

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12926

COMMITTEE FOR PUBLIC COUNSEL SERVICES and
MASSACHUSETTS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS,
Petitioners

v.

THE CHIEF JUSTICE OF THE TRIAL COURT, et al.
Respondents

ON A RESERVATION AND REPORT BY A JUSTICE OF THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

RESPONSE TO PETITION BY THE CHIEF JUSTICE OF THE TRIAL COURT,
DEPARTMENT OF CORRECTION, PAROLE BOARD, PROBATION SERVICE,
AND THE ATTORNEY GENERAL

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INTRODUCTION

The public health implications of the ongoing COVID-19 pandemic are unprecedented. And the Chief Justice of the Trial Court, the Department of Correction (“DOC”), the Parole Board, the Probation Service (“Probation”), and the Attorney General (collectively, the “Respondents”) are committed to taking all necessary and appropriate steps to protect the health and welfare of all Massachusetts residents. To that end, the Respondents, along with other stakeholders, have developed and implemented extraordinary measures in response to the pandemic that are designed to protect everyone within the criminal justice system, as well as the public at large.

However, the situation is rapidly evolving, and the Respondents recognize that additional measures may be needed in the coming days and weeks, including with respect to the uniquely challenging circumstances faced by incarcerated persons¹ and those who work with them. The Respondents agree that this Court is uniquely situated to potentially implement measures

¹ This brief uses the term “detainee” to refer to a person held in custody on the basis of a judicial order in a criminal case other than a final judgment (i.e., sentence). It uses the term “inmate” to refer to a person held in custody on a final judgment in a criminal case.

that may afford immediate and necessary relief, and agree that exercise of this Court's superintendence authority over the lower courts under G.L. c. 211, § 3, may be appropriate in some of these circumstances.

In what follows, the Respondents first outline some of the measures that they have already put in place in response to the pandemic. See pp. 5-18 below. The Respondents then offer several principles that, in their view, should guide any relief ordered by this Court. See pp. 18-25 below. The Respondents look forward to working cooperatively with the petitioners, the Special Master, and this Court to implement measures designed to advance our common goals of protecting the public health and public safety.

STATEMENT OF THE FACTS

The Various Trial Courts' Response to COVID-19

As this Court is aware, all of the trial courts have issued new standing orders in response to this Court's orders regarding COVID-19; the details of those standing orders need not be reviewed here (they are available at <https://www.mass.gov/guides/court-system-response-to-covid-19#-court-orders>). Submitted herewith are affidavits from the Chief Justices of the Superior Court (Hon. Judith Fabricant), the District Court (Hon. Paul C. Dawley), the Boston Municipal

Court (Hon. Roberto Ronquillo, Jr.), and the Juvenile Court (Hon. Amy Nechtem), each of which sets forth additional details regarding each court's response to the COVID-19 crisis.

Each of these courts has designated motions seeking relief from confinement as a result of COVID-19 as emergency matters to be handled on an expedited basis. See Fabricant Aff. ¶ 4; Dawley Aff. ¶¶ 4, 7-9; Ronquillo Aff. ¶ 4; Nechtem Aff. ¶¶ 4-5, 8. Such motions may be heard via telephone or videoconference, and in many cases may be decided on the papers. See Fabricant Aff. ¶¶ 5, 9; Dawley Aff. ¶ 7; Ronquillo Aff. ¶ 4; Nechtem Aff. ¶ 5. When evaluating such motions, the courts are expressly considering the COVID-19 pandemic. See Fabricant Aff. ¶ 12; Dawley Aff. ¶ 11 ("I reminded judges that, in setting bail or deciding whether to detain someone pursuant to G.L. c. 276, § 58A, they should be considering the impact of the COVID-19 virus along with all of the other factors that go into making those determinations."). And each of these trial courts has put in place emergency measures designed to ensure that, even when courthouses are closed to non-emergency business--or, in the case of positive COVID-19 tests within the courthouse, closed completely--judges and clerks remain available by telephone and email to ensure that emergency matters are dealt with expeditiously. See

Fabricant Aff. ¶ 7; Dawley Aff. ¶ 10; Ronquillo Aff. ¶ 5; Nechtem Aff. ¶ 6. None of the Chief Justices is aware of any complaints of delay with respect to motions of this kind. See Fabricant Aff. ¶ 9; Dawley Aff. ¶ 12; Ronquillo Aff. ¶ 11; Nechtem ¶ 9.

