SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

NO. SJC–12935

STEPHEN FOSTER, MICHAEL GOMES, PETER KYRIAKIDES, RICHARD O'ROURKE, STEVEN PALLADINO, MARK SANTOS, DAVID SIBINICH, MICHELLE TOURIGNY, MICHAEL WHITE, FREDERICK YEOMANS, & HENDRICK DAVIS,

Plaintiffs,

v.

CAROL MICI, Commissioner of the Massachusetts Department of Correction, GLORIANN MORONEY, Chair, Massachusetts Parole Board, THOMAS TURCO, Secretary of the Executive Office of Public Safety and Security, & CHARLES BAKER, Governor of the Commonwealth of Massachusetts,

Defendants.

On Reservation & Report from the
Supreme Judicial Court for Suffolk County, SJ-2020-0212

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF DEFENDANT GOVERNOR CHARLES D. BAKER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

This action concerns Plaintiffs' conditions of confinement at facilities operated by the Department of Correction during the public health crisis posed by COVID-19. The Governor is not a proper party because the declaratory and mandamus relief sought by Plaintiffs cannot be ordered against the Governor.

As this Court will see from the proceedings below, and has already confronted in CPCS v. Chief Justice of the Trial Courts, No. SJC-12926, 2020 WL 1659939 (Mass. Apr. 3, 2020), now is a particularly challenging time to administer correctional facilities. In the midst of a pandemic, the Commissioner of Correction and the Department she oversees have made extraordinary efforts to protect those in their custody and employ.[1]

This being a motion to dismiss, the Governor must accept Plaintiffs' allegations as true, though he does not concede them to be. On the alleged facts, there is a fundamental disconnect between the alleged wrong, on the one hand (which as even Plaintiffs seem to concede, is the function of a novel virus and the inherent limitations of the Department's physical resources), and the extraordinary relief sought against the Governor, on the other hand. By statute a declaratory judgment cannot be entered against the Governor. G.L. c. 231A, § 2. Nor may the Judicial Branch mandate that the Governor affirmatively exercise his executive powers. See McCarthy v. Governor, 471 Mass. 1008, 1010-1011 (2015) ("Neither an action for mandamus nor an action seeking declaratory relief will lie against the Governor."). These reasons alone require dismissal.

[1] As noted infra in Part B, certain Plaintiffs are in the custody of county sheriffs, who are separately elected to operate distinct political entities, and who are not parties to this action. G.L. c. 37, § 1. As this Court has had occasion to declare, the sheriffs are not overseen by and do not report to the Governor. See McGonigle v. Governor, 418 Mass. 147, 151-52 (1994).

Claims seeking across-the-board relief for incarcerated individuals present considerable concerns under art. 30 of the Massachusetts Declaration of Rights. See CPCS, 2020 WL 1659939, at *13. Those concerns are particularly acute in this case, where the Governor has been named as a party[2] and where the Plaintiffs' only allegations against the Governor are that he has not exercised his discretionary powers. See Compl. Prayer for Relief ¶ 3(e), (f).[3] This Court does not mandate that particular affirmative acts be taken by the Governor (as he is the executive of a co-equal branch of government), Rice v. Draper, 207 Mass. 577, 579 (1911), nor has it ever demanded a specific exercise of the Governor's quintessentially executive emergency or clemency powers. Plaintiffs' claims against the Governor are therefore entirely unsupported by precedent and unmoored from the Constitution. See Mass. Const. Pt. I, art. 30 ("In the government of this commonwealth . . . the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men"). This case presents no occasion to depart from that settled precedent. Accordingly, the claims against the Governor must be dismissed.

[2] The Governor was not named as a defendant in CPCS.

[3] As detailed infra, the Massachusetts Constitution does not permit the Governor to issue blanket commutations to individuals held in state custody, as clemency from a felony conviction must proceed according to a process established by the Legislature and must receive the advice and consent of the Executive Council. Mass. Const. Pt. II, c. 2, § 1, art. 8, as amended by Amend. art. 73 of the Amendments to the Massachusetts Constitution.

BACKGROUND

A brief recitation of the constitutional and statutory backdrop within which each of the Defendants operates provides context for Plaintiffs' claims.

