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May 13, 2020

Francis V. Kenneally
Clerk, Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Suite 1300
Boston, MA 02108

Re: Foster et al. v. Mici et al., SJC-12935

Dear Clerk Kenneally:

Plaintiffs submit this additional letter under Mass. R. App. P. 16(l) to bring to the Court's attention a further case ordering relief for sentenced prisoners under the Eighth Amendment because of COVID-19.

Yesterday, the District of Connecticut issued a temporary restraining order in *Martinez-Brooks v. Easter* No. 3:20-CV-00569 (MPS), 2020 WL 2405350 (D. Conn. May 12, 2020) aimed at “accelerating the process for evaluating inmates for home confinement and compassionate release, and focusing that process on achieving a ‘reasonable’ balance between the risks to inmate safety and the risks to public safety.” 2020 WL 2405350, at *32. In issuing the order, the court found that the petitioners were likely to succeed on the merits of their claim that the respondents had violated the Eighth Amendment by failing to fully exercise their authority to order home confinement and compassionate release to remove medically vulnerable prisoners from prison. *Id.* at *23 (“[E]ven with the measures that the Warden has put in place, due to the impossibility of adequate social

distancing, confinement at FCI Danbury—due to the very structure of the facility—continues to pose a grave risk to vulnerable inmates’ health. . . . Under the circumstances of the present crisis, the Warden’s failure to make prompt, broader use of this authority [to order home confinement] to protect the lives of vulnerable inmates is likely to constitute deliberate indifference.”); *id.* at *24 (failure to make “any noticeable effort to update the process for evaluating ‘compassionate release’ requests to take account of the COVID-19 pandemic . . . bolsters my conclusion that Petitioners have shown a likelihood of success on the merits on their claim that the Respondents are displaying deliberate indifference in violation of the Eighth Amendment”).

Respectfully Submitted,

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