From March 14, 2020 through March 26, 2020, the Superior Court conducted 20 arraignments. Fabricant Aff. ¶ 13. In this same period the Superior Court also heard approximately 100 motions seeking release from confinement, and 118 petitions for review of bail and detention orders based on dangerousness issued in the District or Boston Municipal Court. Id. ¶¶ 8, 12 & Attachment 2. Details regarding the disposition of the 100 motions seeking release are set forth in Attachment 2 to Chief Justice Fabricant's affidavit.

From March 16, 2020 through March 27, 2020, the Boston Municipal Court conducted approximately 94 new arraignments, and received approximately 53 motions seeking immediate release or to reconsider bail. Ronquillo Aff. ¶¶ 12-13.

From March 14, 2020 through March 25, 2020, the Juvenile Court conducted 15 arraignments. Nechtem Aff. ¶ 10. Of those, the youths were released in 8 cases, held on bail in 4 cases, and held as dangerous pursuant to G.L. c. 276, § 58A in 3 cases. Id. The Juvenile Court also received at least 25 petitions for bail reduction or release (information was not

immediately available from two counties), of which 10 were granted, 5 were denied, and 10 remain pending.

Id. ¶ 11.

The Probation Service's Response to COVID-19

Understanding the gravity of the COVID-19 health crisis, Probation has implemented, and is in the process of implementing, a variety of steps to reduce the risk of infection for probationers.

A. The Probation Service Has Dramatically Reduced the Need for In-Person Contact In Its Supervision Activities.

Probation has taken steps to significantly reduce the number of probationers arrested or brought into court through probation violation notices. Although Probation continues to issue notices of violation when a probationer is charged with a new criminal offense, its staff has been instructed for all other alleged violations of probation to file violation notices only when "the matter is emergency in nature or poses a clear and present danger to victims, the public, or the individual probationer." Affidavit of Commissioner of Probation Edward Dolan ¶ 10. Probation staff has been similarly instructed not to request warrants except in emergency situations, or where there exists a clear and present danger. See id.

Probation has significantly changed its supervision practices, and is currently requesting that supervised probationers only come into court to meet in emergency situations. See id. ¶ 12. Community Corrections Centers are conducting supervision meetings by phone, and will soon offer classes and at least some therapy groups remotely, but are not penalizing any probationer who is unable to access online resources. Id. ¶¶ 18-19. Indeed, if a probationer is unable to comply with any condition of probation due to the current situation, Probation will not file a violation notice, but will instead “record in the supervision notes which specific conditions cannot be complied with and the reasons therefor.” Id. ¶ 20.

Probation is continuing to fulfill its role in supporting supervisees by assisting them with accessing vital benefits such as enhanced unemployment resources as well as basic needs including health information, food, shelter, and clothing. See id. ¶¶ 12, 36.

B. The Probation Service Has Adopted Special Precautions for Those Supervision Activities that Do Require In-Person Contact.

Probation has made substantial efforts to minimize risk to probationers where a condition of probation requires in-person contact. Probation

officers and Community Corrections Centers have ceased conducting onsite drug tests, as of March 16, 2020.

Id. ¶¶ 13. Drug testing conducted by Probation's vendor, Averhealth, has continued in modified fashion to accommodate social distancing recommendations. See id. ¶¶ 13-24. Currently, at Averhealth, probationers are called to be tested during a two-hour block of time, with no greater than ten individuals in each block. Id. ¶ 14. Extra staff at each location ensure frequent cleaning of the space, and management of any line that may form. Id. Probationers may not enter if they are not feeling well, have a temperature, or have recently traveled internationally. Id. At most locations, Averhealth plans to soon introduce a feature which will allow probationers to text staff upon arrival at the facility, but wait in a car or other location until they are called in to provide a sample. Id. ¶ 16.

The Department of Correction's Response to COVID-19

Throughout the COVID-19 pandemic, the DOC has remained focused on the health and safety of its inmates and staff, and has updated its plans and procedures frequently to reflect the rapid changes in the public health situation. Affidavit of Commissioner of Correction Carol Mici ¶¶ 2, 5.