A. Legal Framework of Correctional Administration.

1. The Department of Correction

The Commissioner of Correction (the "Commissioner") has the responsibility to oversee and administer all state correctional facilities. See G.L. c. 124, § 1(b). The Commissioner is statutorily directed to "maintain security, safety and order at all state correctional" institutions and other facilities within the Department's control, and is granted broad statutory and regulatory authority to accomplish that duty. Id. § 1(b), (q).[4] The Department of Correction is part of the Executive Office of Public Safety and Security ("EOPSS"), whose Secretary appoints the Commissioner with the approval of the Governor. G.L. c. 6A, § 18; G.L. c. 27, § 1.

2. The Parole Board

The Parole Board is an agency nominally situated within the Department of Correction (and EOPSS), but not subject to the control of the Commissioner or the Secretary. See G.L. c. 27, § 4. Members of the Parole Board are appointed by the Governor, with the advice and consent of the Executive Council, for a term of five years. Id. They are removable only for cause. Id.

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[4] The Department of Correction can also become responsible for non-incarcerated individuals suffering from alcohol or substance abuse disorder who have been civilly committed to facilities operated by the Department. Persons for whom there has been a judicial determination of a likelihood of serious harm as a result of the person's alcohol or substance abuse disorder are ordinarily committed to a treatment facility designated by the Department of Public Health. G.L. c. 123, § 35. Where no such treatment facility is available, however, or where a court determines a secure facility is necessary, such persons may be committed to the custody of the Department of Correction. Id.

The Parole Board is responsible for granting parole, setting conditions for parole, and supervising parolees. G.L. c. 27, §§ 4-5. The Parole Board may grant parole where, for a parole-eligible inmate, "there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." G.L. c. 127, § 130.

3. The Executive Office of Public Safety and Security

EOPSS is the Executive Office under which the Department of Correction operates, along with other agencies including the Massachusetts State Police and the Massachusetts Emergency Management Agency. G.L. c. 6A, §§ 2, 18. The Secretary of EOPSS is appointed by the Governor. G.L. c. 6A, § 3.

4. The Governor

As the chief of the Executive Branch under Pt. II, c. 2, § 1, art. 1 of the Constitution of the Commonwealth, the Governor appoints the Secretary of EOPSS, who in turn appoints the Commissioner of Correction, who in turn oversees the administration of correctional facilities. G.L. c. 6A, § 3; G.L. c. 27, § 1.

The Governor's direct involvement in the release of incarcerated individuals is limited to his constitutional power of clemency, which itself is subject to the advice and consent of the Executive Council and for felonies must follow procedures established by the Legislature. Mass. Const. Pt. II, c. 2, § 1, art. 8, as amended by Amend. art. 73.[5]

[5] Subject to limited and nuanced exceptions, those in the custody of the Department by a criminal sentence have committed felonies. See G.L. c. 274, § 1 ("A crime punishable by . . . imprisonment in the state prison is a felony. All other crimes are misdemeanors").

"This is the only warrant in the Constitution enabling the executive department of government to mitigate or remit sentences imposed by the courts as penalty for crime." Juggins v. Exec. Council, 257 Mass. 386, 388 (1926). The Governor's decision to grant clemency – whether by pardon or commutation – is entirely within his discretion; he is not required to exercise his constitutional "power of pardoning." See id.; G.L. c. 127, § 152.

In addition, the Legislature has granted to the Governor certain powers that may be exercised during a period of declared emergency. See Civil Defense Act, St. 1950, c. 639 (the "Act") (vesting emergency powers in the Governor "to provide for the safety of the commonwealth during the existence of an emergency resulting from disaster or from hostile action"). The Act "as befit[s] its volatile and perilous mission, [. . .] delegate[s] to the Governor, as head of the executive branch, very extensive and highly flexible powers both in preparing for and meeting an emergency." Dir. of Civil Defense Agency v. Civil Serv. Comm'n, 373 Mass. 401, 404 (1977).

Faced with the public health crisis posed by COVID-19, Governor Baker declared a statewide emergency under the Act on March 10, 2020. The Governor has issued numerous executive orders since that time, including those that closed non-essential businesses and K-12 schools; prohibited gatherings of more than ten people; mandated that insurers cover all medically-required costs of COVID-19 treatment at out-of-network hospitals; extended and accelerated professional licenses for medical

professionals; and modified the open meeting law so state and local governments can more readily continue essential functions.[6]

B. The Complaint

This action is brought by eight individuals in the custody of the Department of Correction (the "Department") following criminal convictions and judgments of sentence entered by the judiciary; two individuals in the custody of county sheriffs, likewise following criminal convictions and judgments of sentence; and one individual who previously had been civilly committed to Department custody pursuant to G.L. c. 123, § 35. Compl. ¶¶ 11-21.

