicate the separation of powers concerns that the Court stated arose from shortening sentences.

With respect to the facts, this Court's expectations turned out to have been mistaken in key areas. Contrary to the Court's apparent understanding at the time of the decision, current processes for adjudicating post-conviction motions and parole requests are incompatible with the expeditious release of people who are in danger.

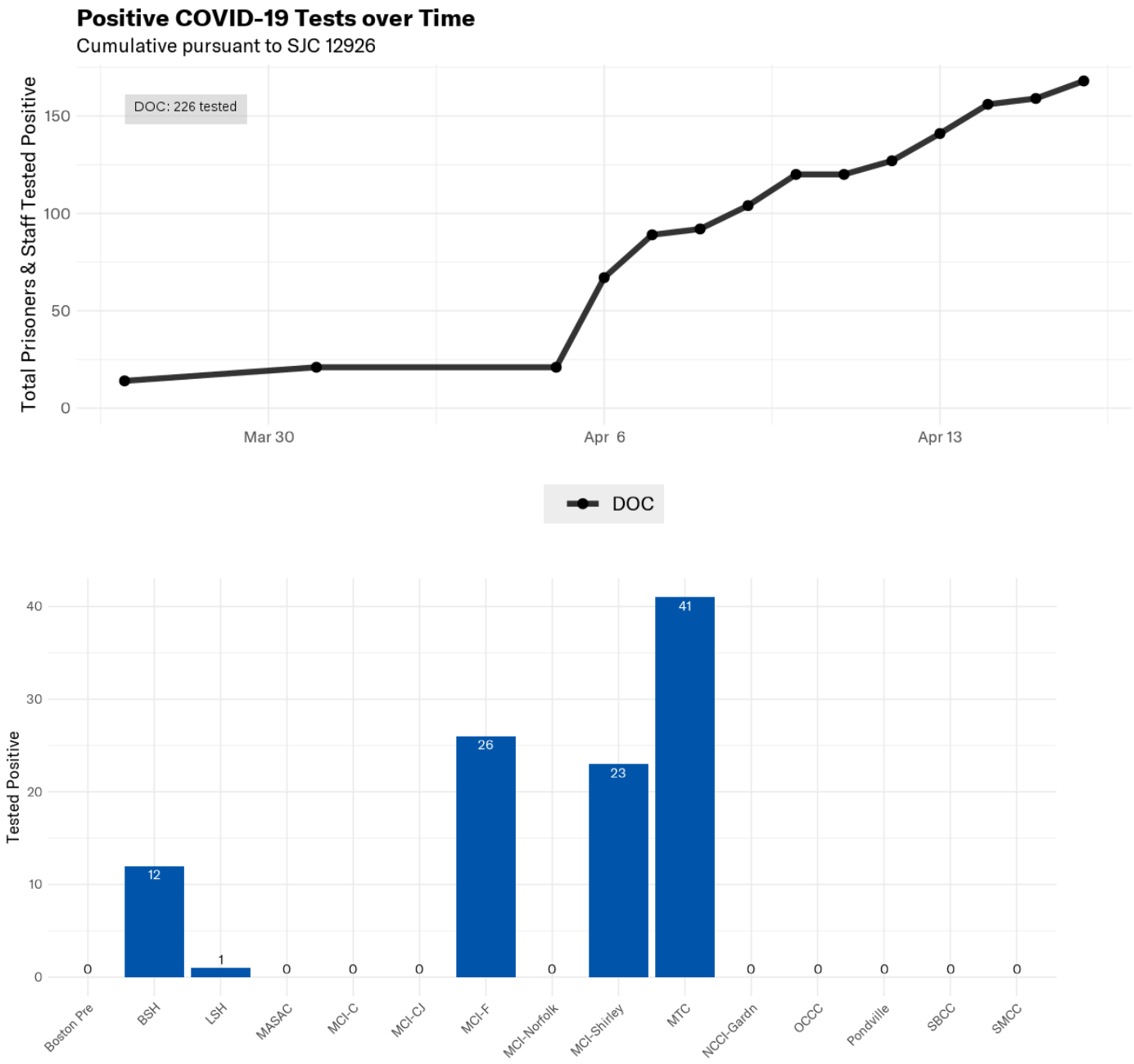
The number of infections continues to rise every day and incarcerated individuals, correctional staff, and the general public are not safe. This is not because the Special Master has failed to move the process along; it is because the process itself needs improvement, just as this Court anticipated it might. The Court should therefore make necessary modifications to save lives.