A. Every DOC Institution Is Under Capacity.

As of March 23, 2020, the DOC houses 7,916 inmates in its facilities, including 7,364 in general population; this means that the DOC is running at 73% of its operational occupancy of 10,157 general inmates. Id. ¶ 86 & Exh. 9. The occupancies of individual DOC facilities range between 31% and 95%, but none equals or exceeds full capacity. Id.

B. In accordance with CDC Guidance, the DOC Has Proactively Sought to Limit Inmates' Opportunities for In-Person Contact with DOC Staff and Outsiders, and with Each Other.

Beginning during the week of March 9, and continuing through the present, the DOC has taken steps to limit the risk of the spread of COVID-19 within its facilities. These steps have included:

- Advising staff and inmates, in accordance with Centers for Disease Control ("CDC") and Massachusetts Department of Public Health ("DPH") guidance, about ways to prevent infection, Id. ¶¶ 25-28 & Exhs. 1-5;
- Restricting transfers between correctional facilities,² id. ¶ 29;
- Instructing institution superintendents on practices to implement social distancing and reduce crowding in chow halls, gym activities, outdoor exercise periods, libraries, and classrooms, id. ¶ 31;

² In addition, the slowdown in judicial business has substantially reduced the need to transport DOC inmates to trial courts, where they might be temporarily held in lockups with exposure to prisoners from other institutions.

- Limiting the number of inmates able to be out of cells and on tiers, id.;
- Providing inmates with bar soap at no charge, id. ¶ 54, 56;
- Providing all housing units with pump containers of isopropanol-based hand sanitizer, id. ¶ 55;
- Suspending all general visits at all facilities, id. ¶ 34; and
- With the assistance of the National Guard, requiring every person who enters a DOC facility to pass an enhanced entrance screening that consists of a series of health-related questions and a temperature check (persons with a fever above 99.9 degrees Fahrenheit are not permitted to enter), id. ¶¶ 38-49 & Exh. 8.

In addition, DOC employees who have direct contact with inmates have received masks and gloves, which are being worn. Id. ¶ 30. These measures and others have implemented most of the recommendations contained in the CDC's March 23, 2020, "Interim Guidance on Management of [COVID-19] in Correctional and Detention Facilities."³ Id. ¶ 29.

C. The DOC Has Procured Extensive Hygienic Supplies for Its Inmates and Staff.

The DOC's efforts to combat the spread of COVID-19 are well-supplied. The DOC currently has on hand some 4,338 face masks, 5,000 pairs of polypropylene coveralls, 328 half-gallon containers of isopropanol-based hand sanitizers, 158,000 bars of soap, and

³ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>

nearly one million pairs of gloves. Id. ¶¶ 30, 55, 57. In addition, the DOC's Industries Division has itself produced some 2,500 individual bottles of hand sanitizer. Id. ¶ 30.

D. The DOC Has Expanded Its Medical Services In Response to COVID-19.

In addition, the DOC's contract medical provider, WellPath, has implemented multiple COVID-19 procedures and protocols within DOC facilities, including but not limited to:

- A COVID-19 screening and triage process, including screening questions and temperature checks;
- Collection of diagnostic respiratory specimens from patients;
- Identification and monitoring of patients both confirmed and unconfirmed for COVID-19;
- Tracking of all patients tested for COVID-19;
- Mask fit testing and distribution to staff;
- Education for patients and staff regarding COVID-19 mode of transmission, standard precautions, hand washing, social distancing, and housekeeping/cleaning;
- Identification of patients who are at high risk;
- Proper use of personal protective equipment; and
- Cancellation of non-essential and elective procedures for off site appointments.

Id. ¶ 32. Medical providers meet with inmates who present with symptoms consistent with a viral illness.

Id. Inmates who are symptomatic undergo a quarantine protocol, receiving meals and full medical care within their rooms. Id.

In the meantime, the DOC has continued to exercise its responsibility for petitions for medical parole, working with inmates and other stakeholders to create medical parole plans and to identify potential placements for inmates who are medically paroled. Id. ¶¶ 66-81. Medical parole, however, is limited by the availability of placements in nursing homes and other facilities. Id. ¶ 80.

