

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk, ss.

No. SJC -12935
Super. Ct. No. 20-00855-D

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

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, and **CHARLES
BAKER**, Governor of the Commonwealth of
Massachusetts,

Defendants.

**STIPULATION AS TO FACTS AGREED BETWEEN THE PLAINTIFFS AND THE
CHAIRPERSON OF THE MASSACHUSETTS PAROLE BOARD**

Pursuant to the Reservation and Report & Interim Order issued on April 20, 2020 by the
Single Justice Session of the Supreme Judicial Court and the Notice of Evidentiary Hearing and
Pre-Hearing Requirements issued on April 21, 2020 by the Superior Court, the Plaintiffs in the

above-captioned case and Defendant Chairperson Gloriann Moroney stipulate that the following facts are undisputed:¹

Inmates who have been approved for parole, but have not yet been released

1. In *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, SJC No. 1296, the Supreme Judicial Court urged the parole board to work with the special master to expedite parole hearings and to expedite the issuance of parole permits to those who have been granted parole.
2. At the time of oral argument in *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, the board reported that as of March 31, 2020, the parole board had approved approximately 300 individuals for parole, but had not yet granted the parole permits that would result in release from custody.
3. The reasons a permit may not yet have been granted include: the individual has not submitted a home plan, the individual is in the process of having the home plan approved, the individual is awaiting a bed in a program, the individual has not satisfied conditions precedent set by the board (such as completing a program or spending a certain amount of time in a lower security facility) or the individual has not reached their parole eligibility date. As the conditions for release are met parole permits are granted.
4. The parole board informed the Supreme Judicial Court that the granting of a permit and release is typically set for two weeks after a positive parole vote while the board finalizes the inmate's housing plan and contacts any victims or law enforcement agencies as required by statute.

¹ Parole's agreement to this statement of facts is intended to comply with Justice Cypher's order to use every reasonable effort to come to factual agreement, however, parole's agreement is in no way a disclaimer of any argument it intends to put forth in support of its Motion to Dismiss.

5. In its April 3, 2020 decision in *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, the SJC stated: “During normal times, the two-week delay the board states is standard might be reasonable. But these are not normal times. We urge the board to expedite release of these previously approved individuals, as well as to expedite hearings on other inmates who are eligible for parole.”
6. Since the SJC decision, the Board has reduced the two-week period to seven days.
7. According to the April 21, 2020 report of the Special Master, the parole board issued parole permits and released 127 individuals between April 3, 2020 (the date of the SJC decision) and April 17, 2020.
8. On April 24, 2020, the parole board reported to the Special Master that it had issued permits and released an additional 76 individuals between April 21, 2020 and April 24, 2020. During the same 4 day period 57 parole hearings were held resulting in 37 positive votes.
9. As of April 23, 2020, 181 individuals have received a positive parole vote but do not yet have an approved home plan. The parole board has provided CPCS with the names of these individuals so that CPCS may offer the individuals assistance with submission of home plans to expedite their release.
10. In a further effort to expedite releases, parole has provided CPCS with a list of individuals who have received a positive parole vote, but for whom the Board determined that parole permit eligibility required fulfillment of one or more preconditions, including but not limited to, completion of a program, the need for more time in lower security, lack of clearance by the district attorney under G.L. c. 123A, § 12, or a probation violation. With that list of individuals, CPCS can offer legal assistance with motions for reconsideration or take other legal action that may clear the way to release.

11. A number of individuals on the lists provided to CPCS have reserve dates prior to March 1, 2020.
12. During the period between March 19, 2020 and April 17, 2020, 358 home plans have been submitted and approved by field parole officers. Prior to the onset of the COVID-19 pandemic, an average of 282 home plans were approved by month.
13. The parole board has distributed a form to every individual who has received a positive vote informing the individual of CPCS's willingness to assist in developing a home plan, as well as providing contact information, so that an individual can immediately seek assistance with a home plan or other conditions of release.