Background

Because of the daily reporting ordered by this Court, it is possible to assess whether Respondents' mitigation efforts, combined with prisoner releases, have curbed the spread of the coronavirus inside Massachusetts prisons, jails, and houses of correction. They have not.

Releases have been limited; 449 people have been released pursuant to this order, and since April 7[2], the total incarcerated population has only decreased by 5.69%. The parole board, to our knowledge, is still requiring people with a positive parole vote to move to a long-term residential facility or step down to a lower security facility—during a time when no transfers are permitted—before they will be released. Of the approximately 300 people with positive parole votes awaiting a parole permit at the time of oral argument on March 31, it appears that only 58 have since received them.[3] Meanwhile, at least 318 incarcerated individuals and staffers have tested positive for COVID-19. In the DOC, where five prisoners have already died, the situation is dire; over 160 prisoners and staffers have confirmed infections, apparently including *more than 13%* of all prisoners at the Commonwealth's only women's prison.[4]

[2] April 7, 2020, was the first day that all Respondents provided population statistics to Petitioners.
[3] See Special Master's Weekly Report (Apr. 13, 2020).
[4] See https://www.mass.gov/lists/weekly-inmate-count-2020 (listing 198 prisoners in MCI-Framingham as of April 13, 2020).



Breakdown of the total of prisoners who tested positive for COVID-19 for each DOC facility.

Overall, Respondents have reported infections among at least 138 staff members and contractors. This is both a human tragedy and a worrying sign that

infection is being transmitted from the community into prisons and jails, and vice versa.

Officials have found these infections despite rarely testing anyone. As of April 15, just 422 incarcerated individuals, out of a population that has consistently exceeded 14,000, had been tested. The Barnstable and Franklin County Sheriff's Offices have each reported testing zero incarcerated individuals since April 5, while they each have two staffers that have tested positive for COVID-19.[5] Contrary to this Court's order, and despite repeated requests, the DOC has never reported how many of its staff have been tested to find its 64 positive staff cases. The DOC has also never reported its inmate testing numbers or overall population *per facility*, making it impossible for Petitioners or the Court to assess the adequacy of testing in anything but the system as a whole, which itself is patently inadequate. It appears that the Commonwealth is not on a path to solve the coronavirus outbreaks in its prisons and jails, but instead is burying its head in the sand.

Discussion

Reasonable people might disagree about how many releases are needed to achieve an acceptable level of risk inside and outside prison walls. But it cannot reasonably be disputed that the current rate of releases is inadequate to protect incarcerated persons, correctional staff, and the general public. That is because the

[5] Dukes County also reports zero tests of incarcerated individuals since April 5.

crisis inside Massachusetts correctional facilities worsens by the day. Indeed, the number of deaths at the Massachusetts Treatment Center "put[s] it on par with facilities such as Cook County Jail in Illinois, and Rikers Island in New York City. The entire federal prison system has reported only 16 in-custody deaths from the new coronavirus."[6] It is therefore important to correct two misapprehensions in the April 3 opinion that have slowed the pace of prisoner releases: this Court's pronouncements about staying sentences, and its expectations of how individualized release determinations would proceed.

I. This Court can and should exercise its inherent authority to authorize trial courts to stay sentences during the pandemic even where there are no pending appeals or motions for new trial.