The Parole Board's Response to COVID-19

The Parole Board continues to supervise parolees and hold parole hearings in most cases, with alterations of its practices to avoid aggravated risk of COVID-19 infection for parolees and prospective parolees.

Prior to any parole hearing, an institutional parole officer must conduct a "risk/needs" assessment. Affidavit of Parole Board Chair Gloriann Moroney ¶ 6. During the COVID-19 health crisis, parole officers have been instructed to conduct such assessments using alternate means, to avoid in-person conduct, including by use of videoconferencing and contactless visitation rooms. Id. Similarly, beginning on March 19, 2020, all parole hearings for inmates sentenced to state

prison for terms other than life have taken place by videoconference. Id. ¶ 8. At the Houses of Correction, no in-person parole hearings have taken place since March 23, but the Parole Board is currently in the process of resolving technological compatibility issues in order to conduct parole hearings by videoconference for these inmates. Id. ¶ 9. As of March 26, parole hearings have been taking place by videoconference at the Barnstable House of Correction. Id.

Currently, parole hearings for inmates serving life sentences have been suspended, because they are open to the public and frequently involve multiple witnesses and spectators. Id. ¶ 11. Any such hearings that must be postponed due to the COVID-19 crisis will be re-scheduled and placed on a priority list. Id.

Medical parole cases have additionally been affected by COVID-19, as the “availability of medical facilities and nursing homes capable of accepting new patients has been severely limited.” Id. ¶ 16. Tewksbury State Hospital, for example, has determined that it will not be accepting any medical parole cases during the pandemic. Id.

In response to COVID-19, the Parole Board has changed its policy regarding parole violations: Since March 16, an additional review process has been

required before an officer seeks a detainer. Id. ¶ 15. To seek a detainer, a field officer must consult with his/her supervisor, who must review the matter with the Deputy Chief of Field Services to determine if there is a safe alternative to seeking a detainer. Id.

Prisoner Re-Entry and Public Health In the Time of COVID-19

The DPH has emphatically advised that every individual in Massachusetts, whether incarcerated or not, is at risk of contracting COVID-19. See Affidavit of Deputy Secretary of the Executive Office of Health and Human Services Daniel Tsai ¶ 5. Thus, a prisoner's re-entry into society is relevant to the issues raised by the petition.

A. Re-Entry Typically Is a Thoughtful Process that Is Closely Managed to Promote a Positive Outcome for All Involved.

For DOC inmates, the process of planning for an inmate's re-entry begins one year prior to his/her release date. Mici Aff. ¶ 81A. That process addresses needs such as housing, identity documents, health care, employment plans, wrap-around resources in the community, and eligibility for benefits (e.g., VA compensation, SSI/SSDI). Id. ¶¶ 81A-82. Prior to COVID-19, the DOC released, on average, 22% of inmates to sober or residential recovery homes. Id. ¶ 84.

**B. Unplanned Re-Entries May, in Some Instances,
Exacerbate the Risks to Public Health and
the Individual's Own Well-Being.**

The public health is very much concerned with the support systems that are in place, prior to release, to address a re-entering prisoner's specific needs and risks. Tsai Aff. ¶ 6.

Many of the support systems that typically address those needs and risks are already burdened by the COVID-19 pandemic. Id. For example, the Commonwealth's homeless shelter system is at capacity, and faces challenges of staffing, potential closures, and reorganization in the face of guidelines for social distancing. Id. ¶ 7(a). Similarly, the Commonwealth's system of behavioral and mental health services, including the Department of Mental Health system and substance abuse services, is already stretched thin, with many mental health outpatient clinics lacking capacity for new intakes and largely closed to in-person visits. Id. ¶ 9(a). And, although MassHealth continues to accept new enrollments, COVID-19 has required that they be done on-line or by telephone, as walk-in enrollment is suspended. Id. ¶ 10(b). An individual's lack of health insurance would negatively interfere with his/her ability to access preventative and urgent physical health care, and would likely lead him/her to seek medical services through an emergency department.

Id. ¶ 10(a). A released individual who cannot obtain services such as these may incur additional risks to him/herself and present additional risks to the public health. Id. ¶¶ 7, 9, 10.

