

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR
THE COMMONWEALTH

SUFFOLK, ss.

NO. SJC-12926

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

v.

CHIEF JUSTICE OF THE TRIAL COURT,
Respondent

**SUPPLEMENTAL OPPOSITION TO THE PETITIONERS' G.L. c. 211, §3 PETITION
BY THE DISTRICT ATTORNEYS FOR THE BRISTOL, CAPE & ISLANDS, ESSEX,
HAMPDEN, MIDDLE, NORFOLK, & PLYMOUTH DISTRICTS**

On March 27, 2020, the District Attorneys for the Bristol, Cape and Islands, Essex, Hampden, Middle, Norfolk, and Plymouth Districts [seven district attorneys], filed an **OPPOSITION TO THE PETITIONERS' G.L. c. 211, §3 PETITION BY THE DISTRICT ATTORNEYS FOR THE BRISTOL, CAPE & ISLANDS, ESSEX, HAMPDEN, MIDDLE, NORFOLK, & PLYMOUTH DISTRICTS** [opposition memorandum]. Additional legal authority to support its opposition memorandum, Argument C at 12-19, is found below:

Argument

On March 10, 2020, the governor declared a State of Emergency in the Commonwealth of Massachusetts to respond to COVID-19. Executive Order No. 591. In so doing, the governor invoked the powers provided to him by Chapter 639 of the Acts of 1950 and G.L. c. 17, §2A. Executive Order No. 591, paragraph 13. In 1950, in an act “relative to pandemic and disaster preparation and response in the Commonwealth”, session bill S2028, the legislature addressed the conditions, procedures and governmental powers that exist when a disaster impacts the

health, security and safety of the public during a declared state of emergency. More commonly known as the Civil Defense Act, the Legislature explicitly grants additional powers to the governor regarding the health and safety of all inmates in the Commonwealth. Acts of 1950, Chapter 639, section 7.

Specifically, Section 7 of the Civil Defense Act states,

During the effective period of so much of this act as is contingent upon the declaration of a state of emergency . . . , the governor, in addition to any other authority vested in him by law, *shall have and may exercise any and all authority over persons and property necessary or expedient for meeting said state of emergency*, which the general court in the exercise of its constitutional authority may confer upon him as supreme executive magistrate of the commonwealth and commander-in-chief of the military forces, there of . . . , the Governor *shall have and may exercise such authority relative to any or all of the following*: - - - a. *Health or Safety of inmates of all institutions.* (emphasis added).

In his declaration of a state of emergency on March 10th, the Governor invoked the powers of Section 7 and declared that he would “from time to time issue recommendations, directives, and orders as circumstances may require.” Executive Order No. 591, paragraph 13.¹

Without any statutory or constitutional support, and in contravention to the Civil Defense Act, the petitioners claim that this Court, under its G.L. c. 211, §3 emergency powers, is the appropriate governmental body with which incarcerated persons, detained either pretrial or post-conviction, may address collectively, by designated category, their conditions of incarceration

¹ Pursuant to G.L. c. 17, §2A, inserted by St.1965, c. 473, the governor’s emergency order also invoked the powers provided by legislature to the Commissioner of the Department of Public Health. Executive Order No. 591, paragraph 13. G.L. c. 17, §2A provides:

Upon declaration by the governor that an emergency exists which is detrimental to the public health, the commissioner may, with the approval of the governor and the public health council, during such period of emergency, take such action and incur such liabilities as he may deem necessary to assure the maintenance of public health and the prevention of disease.

The commissioner, with the approval of the public health council, may establish procedures to be followed during such emergency to insure the continuation of essential public health services and the enforcement of the same.

during the COVID-19 pandemic. It is not. The legislature explicitly vested such authority in the executive, not judicial, governmental branch. The petitioners' claims rest solely on the issue of whether, and in some cases where, they should be detained during the COVID-19 pandemic, not whether there is an illegality in the imposition of their individual detention orders. *Contrast Diatchenko v. District Atty. For the Suffolk Dist.*, 466 Mass. 655, 673 (2013), S.C. 471 Mass. 12 (2015)(incarcerated defendant claimed error in imposition of life without parole sentence for first-degree murder due to his status as a juvenile when it was imposed); *Commonwealth v. Perez*, 477 Mass. 677, 688 (2017), S.C. 480 Mass. 562 (2018)(incarcerated defendant claimed error in the imposition of aggregate state prison sentences for non-homicide offenses that exceeded *Diatchenko* limits); *Commonwealth v. Latraprasad*, 475 Mass. 692, 701 (2016) (departure from imposition of minimum mandatory sentences was not valid until the sentencing guidelines recommended by the sentencing commission are enacted by the Legislature). The Legislature, who has the statutory and constitutional powers to decide issues relative to the execution of detention orders outside a state of emergency, has transferred that power to the executive branch when the citizens of this Commonwealth are in a declared state of emergency.