Parole Hearings

14. 120 CMR 301.00(1) states "the parole hearing board conducts a parole hearing prior to the eligibility date." The parole board conducts hearings for individuals serving non-life sentence 30 to 60 days prior to parole eligibility.
15. G. L. c. 127, § 133A requires the full board to conduct a public hearing for individuals serving life sentences. Hearings for individuals serving life sentences should be conducted within 60 days before the expiration of the minimum term and may be postponed until 30 days before the expiration of the minimum term.
16. The parole board informed the SJC at the time oral argument that it had not accelerated the scheduling of parole hearings.
17. On March 19, 2020 the parole board began conducting parole hearings via teleconference utilizing Webex and other teleconferencing services. During the period of March 19, 2020 through April 17, 2020 utilizing Webex or other teleconferencing, a total of 259 hearings were conducted by the parole board across all facilities.

18. The parole board has not conducted a hearing for an individual serving a life sentence since March 10, 2020 due to public health concerns. Hearings for individuals serving a life sentence are required to be open to the public, allow victims to be heard if they so choose and be before the full board.
19. In some circumstances, including when the individual has been sentenced to a house of correction sentence and immediately becomes parole eligible, a motion to revise or revoke has been granted or an individual has received double good time credit, the parole board has not been able to hold parole hearings before the prisoners' parole eligibility date.
20. As of April 1, 2020, the parole board has issued expedited release decisions for nearly all individuals serving a life sentence who received a positive parole vote. The parole board has not issued a decision in any lifer release decision held after November 14, 2019.

Reconsideration

21. The parole board may reconsider any decision denying parole, establishing a setback date, or making parole contingent on satisfaction of certain conditions.
22. The Board has considered and allowed reconsiderations, changes of vote, and appeals as it relates to COVID-19 for life sentence and non-life sentence cases. Between April 1, 2020 and April 17, 2020, the parole board processed 36 requests for reconsideration, 119 requests for a change of vote and 12 appeals.
23. The risk posed by COVID-19 to the health of the prisoner given that individual's specific risk factors may qualify as a grounds for reconsideration.

Early Consideration for Parole Release

24. The process and criteria for early consideration of parole release are set forth in 120 CMR § 200.10.

25. The parole board may consider advancing the parole eligibility of an inmate based on its own review of a case or review of an inmate petition. 120 CMR § 200.10(3). In response to the pandemic, the Board has been advised to consider an individual's specific risk factors for COVID-19 as grounds for early consideration.
26. The parole board reviews such petitions on an individual basis. Parole has begun considering advancing parole eligibility in cases where an inmate is not convicted of an excluded offense as set forth in Appendix A of the decision in *Committee for Public Services v. Chief Justice of the Trial Court*, SJC No. 1296.

Parole Revocations

27. There are currently individuals in custody awaiting parole revocation hearings for violations of conditions of release that do not include being charged with a new crime.

Standards for Release

28. G.L. c. 127, § 130, states parole "[p]ermits shall be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that 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."

Respectfully Submitted,

/s/ Pamela A Murphy /

Pamela A. Murphy
General Counsel,
Massachusetts Parole Board
(BBO #665721)
12 Mercer Rd.
Natick, MA 01760-2415
(508) 650-4502
Pamela.a.murphy@state.ma.us

/s/ James R. Pingeon

Elizabeth D. Matos (BBO #671505)
James R. Pingeon (BBO #541852)
Bonita P. Tenneriello (BBO #662132)
David Milton (BBO #668908)
Michael J. Horrell (BBO #690685)
Prisoners' Legal Services
50 Federal Street, 4th Floor
Boston, MA 02110
Telephone: (617) 482-2773
lmatos@plsma.org
jpingeon@plsma.org
btenneriello@plsma.org
dmilton@plsma.org
mhorrell@plsma.org

Attorneys for Plaintiffs

Dated: April 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on April 24, 2020 by email to the following addresses:

- pmoore@hembar.com
- rmcmanus@hembar.com
- varslanian@hembar.com
- nancy.white@state.ma.us
- bradley.sultan@state.ma.us
- richard.gordon@state.ma.us
- stephanie.m.caffrey@state.ma.us
- philip.silva@state.ma.us
- charles.anderson2@state.ma.us
- dina.paciello@state.ma.us
- pamela.a.murphy@state.ma.us
- robert.quinan@mass.gov
- susan.terrey4@state.ma.us
- stephen.dietrick@state.ma.us

/s/ James R. Pingeon

James R. Pingeon