DISCUSSION

In responding to the COVID-19 pandemic, this Court should act both quickly and thoughtfully. It should strike a balance that serves the general public health, the general public safety, and the well-being of individual participants in the criminal justice system, while minimizing harmful unintended consequences. Accordingly, the Respondents respectfully submit that any relief ordered by this Court should be guided by the following principles.⁴

A. Any Relief Should Promote Public Health Within Correctional Institutions.

Detention and correctional institutions present unique COVID-19-related challenges due to their communal setting, the need for interaction between prisoners and staff, prisoners' relative lack of

⁴ The Respondents agree with the petitioners that a novel infectious disease such as COVID-19 within a detention or correctional facility is an event that carries potential constitutional ramifications. However, the Respondents do not understand the petitioners to be raising any constitutional claim at this time, and therefore do not discuss such issues in this filing. The Respondents do not waive any rights with respect to any such constitutional issues and are prepared to brief those issues at the Court's request.

autonomy, and other factors. Institutions should have in place policies and procedures that protect all persons present, and comport with guidance and recommendations made by experts regarding best practices for accomplishing that within the confines of a corrections setting.

Further, because the population of an institution is itself a risk factor, this Court could explore steps to reduce that population, mindful of the other principles discussed herein pertaining to the general public health and public safety, individualized review of cases, and temporary nature of relief. First, the flow of new detainees into correctional institutions should be minimized to the extent possible. Second, this Court could issue guidelines to the trial courts for certain categories of pretrial detainees who are likely to be eligible for some form of release in the present circumstances; such categories could include: (1) persons charged with low-level, non-violent offenses; and (2) those especially vulnerable to COVID-19, such as the aged and those with preexisting medical conditions. Third, the Court should explore, in conformance with and within the bounds of applicable constitutional principles, statutes, regulations, and rules, expedited relief for those serving committed sentences who are similarly vulnerable to COVID-19 infection. Such mechanisms

might include existing procedures around medical parole (G.L. c. 127, §119A) and/or educational release (G.L. c. 127, §§ 49-49A), or judicial action to expand an inmate's ability to bring a motion in court to revise, revoke, or modify his/her sentence under Massachusetts Rule of Criminal Procedure 29.

B. Any Relief Should Promote Public Health in Probation, Parole, and Pretrial Settings.

Probationers and parolees should not be required to aggravate their risk of infection in order to fulfill the conditions of their release. Thus, where feasible, during this time, conditions of probation, parole, or pretrial release requiring interactions that would violate current advisories issued by the Massachusetts Department of Public Health should be adapted to avoid the need for such interactions. Indeed, many such adaptations are already taking place. For example, mandated supervision meetings with staff at Community Corrections Centers are currently taking place by telephone, and certain therapy groups and classes will shortly be available online. See Dolan Aff. ¶¶ 17-19. Where a condition cannot be adapted to avoid in-person interactions, enforcement of the relevant condition should be suspended during the COVID-19 crisis. Id. ¶ 20. As is the current practice, probation notices and warrants for so-called "technical" violations--which

include all violations in which the probationer is not charged with a new offense, see id. ¶ 5--should only be issued "when the matter is emergency in nature or poses a clear and present danger to victims, the public, or the individual probationer." Id. ¶ 10.

C. Any Relief Should Promote The General Public Health.

Relief should be designed to minimize any harmful unintended consequences to the general public health. For example, an individual released without plans for housing and social support may not be able to engage in the social distancing, quarantine, and hygienic practices recommended by public health experts. Tsai Aff. ¶¶ 7, 9-10. Any relief ordered by this Court should be mindful of its impact on shelters, emergency rooms, and other social services. Cf. id. ¶¶ 6-10. The individual's circumstances will be relevant here.

Relatedly, any detainee released during this time should receive information about the public health, including facts about COVID-19, current prevention guidelines, and a list of resources for medical care and other needs. A detainee who has tested positive, or been deemed presumptively positive, for COVID-19 should not be released into the community without adequate provision for quarantine and medical care. And Respondents agree with petitioners that detainees eligible for release pursuant to any relief granted in

this case, but who wish to remain in the facility, should be allowed to do so. See Pet. at 26 n.44.