The Court's opinion jointly addressed the judiciary's authority to stay sentences and its authority to revise or revoke them. *CPCS v. Trial Court*, 484 Mass. at 450-451. But the authority to *pause* sentences is distinct from, and broader than, the authority to *shorten* them. See Reply Br. at 21-22. For three reasons, this Court may authorize sentences to be stayed even in the absence of an applicable rule of appellate or criminal procedure, and even where revising or revoking sentences would (under this Court's April 3 decision) implicate separation of powers concerns.

First, exercising the judiciary's inherent authority to stay sentences does not violate separation of powers principles. Although several district attorneys argued

[6] Vernal Coleman, *State correctional facility in Bridgewater emerges as hotspot of coronavirus infection*, THE BOSTON GLOBE (April 16, 2020).

that article 30 circumscribes the judiciary's authority to revise or revoke sentences beyond those covered by Mass. R. Crim. P. 29, they did not cite a single case for the proposition that article 30 similarly circumscribes stays of sentences. This is not surprising. Pausing a sentence for a finite period of time, without shortening or otherwise modifying it, treads on neither the legislative authority to set mandatory minimum sentences nor the executive authority to grant parole, pardons, or commutations. Indeed, Petitioners have found no article 30 cases, apart from this Court's April 3 opinion, suggesting otherwise.

Second, the rules of appellate and criminal procedure do not define the outer limit of a judge's authority to stay a sentence; this Court has already held that "a judge has the inherent power to stay sentences for 'exceptional reasons permitted by law.'" *Charles*, 466 Mass. at 72 (quoting *Commonwealth v. McLaughlin*, 431 Mass. 506, 520 (2000)). Inherent judicial powers "exist independently" of statutory authority. *Id.* at 73 (quoting *First Justice v. Clerk-Magistrate*, 438 Mass. 387, 397 (2003)). Because "[t]he very concept of inherent power carries with it the implication that its use is for occasions not provided for by established methods," *id.* (cleaned up)[7], by definition such "exceptional reasons" exceed those articulated in Mass. R.

[7] This petition uses (cleaned up) to indicate that internal quotation marks, alterations or citations have been omitted from quotations. See Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 (2017).

App. P. 6 and Mass. R. Crim. P. 31.[8] This includes instances where circumstances necessitate temporary, time-bounded release even in the absence of a pending action for permanent release. See, e.g., *Commonwealth v. DeMarco*, 387 Mass. 481, 482 (1982) (noting that to "enable the defendant to see his parents, the judge stayed the execution of this sentence for one week"); *United States v. Melody,* 863 F.2d 499, 501 (7th Cir. 1988) (judge stayed the sentence of a mother until the sentence of the father was completed "to make sure that the children of the defendants [had] one parent with them") (cited in *McLaughlin,* 431 Mass. at 520); see also *Rozier vs. United States*, 2014 WL 2117355, No. 13-1146, at *1 n.1 (S.D. Ill. May 21, 2014) (noting that "[t]he court stayed the judgment six months because [defendant] was pregnant").

Third, even if it were true that an action for permanent release must be filed before a judge can stay a sentence—though it is not—such an action already exists. On March 30, 2020, Prisoners' Legal Services moved to intervene in this case, seeking the release from custody of all prisoners over the age of 50 or with medical conditions that render them particularly vulnerable to COVID-19. See SJC 12926 Dkt. 50. As of the time of this filing, that motion was still pending. In addition, Petitioners understand that a new class action complaint brought on behalf of all prisoners incarcerated at Massachusetts jails and prisons seeking release from

[8] The 2009 Reporters Notes to Mass. R. Crim. P. 31 expressly note that "[t]his Rule does not address stays of execution of a sentence when an appeal is not pending."

custody based on violations of their rights under the 8th Amendment and article 26 will be filed with the single justice under G. L. c. 214, § 1, today. These actions implicate the rationale of *Charles*, where this Court authorized stays for defendants with pending new trial motions "because a conviction may be reversible, but the time spent in prison is not." *Charles*, 466 Mass. at 77. Here, given the risks presented by COVID-19, the time that defendants spend in prison while the above actions are adjudicated is just as irreversible, if not more so.