In broad strokes, the Plaintiffs allege that conditions in the institutions in which they are confined violate art. 26 of the Massachusetts Declaration of Rights and the Eighth Amendment to the United States Constitution. The core of Plaintiffs' claims is that COVID-19, and the risk of infection it poses to them and others incarcerated in the Commonwealth's correctional facilities, has caused their conditions of confinement to become cruel or unusual punishment, and thus unconstitutional. Compl. ¶¶ 94-97. The same assertions are apparently made concerning county facilities, see, e.g., Compl. ¶¶ 88, 94-97, notwithstanding that Plaintiffs have named exclusively state officials as Defendants.[7] Plaintiffs further claim that the conditions of custody for individuals

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[6] These Executive Orders are available at https://www.mass.gov/info-details/covid-19-state-of-emergency.

[7] Insofar as Plaintiffs are suggesting that the Department's second-order regulatory authority over county correctional officials under G.L. c. 127, §§ 1A and 1B renders it responsible for the day-to-day operation of houses of correction, that suggestion fails as a matter of law. See G.L. c. 126, § 16 ("The sheriff shall have custody and control of the jails in his county, and . . . of the houses of correction therein, and of all prisoners committed thereto, and . . . shall be responsible for them").

civilly committed under G.L. c. 123, § 35, violate the requirements of due process. Compl. ¶¶ 98-102.

To remedy these allegations, Plaintiffs seek various forms of decarceration, including home confinement, extended furloughs, and the early termination of certain sentences (via commutation, increased good conduct credits under G.L. c. 127, § 129D, or medical parole under G.L. c. 127, § 119A). Compl. Prayer for Relief ¶ 3(a)-(f). That relief is not available under existing law in the across-the-board fashion Plaintiffs seek. E.g., G.L. c. 127, §§ 48, 49A (permitting work and educational release in only certain limited and prescribed circumstances); G.L. c. 127, § 90A (permitting furloughs, but only for enumerated purposes, and only for 7 consecutive days with an annual cap of 14 days); G.L. c. 127, § 129D (delineating how good conduct credits may be earned and mandating that "in no event shall said . . . credits reduce such imposed minimum term by more than 35 per cent"); G.L. c. 127, § 119A (permitting medical parole only where a prisoner "is terminally ill or permanently incapacitated such that if the prisoner is released the prisoner will live and remain at liberty without violating the law").

ARGUMENT

The ultimate question before the Court in this action is whether conditions of confinement during the COVID-19 public health crisis comport with the federal and state constitutions. The question presented by this motion, however, is whether the Governor is a proper defendant.

Plaintiffs claim they are entitled to a declaratory judgment or an affirmative injunction against the "Defendants," one of whom is the Governor. But declaratory judgment is not available against the Governor; and, more fundamentally, no order may be entered to compel him to exercise certain emergency or constitutional authority.

These are baseline principles of settled law, anchored firmly in Article 30. See Rice v. Draper, 207 Mass. 577, 579 (1911); see also LIMITS v. President of the Senate, 414 Mass. 31, 34 (1992) (explaining, in the context of denying mandamus against the Legislature, that "[t]he reason for this rule rests on separation of powers principles expressed in art. 30"). This alone requires dismissal of all of Plaintiffs' claims.

In addition, even if the remedies Plaintiffs seek were available against the Governor (which they are not), Plaintiffs' Complaint fails to identify any direct involvement by the Governor in the alleged violations. Their Complaint therefore fails to state a claim against the Governor.

I. Declaratory Judgment Is Not Available Against The Governor.

Plaintiff's First and Third Causes of Action seek relief pursuant to the Declaratory Judgment Act, G.L. c. 231A, et seq., which by its very terms does not permit a declaratory relief against the Governor. See Compl. ¶¶ 95, 102 (citing G.L. c. 231A, § 2). The Act states, simply, that it "shall not apply to the governor and council or the legislative and judicial departments." G.L. c. 231A, § 2. This Court has adhered consistently to that plain statutory language. See, e.g., Town of Milton v. Commonwealth, 416 Mass. 471, 475 (1993) ("Declaratory relief is not available against the Governor or the Legislature"); Williams v. Sec'y of the Exec. Office of Human Servs., 414 Mass. 551, 551 n.3 (1993); Alliance, AFSCME/SEIU, AFL-CIO v. Sec'y of Admin., 413 Mass. 377, 377 n.1 (1992); Powers v. Sec'y of Admin., 412 Mass. 119, 119 n.2 (1992); Barnes v. Sec'y of Admin., 411 Mass. 822, 822 n. 2 (1992); MBTA v. Governor, 383 Mass. 24, 24 n.1 (1981). That approach is especially appropriate where, as here, other agency and department heads, against whom relief may be available under G.L. c. 231A

(provided the basis for such relief is established), are named as defendants. See, e.g., Alliance, 413 Mass. at 377 n.1; Powers, 412 Mass. at 119 n.2.