The petitioners' requested relief from this Court violates the separation of powers. Massachusetts Declaration of Rights art. 30. The petition must be dismissed.

Conclusion

For the foregoing reasons, and those stated in its previously filed opposition memorandum, the seven district attorneys will continue to represent the Commonwealth at any individualized hearing of an aggrieved incarcerated person or probationer pursuant to the established Rules of Criminal and Appellate Procedure during this COVID-19 pandemic, but respectfully suggest the petition must be dismissed.

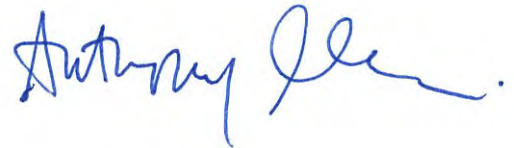
Respectfully submitted,

THOMAS M. QUINN, III
DISTRICT ATTORNEY FOR THE BRISTOL DISTRICT
218 South Main Street,
Fall River, MA 02721
Tel. (508) 821-4028
BBO NO. 553179
Thomas.m.quinn@state.ma.us

MICHAEL D. O'KEEFE
DISTRICT ATTORNEY FOR THE
CAPE AND ISLANDS DISTRICT
3231 Main Street, P.O. Box 455
Barnstable, MA 02630
Tel. (508) 362-8113
BBO NO. 378145
Michael.okeefe@state.ma.us

JONATHAN BLODGETT
DISTRICT ATTORNEY FOR THE EASTERN DISTRICT
Ten Federal Street
Salem, Massachusetts 01970
(978) 745-6610
BBO NO. 544467
Jonathan.blodgett@state.ma.us

ANTHONY D. GULLUNI
DISTRICT ATTORNEY FOR THE HAMPDEN DISTRICT
Roderick L. Ireland Courthouse, 3rd Floor
50 State Street
Springfield, MA 01102
Tel. (413) 747-1000
BBO NO. 674246
Anthony.gulluni@state.ma.us



JOSEPH D. EARLY
DISTRICT ATTORNEY FOR THE MIDDLE DISTRICT
Worcester Trial Court, Room G301
225 Main Street
Worcester, MA 01608
Tel. (508) 755-8601
BBO NO. 545809
Joseph.early@state.ma.us

MICHAEL W. MORRISSEY
DISTRICT ATTORNEY FOR THE NORFOLK DISTRICT
45 Shawmut Road
Canton, MA 02021
Tel. (781) 830-4800
BBO NO. 546756
Michael.w.morrissey@state.ma.us

TIMOTHY J. CRUZ
DISTRICT ATTORNEY FOR THE PLYMOUTH DISTRICT
166 Main Street
Brockton, MA 02301
Tel. (508) 584-8120
BBO NO. 545068
Timothy.j.cruz@state.ma.us

March 30, 2020

CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury, that I today served the within supplemental memorandum electronically to all parties on the following list:

Massachusetts Attorney General's Office:

Maura Healey, Attorney General, Maura.Healey@state.ma.us
Joanna Lydgate, Deputy Attorney General, joanna.lydgate@state.ma.us
Alicia Robello-Pradas, Chief, Policy & Government Division, Alicia.Rebello-Pradas@mass.gov
Gina Kwon, Chief, Criminal Bureau, gina.kwon@state.ma.us
Abigail Taylor, Chief, Civil Rights Division, abigail.taylor@state.ma.us
Robert Toone, Chief, Government Bureau, robert.toone@state.ma.us
Timothy Casey, Chief, Administrative Law Division, timothy.casey@state.ma.us
Randall Ravitz, Chief, Appeals Division, randall.ravitz@mass.gov

Massachusetts County Sheriff Departments:

Carrie Hill, Executive Director, Massachusetts Sheriffs' Association,
Carrie.hill@massmail.state.ma.us
Donna Buckley, General Counsel, Barnstable County Sheriff's Office,
dbuckley@bsheriff.net
Jim Cummings, Sheriff, Barnstable County Sheriff's Office, [jcummings@bsheriff.net](mailto:jcumplings@bsheriff.net)
Daniel Sheridan, General Counsel, Berkshire County Sheriff's Office,
daniel.sheridan@sdb.state.ma.us
Thomas Bowler, Sheriff, Berkshire County Sheriff's Office,
thomas.bowler@sdb.state.ma.us
Robert Novack, General Counsel, Bristol County Sheriff's Office,
robertnovack@bcso-ma.org
Thomas Hodgson, Sheriff, Bristol County Sheriff's Office, sheriff@bcso-ma.org