If this Court agrees that it should modify its opinion and authorize sentences to be stayed even in the absence of predicate appeals or motions for new trial, Petitioners recommend that the Court:

1) Establish a rebuttable presumption of a stay for certain individuals, such as those who are:
    a. Eligible for parole and incarcerated for an offense that is not listed in Appendix A of this Court's April 3, 2020, decision;
    b. Serving time in a house of correction for a non-excluded offense;
    c. Completing their sentences within six months, taking into account any credit for good behavior or programming;
    d. Incarcerated for a probation or parole violation that does not include an allegation of a new criminal offense;
    e. Vulnerable to COVID-19 due to age or medical condition; or

f. Medically qualified for medical parole.

2) Order DOC and the Sheriffs to facilitate the prompt filing of stay motions by providing Petitioners with the name, docket number, inmate number, wrap-up date, and parole eligibility date of all individuals who fall into the categories listed above; providing access to medical records within 24 hours of a request; and ensuring prompt access to confidential attorney-client communications.

3) Require motions for stays to be heard no later than two business days after the filing of the motion, with a decision to be rendered promptly thereafter. See *CPCS v. Trial Court*, 484 Mass. at 453 (ordering "a hearing within two business days" for those pretrial detainees entitled to a rebuttable presumption of release).[9]

This Court has said that "these are not normal times." *Id.* The pandemic is sufficiently exceptional to trigger this Court's inherent power to authorize trial courts to grant stays of execution of sentences, even in the absence of a pending post-conviction motion or appeal. Incarcerated people should be allowed to ask that their sentences be paused during this pandemic, so they can finish them when it would not risk their health or life to do so.

[9] Given the urgent nature of the pandemic, Petitioners request that this time frame apply to all motions for stay, including those filed under Mass. R. Crim. P. 31 and Mass. R. App. P. 6(b).

II. This Court should take further steps to effectuate the decision's stated goals.

The Court's opinion recognized a need to facilitate the expeditious release of those in pretrial detention, allow for the release of individuals through timely Rule 29 motions, and encourage the release of individuals via parole. Nearly two weeks of implementation have demonstrated that this is not happening fast enough, partly because Petitioners cannot clear roadblocks as fast as others create them. For example, none of the DOC's daily reports have provided all of the information ordered by the Court in its April 3 decision. See, e.g., *Id.* at 435, 448 n.20 ("the DOC shall furnish the special master daily reports of inmate counts and rates of COVID-19 cases at each facility"). Petitioners have had to undertake substantial efforts just to get the DOC to report as much information to the Special Master as it does to the media.[10] Several counties are refusing, after repeated requests, to provide lists of people who are held pending a probation violation hearing and thus eligible for the rebuttable presumption of release (unless they also have a pending excluded offense). The parole board has apparently not expedited the release of previously-approved individuals.[11] And while some Respondents are facilitating prompt

[10] Compare Jennifer McKim (@jbmckin), Tweet Dated April 13, 2020 @ 5:41 P.M., https://twitter.com/jbmckim/status/1249814890279247872 (reporting facility-specific information about inmate and staff COVID-19 infections in the DOC, as well as prisoner deaths), with Special Master's Weekly Report (Apr. 13, 2020) (reflecting that DOC did not report that same information during its first seven daily reports in this case).

[11] See Affidavit of Catherine J. Hinton (Apr. 15, 2020).

attorney-client communications and releases of medical records, others are not and some are even requiring attorneys to *mail* medical releases to clients, both of which slow the process of filing motions. But see *Id.* at 448-449 ("Defense counsel shall be permitted promptly to convene video or teleconferences with their clients; the sheriffs' offices and DOC are to work with the defense bar to facilitate such communications"); *Id.* at 448 n.21 ("Upon request by a defendant, the sheriffs also are required timely to provide the defendant with his or her requested medical records"). These delays can cost lives.