Plaintiffs' claims for declaratory relief against the Governor therefore must be dismissed.

II. The Affirmative Injunctive Relief Sought By Plaintiffs Against The Governor Is Barred By Settled Precedent And The Separation Of Powers.

It is likewise settled that the Commonwealth's courts may not mandate that the Governor take any affirmative action.

Mandamus is not available against the Governor. McCarthy, 471 Mass. at 1010-11; Milton, 416 Mass. at 475. This Court explained why more than a century ago: to enter an order of mandamus "'would be not only to question the wisdom of the Constitution or the law, but also to assert a right to make the Governor the passive instrument of the judiciary in executing its mandates within the sphere of his own duties,'" thereby "'break[ing] away from these checks and balances of government which were meant to be checks of cooperation, and not of antagonism or mastery.'" Rice, 207 Mass. at 579 (quoting Sutherland v. Governor, 29 Mich. 320, 329 (1874)). Thus, "[j]udicial unwillingness to order the Governor . . . to act is founded on separation of powers principles expressed in art. 30 of the Massachusetts Declaration of Rights." Milton, 416 Mass. at 475.

Plaintiffs' claims against the Governor thus run headlong into a century of precedent. See McCarthy, 471 Mass. at 1010-1011; Milton, 416 Mass. at 475; Rice, 207 Mass. at 579. Although Plaintiffs decline to identify it as such, there is no question that the relief they seek against the Governor is in the nature of mandamus. They seek an order compelling the Governor to undertake certain executive actions. Compl. Prayer

for Relief ¶ 3(e), (f) (requesting as relief an order that the Governor "[m]aximiz[e] the use of commutation and clemency" and "[m]aximiz[e] the use of the Governor's emergency powers"). While "[r]elief by restraining affirmative action ordinarily is given in equity by preventive injunction," this Court has long recognized that "relief against inaction by compelling performance of a public or quasi public duty . . . ordinarily is given at law by writ of mandamus." Dep't of Pub. Utils. v. Trustees of N.Y., N.H., & H.R. Co., 304 Mass. 664, 671 (1939) ("the very object of [mandamus] is to change the status of affairs and to substitute action for inactivity") (internal quotation marks omitted).

This case underscores the wisdom of the Court's long-standing conclusion that constitutional limitations preclude any order that would attempt to grant mandamus relief against the Governor. The Declaration of Rights recognizes separation of powers as essential to our form of government and preservative of all other rights. Mass. Const. Pt. I, art. 30 (mandating the separation of powers in the government of the Commonwealth "to the end it may be a government of laws and not of men"); see Rice, 207 Mass. at 578 (observing that art. 30 provides for the separation of powers "in language picturesque and emphatic"). Clemency is a core executive power. See Mass. Const. Pt. II, c. 2, § 1, art. 8 ("The power of pardoning offences . . . shall be in the governor, by and with the advice of council") (emphasis added).[8] This Court has so recognized. Juggins, 257 Mass. at 388-389 (holding that "[t]he duty of making the preliminary determination [subject to the Executive Council's advisory power] rests

[8] See Juggins, 257 Mass. at 388 ("The words 'the power of pardoning offenses,' used in the Constitution, are of wide import. They comprehend, not only the absolute release from the penalty imposed by the judicial department, but the exercise of all degrees of lesser clemency, such as remission of part of the sentence . . . commutation of sentence, and respite of sentence").

primarily upon the Governor alone" and "[w]hether the Governor takes advice or not, his conclusion must rest finally upon his own judgment"). If the judiciary could compel the exercise of such executive authority, the line between the executive and the judiciary would fade into the horizon.[9]

