

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2020-0212

STEPHEN FOSTER, MICHAEL GOMES, PETER KYRIAKIDES, RICHARD O'ROURKE
STEVEN PALADINO, MARK SANTOS, DAVID SIBINICH, MICHELLE TOURIGNY,
MICHAEL WHITE, FREDERICK YEOMANS, and HENDRICK DAVIS, individually and on
behalf of all others similarly situated,

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, and CHARLES BAKER, Governor of the Commonwealth
of Massachusetts

**RESERVATION AND REPORT
&
INTERIM ORDER**

The plaintiffs filed their complaint, as a putative class action, on the evening of Friday, April 17, 2020. As explained below, I reserve and report the case to the full court and, to ensure that the court has an adequate factual record to decide the case, I also refer the matter to the Superior Court for fact-finding.

1. Reservation and report. I hereby reserve and report the case to the full court. The record before the full court will consist of the complaint, the motion for a preliminary injunction, exhibits to the motion, an answer to be filed by the defendants in the full court no later than 5:00 p.m. on Friday, April 24, 2020, a statement of agreed facts to be filed by the parties, and findings of fact to be made in the Superior Court, as outlined below.

2. Reference to the Superior Court. I also refer this matter to the Superior Court for fact-finding that will enable the full court to decide the case in the first instance. The Chief Justice of the Superior Court will designate a judge to conduct the necessary proceedings and to make the appropriate findings.

To facilitate the fact-finding in an expeditious manner, the parties shall submit their statement of agreed facts (to the full court and to the Superior Court) no later than 5:00 p.m. on Friday, April 24, 2020, indicating, to the fullest extent possible in the circumstances, all areas of factual agreement. The parties shall also indicate those material factual issues as to which they do not agree. The plaintiffs shall have responsibility for initiating the statement of facts.

The judge designated to hear this matter shall conduct proceedings in the Superior Court in the manner, and at such times, as he or she deems necessary in order to report his or her findings to the full court no later than Friday, May 1, 2020. The parties should be prepared to provide witnesses and any other evidence they intend to provide, and such other evidence as the judge may require, expeditiously in accordance with the schedule set by the judge. Any issues and concerns involving the timing of the proceedings, availability of witnesses, and so on shall be resolved by the Superior Court judge in the first instance.

The judge should make any and all findings, beyond the facts agreed to by the parties, that he or she deems necessary and relevant to the resolution of the legal issues raised by the plaintiffs in their complaint. The judge's findings shall be transmitted directly to the full court. Recognizing that time is of the essence, if the judge determines that he or she cannot complete the fact-finding on or before May 1, he or she shall report that to the full court as early as possible, shall indicate what further steps remain to be taken, and shall propose for the full

court's consideration a time-frame within which all of the necessary proceedings and the fact-finding will be completed.

The parties are directed to make every reasonable effort to assist the judge, in the manner he or she prescribes, with this fact-finding process. They are reminded that the full court will be deciding this case in the first instance, and their failure to furnish the full court with an adequate factual record could impede the court's ability to do so.

3. Logistics for filing written material. Copies of all documents filed to date in the Supreme Judicial Court for the County of Suffolk (county court) will be transferred by the Clerk of the county court to the Supreme Judicial Court for the Commonwealth (full court). Unless directed otherwise by the Superior Court judge, the parties shall electronically file all further papers that are intended for the Superior Court in the first instance with the Clerk of the full court. The Clerk of the full court will assist the Superior Court assistant clerk assigned to this matter by forwarding electronically all such papers to the assistant clerk and to the judge.

4. Further proceedings in the full court. The Clerk of the full court, in consultation with the Chief Justice, will schedule this matter for a hearing before the full court in due course, and will notify counsel accordingly. Counsel should be prepared to brief and argue the case in short order after the completion of the fact-finding. Alternatively, either side or both sides may, if they wish, file a preliminary brief in the full court by Friday, May 1, 2020, addressing the general legal principles to be applied, and thereafter, once the fact-finding is complete, shall file a supplemental brief on a timetable to be established by the full court addressing the facts found and the application of the law to the facts; if the parties use this option, they shall ensure that their preliminary and supplemental briefs are not redundant or, when combined, excessive. If a party chooses to wait until the completion of the fact-finding to file a single all-encompassing

brief, they will nevertheless be required to file the brief on the short timetable to be set by the court.

The Clerk of the county court shall send a copy of this order to the Chief Justice of the Superior Court and to the Clerk of the Suffolk Superior Court for civil business. All additional issues and questions concerning this order and the scheduling of the case before the full court shall be directed to the Clerk of the full court.

/s/ Elspeth B. Cypher
Elspeth B. Cypher
Associate Justice

Date: April 20, 2020