

SUPREME JUDICIAL COURT

for the Commonwealth

Case Docket

STEPHEN FOSTER & others vs. CAROL MICI, COMMISSIONER OF THE

MASSACHUSETTS DEPARTMENT OF CORRECTION & others

SJC-12935

CASE HEADER

Case Status	Decided, Rescript issued	Status Date	06/02/2020
Nature	Nature to be determined	Entry Date	04/20/2020
Appellant	Plaintiff	Case Type	Civil
Brief Status		Brief Due	
Quorum	Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, Kafker, JJ.		
Argued Date	05/07/2020	Decision Date	06/02/2020
AC/SJ Number	SJ-2020-0212	Citation	484 Mass. 698
DAR/FAR Number		Lower Ct Number	SJ-2020-0212
Lower Court	SJC for Suffolk County	Lower Ct Judge	Elspeth B. Cypher, J.
Route to SJC	Direct Entry: Single Justice Reservation & Report		

ADDITIONAL INFORMATION

No. 2 reported at vol.484, p.1059

INVOLVED PARTY

Stephen Foster

Petitioner/Appellant

Michael Gomes

Petitioner/Appellant

Peter Kyriakides

Petitioner/Appellant

Richard O'Rourke

Petitioner/Appellant

Steven Paladino

Petitioner/Appellant

Mark Santos

Petitioner/Appellant

David Sibinich

Petitioner/Appellant

Michelle Tourigny

Petitioner/Appellant

Michael White

Petitioner/Appellant

ATTORNEY APPEARANCE

[Elizabeth D. Matos, Esquire](#)

[James R. Pingeon, Esquire](#)

[Bonita Tenneriello, Esquire](#)

[David Milton, Esquire](#)

[Michael Horrell, Esquire](#)

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Frederick Yeomans Petitioner/Appellant	David Milton, Esquire Michael Horrell, Esquire
Hendrick Davis Petitioner/Appellant	Elizabeth D. Matos, Esquire James R. Pingeon, Esquire Bonita Tenneriello, Esquire David Milton, Esquire Michael Horrell, Esquire
Carol Mici, Commissioner of the Massachusetts Department of Correction Respondent/Appellee	Elizabeth D. Matos, Esquire James R. Pingeon, Esquire Bonita Tenneriello, Esquire David Milton, Esquire Michael Horrell, Esquire
Gloriann Moroney, Chair Massachusetts Parole Board Respondent/Appellee	Nancy Ankers White, Esquire Stephen G. Dietrick, Esquire
Thomas Turco, Secretary of the Executive Office of Public Safety and Security Respondent/Appellee	Pamela Murphy, Esquire Michael R. Byrne, Esquire
Charles Baker, Governor of the Commonwealth of Massachusetts Respondent/Appellee	Stephen G. Dietrick, Esquire
Disablity Law Center Amicus Awaiting green brief	M. Patrick Moore Jr., Special A.A.G. Ryan P. McManus, Special A.A.G. Vanessa Azniv Arslanian, Special A.A.G.
District Attorney for Suffolk County Amicus Awaiting green brief	Tatum Pritchard, Esquire
Representative for the 9th Suffolk District Amicus Awaiting green brief	Rachael Splaine Rollins, District Attorney
American Civil Liberties Union of Massachusetts, Inc. Amicus Awaiting green brief	Matthew Segal, Esquire
Massachusetts Association of Criminal Defense Lawyers Amicus Awaiting green brief	Matthew Segal, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
04/20/2020	#1	Entered.
04/21/2020	#2	Class Action Complaint filed for Stephen Foster & others by Attorney Bonita P. Tenneriello & others.
04/21/2020	#3	Emergency Motion for Preliminary Injunctive Relief, filed for Stephen Foster & others by Attorney Bonita P. Tenneriello & others.
04/21/2020	#4	Memorandum in Support of Paper #3 with Exhibits, filed for Stephen Foster & others by Attorney Bonita P. Tenneriello & others.
04/21/2020	#5	Copy of Order of Designation received from Chief Justice Judith Fabricant.
04/24/2020	#6	Appearance filed for Charles Baker, Governor of the Commonwealth of Massachusetts by M. Patrick Moore, Special A.A.G., Ryan P. McManus, Special A.A.G., and Vanessa A. Arslanian, Special A.A.G..
04/24/2020	#7	MOTION TO DISMISS APPEAL filed for Charles Baker, Governor of the Commonwealth of Massachusetts by Attorney Michael P. Moore, Attorney Ryan McManus
04/24/2020	#8	MOTION TO DISMISS APPEAL filed for the Parole Board by Attorney Pamela Murphy.
04/24/2020	#9	ORDER: The Governor's memorandum in support of the motion to dismiss shall be filed by Wednesday, April 29, 2020, at 4 PM; the plaintiffs' opposition, if any, shall be filed by Monday, May 4, at 4 PM.
04/24/2020	#10	ORDER: The Parole Board's memorandum in support of the motion to dismiss shall be filed by Wednesday, April 29, 2020, at 4 PM; the plaintiffs' opposition, if any, shall be filed by Monday, May 4, at 4 PM.
04/24/2020	#11	Appearance filed for Carol Mici, Commissioner of the Massachusetts Department of Correction and Thomas Turco, Secretary of the Executive Office of Public Safety and Security by Stephen Dietrick, Deputy General Counsel.
04/24/2020	#12	Answer to Plaintiff's Class Action Complaint with Affidavits filed for Carol Mici, Commissioner of the Massachusetts Department of Correction and Thomas Turco, Secretary of the Executive Office of Public Safety and Security by Stephen Dietrick, Deputy General Counsel.
04/24/2020	#13	Proposed Statement of Agreed Facts filed for Carol Mici, Commissioner of the Massachusetts Department of Correction by Stephen Dietrick, Deputy General Counsel.