The situation is unlikely to improve faster than the rate of infection, and is grounds for substantially rehauling the current framework. The Court could, for example, set a decarceration benchmark or involve the Single Justice more thoroughly in facilitating releases. Cf. Reply Br. 25-26. But even if the Court maintains the current framework, it should correct key misapprehensions that, while surely understandable given that this Court's opinion issued just three days after oral argument, are preventing the opinion from operating as intended. Petitioners therefore request that the Court take the following actions.

1. *Permit individualized release decisions for pre-trial detainees exposed to the virus.*

This Court's holding that people who are COVID-19 positive or quarantined are ineligible for release, *CPCS v. Trial Court*, 484 Mass. at 448 n.19, appears to reflect a view that keeping those individuals incarcerated will protect public health.

This view is incorrect. Individuals who have a place to self-quarantine in a private setting should be released; if they remain "quarantined" in a prison, jail, or house of correction, they will still have numerous daily interactions with correctional staff who often move between units and certainly move in and out of the facility. Trial courts should therefore be permitted to release individuals who have tested positive for, or have been exposed to, the virus based on an individualized determination of the circumstances of the person seeking release and their ability to self-quarantine.

2. Require Rule 29 motions to be heard more quickly.

This Court recognized the judicial authority to revise or revoke sentences based on timely-submitted Rule 29 motions, *id.* at 450, and a need for timely reductions in the number of people who are held in custody, *id.* at 445. Yet, in the wake of the Court's decision, the trial court has issued standing orders that allow the Commonwealth to wait *fourteen days* before responding to a Rule 29 motion, and which place no time limit on the trial judge's resolution of those motions.[12] In this pandemic, where the number of infected prisoners has already spiked nearly ten-fold since this case was argued,[13] fourteen days is a lifetime. This Court should

[12] Boston Municipal Court Standing Order 5-20 at 3; Juvenile Court Standing Order 5-20 at 3; Superior Court Standing Order 5-20 at 3; District Court Standing Order 4-20 at 4.

[13] On March 31, the day of argument, 17 incarcerated people were infected. See Vernal Coleman & Andrea Estes, *SJC hears arguments over releasing some inmates during the pandemic*, THE BOSTON GLOBE (March 31, 2020). According to the daily reports, today (April 16) that number has increased to 167.

require the Commonwealth to respond to Rule 29 motions within 48 hours and trial courts to decide such motions promptly thereafter.

The Court should also remind trial judges that they can consider COVID-19 as a fact that existed at the time of sentencing. See, e.g., *Commonwealth v. Jackson*, 80 Mass. App. Ct. 528, 533 (2011) (fact that existed at the time of original sentencing, but was not known to the judge, is "a permissible ground" on which to revise a sentence). The first case of COVID-19 in the United States was reported on January 21, 2020,[14] the World Health Organization declared a global health emergency on January 30, 2020,[15] and the first case in the Commonwealth was confirmed on February 1, 2020.[16] To the extent that the full danger of the virus was appreciated only later, Rule 29 was meant to address just this type of misunderstanding. Indeed, it is inconsistent with due process to sentence a defendant on "the basis of assumptions" that "were materially untrue." *Townsend v. Burke*, 334 U.S. 736, 741 (1948).

[14] First patient with Wuhan coronavirus is identified in the U.S., NEW YORK TIMES (Jan. 1, 2020), available at: https://www.nytimes.com/2020/01/21/health/cdc-coronavirus.html.
[15] A timeline of the coronavirus pandemic, NEW YORK TIMES (April 2, 2020), available at: https://www.nytimes.com/article/coronavirus-timeline.html.
[16] Boston man has coronavirus, WBUR (Feb. 1, 2020), available at: https://www.wbur.org/news/2020/02/01/coronavirus-boston-massachusetts.