James Neville, Special Sheriff, House of Correction Superintendent, Dukes County Sheriff's Office, jdnville@dcsoa.org
Robert Ogden, Sheriff, Dukes County Sheriff's Office, rogden@dcsoa.org
Richard Jeffery, General Counsel, Essex County Sheriff's Office, rjeffery@essexsheriffma.org
Kevin Coppinger, Sheriff, Essex County Sheriff's Office, kcoppinger@essexsheirffma.org
Lori Streeter, House of Correction Superintendent, Franklin County Sheriff's Office, lori.streeter@fcs.state.ma.us
Chris Donelan, Sheriff, Franklin County Sheriff's Office, chris.donelan@fcs.state.ma.us; cdonelan@fcsso-ma.us
Theresa Finnegan, General Counsel, Hampden County Sheriff's Office, theresa.finnegan@sdh.state.ma.us
Katie Fitzgerald, Secretary, Hampden County Sheriff's Office, katie.fitzgerald@SDH.state.ma.us
Nicholas Cocchi, Sheriff, Hampden County Sheriff's Office, nick.cocchi@sdh.state.ma.us
Charles Maguire, Special Assistant Attorney General, Hampshire County Sheriff's Office, charles@charlesmaguire.com
Patrick Cahillane, Sheriff, Hampshire County Sheriff's Office, Patrick.Cahillane@state.ma.us
Jim Perelman, Sheriff, Nantucket County Sheriff's Office, perelman@islandsheriff.com
Amoroso Cefalo, General Counsel, Middlesex County Sheriff's Office, acefalo@sdm.state.ma.us
Peter Koutoujian, Sheriff, Middlesex County Sheriff's Office, peter.j.koutoujian@state.ma.us
Greg Casey, Chief of Staff, Norfolk County Sheriff's Office, gcasey@norfolksheriffma.org
Jerome McDermott, Sheriff, Norfolk County Sheriff's Office, jmcdermott@norfolksheriffma.org
Patrick Lee, General Counsel, Plymouth County Sheriff's Office, plee@pcsdma.org
Joe McDonald, Sheriff, Plymouth County Sheriff's Office, jmcdonald@pcsdma.org
Allen Forbes, General Counsel, Suffolk County Sheriff's Office, aforbes@scsdma.org
Steven Tompkins, Sheriff, Suffolk County Sheriff's Office, stompkins@scsdma.org
Andrew Abdella, General Counsel, Worcester County Sheriff's Office, aabdella@sdw.state.ma.us
Lewis Evangelidis, Sheriff, Worcester County Sheriff's Office, levangelidis@sdw.state.ma.us

Massachusetts Department of Correction:

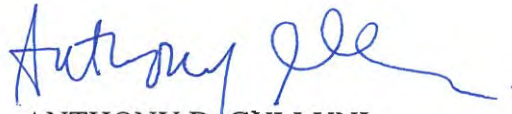
Carol Mici, Commissioner, carol.mici@doc.state.ma.us
Nancy White, General Counsel, nancy.white@doc.state.ma.us
Stephen Dietrick, Deputy General Counsel, stephen.dietrick@doc.state.ma.us
Daryl Glazer, Counsel, daryl.glazer@state.ma.us
Bradley Sultan, Counsel, bradley.sultan@state.ma.us

Massachusetts District Attorneys:

Tara Maguire, Executive Director, Massachusetts District Attorneys' Association,
Tmaguire@state.ma.us
Andrea Harrington, District Attorney, Berkshire District Attorney's Office,
andrea.harrington@state.ma.us
Thomas Quinn, District Attorney, Bristol District Attorney's Office,
Thomas.m.quinn@state.ma.us
Michael O'Keefe, District Attorney, Cape & Islands District Attorney's Office,
Michael.okeefe@state.ma.us
Jonathan Blodgett, District Attorney, Essex District Attorney's Office,
Jonathan.blodgett@state.ma.us
Anthony Gulluni, District Attorney, Hampden District Attorney's Office,
Anthony.gulluni@state.ma.us
Katherine McMahan, Chief of Appeals Division, Hampden District Attorney's
Office, kate.mcmahan@state.ma.us
Marian Ryan, District Attorney, Middlesex District Attorney's Office,
Marian.ryan@state.ma.us
David Sullivan, District Attorney, Northwestern District Attorney's Office,
David.e.sullivan2@state.ma.us
Michael Morrissey, District Attorney, Norfolk District Attorney's Office,
Michael.w.morrissey@state.ma.us
Timothy Cruz, District Attorney, Plymouth District Attorney's Office,
Timothy.j.cruz@state.ma.us
Rachel Rollins, District Attorney, Suffolk District Attorney's Office,
Rachael.rollins@state.ma.us
Joseph Early, District Attorney, Worcester District Attorney's Office,
Joseph.early@state.ma.us

Massachusetts Parole Board:

Gloriann Moroney, Chair, Massachusetts Parole Board, gloriann.moroney@mass.gov



ANTHONY D. GULLUNI
DISTRICT ATTORNEY FOR THE HAMPDEN DISTRICT
Roderick L. Ireland Courthouse, 3rd Floor
50 State Street
Springfield, MA 01102
Tel. (413) 747-1000
BBO NO. 674246
Anthony.gulluni@state.ma.us

March 30, 2020