

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2021-0408

RONALD GEDDES, AC, and RAR, EACH ON THEIR OWN BEHALF AND ON
BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS

vs.

CITY OF BOSTON; BOSTON POLICE DEPARTMENT; BOSTON PUBLIC HEALTH
COMMISSION; KIM M. JANEY, IN HER CAPACITY AS THE MAYOR OF THE
CITY OF BOSTON AND INDIVIDUALLY; GREGORY P. LONG, IN HIS
CAPACITY AS THE ACTING COMMISSIONER OF THE BOSTON POLICE
DEPARTMENT AND INDIVIDUALLY; AND BISOLA OJIKUTU, IN HER
CAPACITY AS EXECUTIVE DIRECTOR OF THE BOSTON PUBLIC HEALTH
COMMISSION AND INDIVIDUALLY

SECOND INTERIM ORDER

This matter came before me on a "verified class action
complaint" for declaratory and injunctive relief, and motions for
a temporary restraining order and a preliminary injunction
enjoining enforcement of certain portions of an October 13, 2021
executive order by the acting mayor of the city of Boston. The
plaintiffs are three named homeless individuals in the city of
Boston who assert that they are acting individually and on behalf
of all others similarly situated.

At a hearing before me on November 9, 2021, all parties
recognized the dire circumstances confronting the plaintiffs as a
group, the inability of some individuals to reside in congregate
care settings, due to medical or mental health issues, and the

significant efforts being undertaken by the Boston Public Health Commission as it attempts to provide assistance with temporary shelter and treatment for substance use disorder, and possible longer-term placements. The legal questions at issue also are complex and multi-faceted. They include interpretation of the doctrine of a status crime under the Eighth Amendment to the United States Constitution as set forth in Robinson v. California, 370 U.S. 660, 666-667 (1962), Powell v. Texas, 392 U.S. 514, 517 (1968), and Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018); whether to adopt Martin or a similar interpretation, and, if so, the meaning of "practically available"; whether art. 26 of the Massachusetts Declaration of Rights is more expansive in this area than the Eighth Amendment; and the legal significance, in New England, of prohibiting tents and temporary shelters, as opposed to prohibiting sleeping, on city property; and whether the terms of the executive order prohibit setting up any encampment within the city of Boston or only prohibit encampments that remain after the expiration of a deadline that was adequately noticed.

During the hearing, it became apparent that the parties' views of the situation on the ground at the encampments in the area known as "Mass and Cass" (near the intersection of Massachusetts Avenue and Melnea Cass Boulevard, including Atkinson and Southampton Streets), which is a particular focus of the

order, differ significantly. And, while the area of Mass and Cass is specifically targeted by the order due to the emergency situation there, the city represented that, as the plain language of the order states, the order is applicable throughout the city of Boston. It also became evident that resolution of some of the complex legal questions at issue requires a factual record that is not present at this stage of the proceedings. Such a record is best developed by a Superior Court judge.

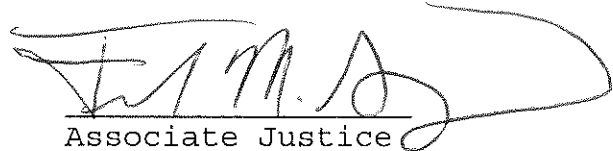
Factual questions that must be resolved in order to allow me to decide the complaint for declaratory and injunctive relief include, at a minimum: 1) the ratio of shelter beds to individuals in need of beds; 2) the current process of enforcement when beds are not available; 3) the process followed and solutions offered, if any, for individuals whose mental or physical conditions or disabilities mean that they are unable to live in congregate settings, or congregate settings would exacerbate those conditions; 4) whether there have been any arrests or threats of arrests for disorderly conduct; 5) the types of notice of removal and the timing of the notice provided; 6) the handling of the storage and disposal of property, including the amount of property offered to be stored and the process for determining what property is subject to immediate disposal; 7) eligibility requirements imposed by shelters that would make individuals ineligible to receive shelter even where empty beds might be available in those

shelters, such as restrictions on length of stay or number of days of shelter in a given time period; 8) whether the provisions of the executive order have been applied outside the Mass and Cass area; 9) the reasonable accommodations the plaintiffs are requesting; 10) the methods used and the individuals making the determination of disability or need for accommodation; 11) whether the blocks in that Mass and Cass area that have been cleared have been available for individuals who are unable to live in a congregate setting and who have not been offered a shelter placement consistent with their needs; and 12) the progress of the development or acquisition of additional units of "low threshold" housing and single-unit housing by the Boston Public Health Commission referenced in the executive order or discussed at the hearing.

Upon consideration, it is ORDERED that the matter be remanded to the Superior Court Department, Suffolk Superior Court, for purposes of issuing forthwith written findings and rulings on the factual questions noted above, as well as any other factual determinations the judge believes will be helpful in resolving the legal questions at issue, to be filed with this court, after whatever hearings the motion judge deems appropriate. The written decision, a transcript of all proceedings, and copies of any exhibits admitted into evidence shall be returned to this court no later than thirty days after the conclusion of the final hearing.

It is FURTHER ORDERED, pursuant to G. L. c. 211, § 4A, that the question of class certification, and the motions for a temporary restraining order and a preliminary injunction be transferred to the Superior Court Department, Suffolk Superior Court. Hearings and issuance of a decision on the motion for a temporary restraining order shall be conducted with due regard for the emergency nature of these proceedings, and the almost daily actions being undertaken under the auspices of the executive order in the Mass and Cass area.

By the Court, -



Associate Justice

Entered: 11-10-21