D. Any Relief Should Protect the General Public Safety and Support the Rights of Victims.

Ensuring the public safety is a foundational purpose of the criminal justice system, even in times of crisis. Accordingly, as discussed above, any guidance from this Court regarding release should focus on those pretrial detainees accused of non-violent offenses. Dangerous and violent individuals-- including those charged with violent offenses, such as domestic violence or sexual assault offenses, and those held as dangerous under G.L. c. 276, § 58A-- should remain incarcerated.⁵

Also integral to the public safety are the interests of crime victims, including compliance with G.L. c. 258B. Victims must be notified of the release of a detainee to the extent required by statute, and

⁵ Petitioners' suggestion that only the crimes enumerated in chapter 265 of the General Laws are violent or serious, see Pet. at 16-17, 30, is unsound. To the contrary, many serious offenses are not contained within chapter 265. These include hostage taking by a prisoner (G.L. c. 127, § 38A), arson-related offenses (G.L. c. 266, §§ 1-5A), burglary (G.L. c. 266, § 14), illegal possession of firearms and other dangerous weapons (G.L. c. 269, § 10), violation of a restraining order (G.L. c. 209A, § 7), and the creation, possession, and dissemination of child pornography (G.L. c. 272, §§ 29A-29C).

Persons adjudicated as sexually dangerous under G.L. c. 123A also should remain incarcerated.

every effort should be made to notify them as early as possible, so that they may have the opportunity to make informed decisions, plan for safety, and prepare emotionally. See G.L. c. 258B, § 3(t) (victims entitled to be informed in advance of offender's "temporary, provisional or final" release from custody). Notifications of detainee releases should also be made to local law enforcement, to ensure they are prepared to respond to any community difficulties.

E. Any Relief Should Provide Opportunities for Individualized Review.

Any relief should also create the opportunity for review of individual cases. This principle is consistent with the fundamental underpinnings of our justice system.

Prosecutors--or, where appropriate, probation officers--should be given the opportunity to object to the release of any particular detainee. And, of course, those detainees not afforded consideration under any guidelines issued by this Court should continue to have the opportunity to petition the courts for release, and those requests should be decided promptly, as is the case now. Cf. *Fabricant Aff.* ¶ 9; *Dawley Aff.* ¶ 9; *Ronquillo Aff.* ¶ 6; *Nechtem Aff.* ¶¶ 4,9. Both such processes should be conducted in an expedited fashion, with clear standards,

reflecting the time-sensitive nature of this situation.

F. Any Relief Should Provide Relief Only For the Duration Needed.

The COVID-19 crisis is temporary and, accordingly, measures to ameliorate its impact should also be temporary. Where a warrant, or a condition of probation, parole, or pretrial release, is not to be enforced during this time, such warrants or conditions should not be vacated, but rather suspended until the COVID-19 crisis abates. And, generally, any release from pretrial detention should be treated as a temporary abatement that may not necessarily continue after the COVID-19 crisis abates. With respect to inmates serving sentences, a judicial order that cuts short a sentence would be an effective commutation, raising separation of powers problems by intruding on the constitutional prerogatives and statutory authorities of the other branches of government.

Relatedly, any relief ordered by this Court should include mechanisms to keep released detainees in contact with the criminal justice system during their release, in order to facilitate an orderly return after the COVID-19 crisis abates. For example, a pretrial detainee should, prior to any release, be required to provide contact information and should receive formal notice of his/her next court date and

any conditions on release, such as “no contact” or stay-away orders. Such mechanisms will help to ensure the continuity and orderly operation of the criminal justice system both during and after the COVID-19 crisis. The provisions of G.L. c. 127, § 90A, and 103 C.M.R. § 463.00 et seq. (furlough) and G.L. c. 127, § 49 (participation of inmates in outside educational programs), although not directly applicable, may provide guidance in creating guidelines and structures on this score.

CONCLUSION

For the foregoing reasons, this Court should act in accordance with the principles described above and any agreement the parties may reach.

Respectfully submitted,

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CERTIFICATES

Pursuant to Mass. R. App. P. 16(k), I certify that this filing complies with pertinent rules of court. Specifically, I certify that this filing complies with the length limit of Mass. R. App. P. 20(a)(2)(A) by using 12-point "Courier New" font (i.e., 10 cpi) and comprising 32 pages (excepting those excluded by Mass. R. App. P. 20(a)(2)(D)).

Pursuant to Mass. R. App. P. 13(e), I further certify that this filing has been served on the following parties and their representatives by e-mail:

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