

Supreme Judicial Court for the Commonwealth Full Court: SJC-12935 Filed: 5/7/2020 5:27 PM
SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT ATTORNEY RACHAEL ROLLINS

May 7, 2020

The Hon. Ralph Gants
Chief Justice
Supreme Judicial Court
1 Pemberton Square
Boston, MA 02108

Re: *Foster, et al. v. Mici, et al.*, No. SJC-12935

Dear Mr. Chief Justice and the Justices of the Supreme Judicial Court:

We write to you as the District Attorney for Suffolk County and the Representative for the 9th Suffolk District to urge you to provide relief to the Plaintiff class in the above-captioned matter. We also write as directly impacted members of our communities, one as a law enforcement official with loved ones presently involved in the correctional system, and the other an attending emergency room physician currently treating COVID-19 patients on the front lines of a global pandemic.

As a lawyer and a healthcare provider, we share an equity-driven, public health-minded approach to our work. To protect our communities, we know there can be no us versus them, no victim versus defendant, no haves or have nots. A failure to protect the most vulnerable among us is to jeopardize the health and safety of our entire community. In a pandemic of this magnitude, the ability to physically distance is a difference between life and death. Most of us are able to do so, but those who physically cannot -- specifically, disproportionately Black and Brown men and women who are incarcerated in the state's jails, houses of correction, and prisons -- are at far greater risk of infection and mortality from this virus. Among that especially vulnerable population is where you will find the Plaintiffs, who are sentenced and civilly committed persons who, by virtue of their age or medical condition, are at imminent risk of serious illness or death if infected by COVID-19.

This Court soundly recognized nearly a month ago that the measures our public health experts prescribe for flattening the curve and controlling the spread of COVID-19 are nearly impossible to practice in our jails, prisons, and detention facilities. For many who are incarcerated, like the Plaintiff class in this case, the capacity to physically distance is limited or impossible.¹ As such, the responsibility to facilitate safe practices during this pandemic falls to the Department of Corrections, the Parole Board, and Governor Baker. The Department of Corrections has a constitutional and moral obligation to facilitate social distancing and provide

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¹ The American Correctional Association instructs that cells in correctional facilities should have "25 square feet of unencumbered space" per person, leaving a 5' by 5' space per person.

sanitary conditions to all incarcerated. Further, the DOC, the Parole Board, the Executive Office of Public Safety and Security, and Governor Baker have to work together to release those, like the Plaintiff class in this case, who are especially susceptible to complications or death as a result of contracting COVID-19 and who are close to eligibility for release. Decarceration will play a crucial role in slowing the spread of the virus, both behind the wall and in our communities.

In the time since the Court made its first order, the incarcerated population inside the Department of Corrections has declined 5.6%,² while the number of people (inmates and staff) who have tested positive has increased 485%,³ with the releases thus far seeming to have little to no impact on the spread of the virus. Moreover, the infection rate per-1,000 people is astronomical in the Department of Corrections: for every 1,000 people there are 50 who are positive with COVID-19 inside the Massachusetts DOC, compared to 9 in the rest of the Commonwealth. Other jurisdictions across the United States have acknowledged the difficulties in dealing with this hardship, with New Jersey,⁴ Ohio,⁵ and Tennessee⁶ moving to test all individuals in state correctional facilities.

We implore you to protect the Plaintiff class by granting their prayers for relief, which include this Court's ordering the Defendants to take immediate steps to enforce physical distancing inside carceral facilities and to reduce the number of people confined in prisons and jails by a sufficient number to ensure that physical distancing can happen. We ask you for this relief, not only because a rampant outbreak of COVID-19 behind the wall will have an impact on our neighborhoods when corrections officers and staff or contractors contract the virus and carry it home with them, but most importantly because the Plaintiff class are human beings, who did not lose their humanity the day they were sentenced or confined, and their health and lives are worthy of protection.

In solidarity,



Rachael Rollins

District Attorney, Suffolk County



Jon Santiago

Representative, 9th Suffolk District

² March 30th count sheet lists population as 8,201, and the April 30th census report from the DOC lists the population as 7,744.

³ April 6th census report lists 67 total people positive, and April 30th report lists 392 total people positive.

⁴ <https://twitter.com/GovMurphy/status/1255946409846755330>

⁵ <https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2005-02-2020%201230.pdf>

⁶ <https://apnews.com/5d0dde8eaa0385c9fd97e1545a5857da>