04/24/2020	#14	Statement of Agreed Facts between Plaintiffs and Department of Correction filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello & others.
04/24/2020	#15	Statement of Facts not agreed to by the Department of Correction filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello & others.
04/24/2020	#16	Stipulation as to facts agreed between the Plaintiffs and the Governor filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello & others.
04/24/2020	#17	Statement of Facts not agreed to by Governor Baker filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello & others.
04/27/2020	#18	Stipulation as to Facts agreed between the Plaintiffs and the Chairperson of the Massachusetts Parole Board, filed by Pamela Murphy, General Counsel & others.
04/29/2020	#19	Memorandum in Support of Motion to Dismiss filed for Charles Baker, Governor of the Commonwealth of Massachusetts by Ryan McManus, Special A.A.G. & others.
04/29/2020	#20	Memorandum in Support of Motion to Dismiss filed for the Massachusetts Parole Board by Pamela Murphy, General Counsel.
04/30/2020	#21	Supplemental Affidavit of Carol Mici with Exhibits filed by Attorney Stephen Dietrick.
04/30/2020	#22	Supplemental Affidavit of Jennifer Gaffney filed by Attorney Stephen Dietrick.
04/30/2020	#23	Supplemental Affidavit of Kevin Crowely filed by Attorney Stephen Dietrick.
05/01/2020	#24	Findings of Fact of the Superior Court
05/01/2020	#25	ORDER: In light of the Superior Court's factual findings and in accordance with the single justice's reservation and report, the parties shall file their briefs by Wednesday, May 6, 2020, at 5 PM. Oral argument is scheduled for Thursday, May 7, 2020, at 1 PM.
05/01/2020	#26	Appendix filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
05/04/2020		Filing fee of \$300.00 received from Massachusetts Legal Services, Inc.
05/04/2020	#27	OPPOSITION to Paper #8 filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
05/04/2020	#28	OPPOSITION to Paper #7 filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
05/06/2020	#29	Motion for leave to file reply in support of motion to dismiss filed for Charles Baker, Governor of the Commonwealth of Massachusetts by Ryan McManus, Special A.A.G..
05/06/2020	#30	Amicus brief filed for the Disability Law Center by Attorney Tatum Pritchard.
05/06/2020	#31	Appearance filed for Gloriann Moroney, Chair Massachusetts Parole Board by Attorney Michael Byrne.
05/06/2020	#32	Appellee brief filed for Carol Mici, Commissioner of the Massachusetts Department of Correction and Thomas Turco, Secretary of the Executive Office of Public Safety and Security by Attorney Stephen Dietrick.
05/06/2020	#33	Appellant brief filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
05/07/2020		Oral argument held. (Gants, C.J., Lenk, J., Gaziano, J., Lowy, J., Budd, J., Cypher, J., Kafker, J.). View Webcast 
05/07/2020	#34	Amicus Letter filed for the District Attorney for Suffolk County and the Representative for the 9th Suffolk District by Rachael Rollins, District Attorney and Jon Santiago, Representative.
05/08/2020	#35	Amicus Letter filed for American Civil Liberties Union of Massachusetts, Inc. and Massachusetts Association of Criminal Defense Lawyers by Attorney Matthew Segal.