Similarly, responding to a public health emergency requires the flexibility and dexterity that the Executive Branch is best suited to provide. See Federalist No. 70 ("Energy in the Executive is a leading character in the definition of good government," while diffusion of executive authority among different people or entities "might impede or frustrate the most important measures of the government, in the most critical emergencies of the state"). The General Court so recognized in enacting St. 1950, c. 639. And this Court and others have acknowledged the challenge of -- and need for flexibility in -- government administration in times of exigency. Cf. Am. Grain Prods. Processing Inst. v. Dep't Pub. Health, 392 Mass. 309, 326 (1984) (recognizing that an emergency regulation determined by the Executive Branch to be "necessary for the preservation of the public health, safety, or general welfare" may take effect even where its "fiscal effect is unascertainable at the time of its adoption"); Smith v. Avino, 91 F.3d 105, 109 (11th Cir. 1996) (rejecting arguments that curfew imposed after Hurricane Andrew infringed upon plaintiffs' freedom of movement and right to travel because "governing authorities

[9] In the context of executive clemency, the Legislature also has asserted its authority by proposing a legislative amendment to the Constitution that was adopted by the voters in 1944, and affords the Legislature the power "to prescribe the terms and conditions upon which" clemency for a felony may be granted. Mass. Const. Pt. II, c. 2, § 1, art. 8, as amended by Amend. art. 73. The Legislature has exercised that power by the enactment of G.L. c. 127, § 152, the requirements of which the Plaintiffs' filings ignore entirely even though the overwhelming majority of individuals in state custody are there following a felony conviction. See G.L. c. 274, § 1.

must be granted the proper deference and wide latitude necessary for dealing with [an emergency"). A judicial mandate ordering the exercise of particular emergency powers would be inconsistent with those considerations; irreconcilable with settled precedent, Rice, 207 Mass. at 579; and impossible to square with the commands of Article 30.[10]

Plaintiffs' claims for injunctive relief against the Governor must therefore be dismissed.

III. Plaintiffs' Complaint Fails To State A Claim Against The Governor For A Violation Of Civil Rights.

Even if Plaintiffs were not seeking impermissible declaratory relief and mandamus against the Governor, their Complaint would still be subject to dismissal because it fails to state a claim against the Governor, under state or federal law, for violation of their civil rights. The grounds for Plaintiffs' claims against Governor Baker appear to be that he is head of the Executive Branch, and also that as Governor he possesses certain discretionary authority – namely, emergency powers and clemency – that, if exercised, might mitigate what they claim are ongoing constitutional violations.

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[10] Even if the Governor were a proper party to this action (which he is not), an award of affirmative injunctive relief against any of the Defendants would be contrary to the longstanding presumption that agency and department heads will take steps to comply with any declaration entered against them. See, e.g., LaChance v. Comm'r of Corr., 475 Mass. 757, 765 (2016) ("[W]here the declaratory judgment is directed to public officials, an injunctive order is not necessary . . . because Massachusetts courts 'assume that public officials will comply with the law declared by a court and that consequently injunctive orders are generally unnecessary.'" (quoting Mass. Coalition for the Homeless v. Sec'y of Human Servs., 400 Mass. 806, 825 (1987)); cf. Bromfield v. Treasurer & Receiver General, 390 Mass. 665, 669 (1983) (declining to order affirmative action to meet a judgment against the Commonwealth and articulating the "presumption . . . that the Commonwealth will honor its obligations"). This approach emanates from art. 30. Smith v. Comm'r of Transitional Assistance, 431 Mass. 638, 651 (2000) ("Where a court contemplates an injunctive order to compel an executive agency to take specific steps, it must tread cautiously in order to safeguard the separation of powers mandated by art. 30" by first affording the agency an opportunity to respond to a declaration).

Yet Plaintiffs do not claim that Governor Baker directly caused any violations of their constitutional rights. Nor can he be vicariously liable for the conduct of others.

Claims against government officials alleging a violation of rights under state or federal law must allege that each official, through his or her own individual actions, violated the plaintiff's rights. See Temple v. Marlborough Div. of Dist. Court Dep't, 395 Mass. 117, 120 (1985) ("We conclude that the judge properly dismissed all claims against the two court clerks, the Commissioner, and the Governor because the plaintiff failed to allege any action by these defendants which deprived him of rights under State or Federal law."). "Governmental actors 'are responsible only for their own illegal acts.'" Baptiste v. Exec. Office of Health & Human Servs., 97 Mass. App. Ct. 110, 2020 WL 976946, at *4 (Feb. 28, 2020) (Rule 1:28 Decision) (quoting Connick v. Thompson, 563 U.S. 51, 60 (2011) (internal quotation marks omitted)) .