3. Order DOC, the Parole Board, and the Sheriffs to provide information to Petitioners.

This Court urged the DOC and the parole board to "expedite" parole hearings, the issuance of parole permits, and petitions for compassionate release, as well as identify other individuals who could be released. 484 Mass. at 453. Although Petitioners are engaged in talks with the parole board that have been fruitful, we have received no information demonstrating that this Court's expectations are being fulfilled. To the contrary—the only thing we know is that 58 people have been released on parole since the SJC's order.[17] There are a number of categories of incarcerated people who could seek release from the parole board if Petitioners knew who they were and could provide counsel to facilitate that process. Accordingly, the DOC, the Sheriffs, and the parole board should now be ordered to provide the names of all people who have a positive parole vote and are awaiting a parole permit,[18] as well as the following individuals:

1. House of Correction prisoners who have not yet reached their initial parole eligibility date, but with counsel could submit an emergency petition to the parole board for early consideration pursuant to 120 Code Mass. Regs. § 200.1(3);

2. All incarcerated persons who received a positive vote for parole but release is contingent upon completing a particular program or spending time in lower security, who with counsel could seek reconsideration of the parole contingency under 120 Codes Mass. Regs. § 304.03;

[17] See Special Master's Weekly Report (Apr. 13, 2020).
[18] The parole board has already provided CPCS with 170 names.

3. Incarcerated persons waiting for a preliminary hearing or a final revocation hearing on an alleged technical violation of parole (akin to the probationer detainees who are entitled to the presumption of release), as these people could submit an emergency petition to withdraw the parole warrant pursuant to G. L. c. 127, § 149;

4. Incarcerated persons whose parole was revoked and are serving time for a technical violation of parole, as these people could submit an emergency petition to reconsider the decision to revoke parole pursuant to 120 Code Mass. Regs. §304.03; and

5. Incarcerated persons medically qualified for medical parole, as they are some of the people most vulnerable to the virus.

To ensure expeditious consideration of these requests, Petitioners ask this Court to urge the chair of the parole board to exercise its discretion to seek the immediate appointment of three special board members pursuant to G. L. c. 27, § 7. Cf. *Bridgeman v. Dist. Attorney for Suffolk Dist.*, 476 Mass. 298, 300 (2017) (the Court declared "the district attorneys *shall* exercise their prosecutorial discretion and reduce the number of relevant Dookhan defendants).

Finally, to effectively advocate for our clients' release on parole or medical parole, it is sometimes necessary to obtain the assistance of a social worker or medical expert. There is no mechanism in place to obtain court approval for these essential expenditures as required by the Indigent Court Costs Act. See G. L. c. 261, §§ 27A-27G. Petitioners therefore request that this Court permit and order the trial court to work with CPCS to create an administrative procedure to rule upon motions for funds within one business day in cases that involve the parole board or medical

parole proceedings. In the alternative, Petitioners request that this Court order the automatic approval of funds for up to ten hours of assistance from social workers or other experts in connection with representation related to COVID-19 parole and medical parole proceedings.

Respectfully submitted,

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Dated: April 17, 2020

AFFIDAVIT OF CATHERINE J. HINTON, ESQ., RESPECTING PAROLE BOARD PREREQUISITES BLOCKING ACTUAL PAROLE RELEASE OF PREVIOUSLY-APPROVED INDIVIDUALS DURING COVID-19 PANDEMIC

I, Catherine J. Hinton, hereby depose and state under the pains and penalties of perjury as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts, and other jurisdictions. I hold Massachusetts BBO license number 630179, and am a member of the bar in good standing. I am a partner in the firm of Rankin & Sultan, and my work address is 151 Merrimac Street, Boston, MA 02114.