05/08/2020 #36	<u>ORDER</u>: It is ORDERED that no later than 5:00 P.M. on May 13, the following parties are directed to submit to the court a 16(l) letter answering the following questions: <u>For the Commissioner of Correction and the Chair of the Massachusetts Parole Board</u>, (1) For each month from January 2019 through the present, what is the number of persons admitted to DOC custody and the number of persons released from DOC custody? (2) Of the number of persons released for each month in 2020, how many were released (a) because of the completion of their sentence, (b) because of the grant of a parole permit, (c) because of other reasons? (3) Of the number of person admitted for each month in 2020, what was the reason for their admission (e.g. sentenced by court, parole violation, etc.). (4) If the number of persons released was significantly lower in April 2020 than in earlier months, what were the reason(s) for the reduction? <u>For the Commissioner of Correction only</u>, (1) What is the longest period of lockdown in recent memory in any DOC facility? (2) At oral argument, it was represented that the DOC now has available approximately 10,000 COVID-19 tests and that it plans to use them in some form of testing program. What is the number of tests available at this time? When did large-scale testing become available to DOC? What is the DOC's testing plan and the timeline for implementation? Does the DOC have access to a sufficient number of tests to implement that plan? To whom would the tests be administered under the plan (e.g., inmates, correctional officers, other staff) and using what criteria (e.g., symptomatic, non-symptomatic, relevant contact with someone who tested positive, by facility, etc.) ? (3) What is the DOC plan to manage what it characterized as "hot spots"? (4) What is the percentage of DOC inmates who are 50-59 years old? What is the percentage of DOC inmates who are 60 or older? <u>For the plaintiffs</u>, (1) Was relief granted in <u>Brown v. Plata</u>, 563 U.S. 493 (2011), under 42 U.S.C. § 1983? (2) If so, what case citation or other support do you have for so finding? If not, what was the source of the relief granted? .
05/12/2020 #37	Supplemental Citation filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
05/13/2020 #38	Supplemental Citation filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
05/13/2020 #39	Supplemental Citation filed for Gloriann Moroney, Chair Massachusetts Parole Board by Attorney Michael Byrne.
05/13/2020 #40	Supplemental Citation filed for Carol Mici, Commissioner of the Massachusetts Department of Correction and Thomas Turco, Secretary of the Executive Office of Public Safety and Security by Attorney Stephen Dietrick.
05/21/2020 #41	Post-Argument Letter filed for Carol Mici, Commissioner of the Massachusetts Department of Correction and Thomas Turco, Secretary of the Executive Office of Public Safety and Security by Attorney Stephen Dietrick.
05/26/2020 #42	Supplemental Citation filed for Stephen Foster, Michael Gomes, Peter Kyriakides, Richard O'Rourke, Steven Paladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans and Hendrick Davis by Attorney Bonita Pia Tenneriello.
06/02/2020 #43	RESCRIPT (Full Opinion): The motion for a preliminary injunction is denied. The matter is transferred to the Superior Court, where litigation on the complaint shall proceed as an emergency matter, with due speed in consideration of the circumstances, before the same Superior Court judge who was designated to make findings of fact with respect to the motion for a preliminary injunction. In addition to rulings on the merits, the judge shall resolve all questions of class certification, including any amendment of the complaint or substitution of parties. (By the Court)
06/02/2020 #44	RESCRIPT (Rescript Opinion): The Governor's motion to dismiss the complaint is allowed. The parole board's motion is allowed only with respect to the claims of the individuals civilly committed under G. L. c. 123, § 35, and is otherwise denied. (By the Court)
06/02/2020	RESCRIPTS ISSUED to trial court.

As of 06/05/2020 10:20am