

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT NO. SJC-12926

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

v.

CHIEF JUSTICE OF THE TRIAL COURT & OTHERS

BRIEF OF DOMINICK DONOVAN AND OTHERS AS AMICI CURIAE
IN SUPPORT OF APPELLANTS

MAX BAUER, ESQ.
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DATED: March 27, 2020

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Statement of Interest of Amici Curiae

Amici curiae are the following criminal
defendants with pending appeals:

- Richard F. Scism, no. 2020-P-0195
- John T. Lewis, Jr., no. 2019-P-1837
- Averyk Carrasquillo, 2019-P-1492
- Isaiah Hawkins, 2019-P-1470
- Adriano B. Lima, Jr., no. 2019-P-1398
- Ainsley Laroche, no. 2019-P-1234
- Dominick Donovan, no. 2019-P-0877
- Shawn L. Hall, no. 2019-P-0734
- Dwayne McNair, no. 2019-P-0470
- Carlos Hunter, no. 2018-P-1642
- Saquer M. Darhammouda, no. 1577CR00646
- Stevie Jaiman, no. 1584CR10535
- Joseph Rego, no. 1773CR00133

Timothy W. Hayes, no. 1784CR00464

The above-named individuals represent a wide range of ages, medical conditions, stages of appellate proceedings, and charged criminal conduct. However, each individual is either currently incarcerated or has a status such that there is a foreseeable risk they will be taken into custody. Therefore, this case directly affects each individual.

Argument

Mindful of Justice Budd's admonition that "counsel shall do their best to avoid redundant arguments" (Paper #5 on SJ-2020-0115), amici will primarily rely on the arguments set forth by the Committee for Public Counsel Services.

Amici simply urge this Court to consider practical problems with any remedy that involves case-by-case advocacy requiring defense attorneys to alert law enforcement entities to the specific medical conditions of their clients. Under these extraordinary circumstances it is not practical to safely obtain client signatures for releases of medical records nor for defense attorneys to obtain and review updated records. As this Court has reminded its readers recently, remedies for systemic issues must be "fair

and workable." *Bridgeman v. Dist. Attorney for Suffolk Dist.*, 476 Mass. 298, 326 (2017).

Accordingly, amici seek a remedy that directly allows for law enforcement to efficiently obtain medical records (while respecting all privacy interests). Such a process will allow the most expeditious and safe evaluation of the medical status of each criminal defendant. Therefore, all parties will be in the best position to assess who is particularly vulnerable to the disease that might justify his or her release in the interest of public health. *see Brown v. Plata*, 563 U.S. 493, 510-11 (2011) (addressing duty and broad remedial powers of courts to ensure well-being of incarcerated individuals).

Respectfully submitted,

/s/ Max Bauer

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CERTIFICATE OF SERVICE

I, MAX BAUER, ATTORNEY FOR THE ABOVE-NAMED DEFENDANTS, HEREBY STATE THAT I HAVE SERVED A COPY OF THIS BRIEF UPON PARTIES THROUGH EFILEMA.COM AS WELL AS EMAILING PDF COPIES TO SPECIAL MASTER BRIEN O'CONNOR AND ASSISTANT CLERK AMY STEWART.

/s/ Max Bauer

MAX BAUER

**CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 16(K) OF THE
MASSACHUSETTS RULES OF APPELLATE PROCEDURE**

I, MAX BAUER, HEREBY CERTIFY THAT THE FOREGOING BRIEF
COMPLIES WITH Mass. R. A. P. 17 (c) (5).

THIS BRIEF USES THE COURIER NEW FONT, SIZE 12, AND CONTAINS
550 NON-EXCLUDED WORDS AS DETERMINED BY MICROSOFT OFFICE.

/s/ Max Bauer

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