This is especially true of claims against government officials under 42 U.S.C. § 1983, which Plaintiffs assert here. The Supreme Court has repeatedly recognized that "vicarious liability is inapplicable to . . . § 1983 suits." Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009); see Monell v. N.Y. City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). Accordingly, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Iqbal, 556 U.S. at 676; id. at 677 ("each Government official, his or her title notwithstanding, is only liable for his or her own misconduct"). A supervisory governmental official cannot be liable for constitutional violations of a subordinate "unless there is an affirmative link between the behavior of the subordinate and the action or inaction of the supervisor such that the supervisor's conduct led inexorably to the constitutional violation." Feliciano-Hernandez v. Perreira-Castillo, 663 F.3d 527, 533 (1st Cir. 2011) (internal quotation

marks and ellipsis omitted) (collecting cases where broad allegations against high-ranking government officials dismissed for failure to state a claim). It is not enough for Plaintiffs to argue that Governor Baker might be capable of providing a remedy for the violations they allege. Section 1983 requires a "strong causal connection" (not merely a remedial one) between the defendant and the alleged deprivation. Ramirez-Lluveras v. Rivera-Merced, 759 F.3d 10, 19 (1st Cir. 2014) ("After Iqbal, as before, we have stressed the importance of showing a strong causal connection between the supervisor's conduct and the constitutional violation."); Johnson v. City of Worcester, Civ. A. No. 17-40103, 2020 WL 1140077, at *7 (D. Mass. Mar. 9, 2020) (Section 1983 "requires a plaintiff to show a causal connection or affirmative link between a defendant and the federal right of which the plaintiff was deprived").

In light of these standards, it is not surprising that courts, particularly since Iqbal, have repeatedly rejected § 1983 claims against the Governor that fail to allege any direct involvement by the Governor in the alleged constitutional violations.[11] Plaintiffs'

[11] See, e.g., Bruyette v. Patrick, No. CA 13-12727-DJC, 2013 WL 6708998, at *2 (D. Mass. Dec. 16, 2013) ("Bruyette's complaint fails to set forth any legal or factual bases for including Governor Patrick, Terrance Kenney, and Christopher Iannella as defendants. There are no allegations of any direct involvement in the parole revocation proceedings; indeed, there are no allegations at all."); Hannon v. Beard, 979 F. Supp. 2d 136, 141 (D. Mass. 2013) ("Plaintiffs allege no direct connection between their prison conditions and Romney's conduct. There is not an inkling of misconduct by Romney alleged, much less an allegation beyond the 'speculative level.'"); see also Montgomery v. Rufo, No. Civ. A. 6-12419-GAO, 1998 WL 151234, at *1 (D. Mass. Mar. 27, 1998) ("A suit against Weld in his individual capacity must also be dismissed because [plaintiff] has failed to allege facts which would tend to show that Weld was involved personally with any civil rights violations or violations of other legal rights or duties."); Feliciano v. DuBois, 846 F. Supp. 1033, 1045 (D. Mass. 1994) ("The Governor's and the Attorney General's obligations to enforce or execute state laws do not make them responsible for the specific acts of correctional officials."); McLeod v. Dukakis, No. Civ. A. 89-0108-S, 1990 WL 180708, at *1 (D. Mass. Nov. 2, 1990) ("Under [Monell], the Governor can be held liable only if a § 1983 violation occurred under a policy or custom promulgated by

Complaint is similarly deficient. It does not allege any direct involvement by the Governor in the complained of conditions of confinement. Nor can Plaintiffs hold the Governor liable simply because he is the head of the Executive Branch. See Temple, 395 Mass. at 120; Iqbal, 556 U.S. at 676 (vicarious liability inapplicable to 1983 suits).

Accordingly, all of Plaintiffs' claims against Governor Baker must also be dismissed for failure to state a claim.

CONCLUSION

For the foregoing reasons, the Governor respectfully requests the dismissal of the claims asserted against him in this action.

Respectfully submitted,

GOVERNOR CHARLES D. BAKER

By his attorneys,

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him. The complaint makes no such allegation, and accordingly, Michael Dukakis's motion to dismiss all counts is allowed."); Temple, 395 Mass. at 120.

CERTIFICATE OF SERVICE

I, Ryan P. McManus, hereby certify, under the penalties of perjury, that on April 29, 2020, I caused a true and accurate copy of the foregoing to be filed and served via email on all counsel of record.

/s/ Ryan P. McManus
Ryan P. McManus, BBO No. 673219
Special Assistant Attorney General