2. In the course of my professional work, I have represented several juvenile homicide offenders who are eligible for parole pursuant to *Diatchenko v. District Attorney for Suffolk County*, 466 Mass. 655, 675 (2013).

3. Two of my parole clients have received recent positive parole decisions (dated February 19, 2020 and March 26, 2020) declaring them to be rehabilitated and suitable parole candidates, and each of them has a private home to go to in the community, **but they have not yet been released from incarceration**. Instead, the Parole Board has required them to serve additional time in lower security and to complete a Long Term Residential Program before they can actually be released to their home plan.

4. These requirements are expected in ordinary times, but in the unusual context of the COVID-19 pandemic, these requirements ensure that the parole petitioner cannot actually be released, for the reasons explained below.

5. The requirement to serve additional time in lower security means that a parole petitioner, despite being deemed a suitable candidate for parole, cannot be released because the DOC has halted all transfers between institutions, so that no one can actually be transferred to lower security at

this juncture (see *CPCS et al v. Chief Justice of the Trial Court et al*, SJC-2020-12926, p. 5: "...the CDC recommends restricting transfers between correctional facilities, which the Department has done...").

6. The requirement to complete a Long Term Residential Program means that a parole petitioner, despite being deemed "a suitable candidate for parole," cannot be released in a timely manner because there are currently no Long Term Residential Programs that will admit parolees without waiting on a waiting list.

7. In *CPCS et al v. Chief Justice of the Trial Court et al*, SJC-2020-12926 (April 3, 2020), the SJC stated (p. 39): "We urge the board to expedite release of these previously-approved individuals...." The SJC further stated (p. 39, fn 24): "The parole board should use every effort to expedite the several stages of [the release] process as far as reasonably possible so as to reduce the over-all number of incarcerated inmates as quickly as possible."

8. One of my parole clients (#W36275) is over age 60, has pre-existing medical conditions making him particularly vulnerable to COVID-19, was previously released on parole and is currently re-incarcerated solely due to non-criminal, nonviolent parole violations. He was issued a positive parole decision, declared to be "rehabilitated," and deemed a "suitable candidate for parole" on February 19, but he was required to serve 12 months of additional time in lower security and complete a Long Term Residential Program before actual release. He cannot be transferred to lower security because transfers are currently restricted. Nearly two months have gone by since his positive parole vote was issued. On March 18, 2020, I filed an appeal of the Parole Board's decision under 120 CMR 304.02(3)(e); 304.03(a); and 304.03(d), seeking relief from the prerequisites of time in lower security and a long term residential program, and seeking release to his previously-approved home plan. Instead, the Parole Board issued a change

of vote decision dated March 27, 2020 merely reducing his requirement of additional time in lower security from 12 month to 6 months. On April 3, 2020, I filed a request for further change of vote/reconsideration. His previously-approved home plan has not been investigated by parole staff, and his request for further change of vote/reconsideration has not been responded to in any way as of the date of this affidavit.

9. Another of my parole clients (#W82532) was issued a positive parole decision on March 26, 2020, declaring him to be "rehabilitated" and a "suitable candidate for parole," but requiring him to serve 12 months of additional time in lower security and complete a Long Term Residential Program before release. He cannot be transferred to lower security because transfers are currently restricted. On March 30, 2020, I filed an appeal of the Parole Board's decision under 120 CMR 304.02(3)(e); 304.03(a); and 304.03(d), seeking relief from the prerequisites of time in lower security and a long term residential program, and seeking release to a single family home owned by his mother. A further submission in support of his appeal was filed on April 3, 2020. His proposed home plan has not been investigated by parole staff, and his appeal has not been responded to in any way as of the date of this affidavit.

10. In my experience, the Parole Board has not "expedite[d] release" of these "previously-approved individuals...." since the Court's decision in *CPCS et al v. Chief Justice of the Trial Court et al*, SJC-2020-12926 was issued on April 3.

Signed this 15th day of April, 2020.

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