COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

No. 2016-P-0751

ANTHONY WHYTE, on behalf of himself
and all others similarly situated

Plaintiff - Appellant

v.

SUFFOLK COUNTY SHERIFF'S DEPARTMENT;
COMMONWEALTH OF MASSACHUSETTS

Defendants - Appellees

On Appeal from a Final Judgment of the
Suffolk Superior Court

PLAINTIFF-APPELLANT'S BRIEF

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STATEMENT OF ISSUES

Do the Massachusetts wage laws apply to individuals who perform work for the Suffolk County House of Correction, where those individuals (1) satisfy the statutory definition of employees when performing such work, and (2) are not inmates, because they are in civil custody for immigration purposes and are housed at the House of Correction pursuant to a contract, not pursuant to any judicial proceedings?

STATEMENT OF THE CASE

A. Relevant Facts

Plaintiff Anthony Whyte is a citizen of Jamaica and a Lawful Permanent Resident. (A.4). At the time he filed his complaint, he had been detained by U.S. Immigrations and Customs Enforcement ("ICE") since February 28, 2012, first at the Bristol County House of Correction and Jail and then at the Suffolk County House of Correction ("Suffolk County HOC"). (A.4). He is no longer detained. (A.161).

Immigration detainees are civil detainees held for immigration purposes. (A.5). They are in ICE custody for the duration of their immigration removal proceedings, and ICE contracts with facilities such as the Suffolk County HOC to house them. (A.5). Some of

the detainees, such as Mr. Whyte, have lawful immigration status in the U.S. prior to and during detention, and were engaged in lawful employment prior to detention. (A.5).

Any immigration detainee housed in the Suffolk County HOC may sign up to work, for which they are paid a wage of $1 per day. (A.5). Duties of the work details include serving food and drink, cleaning tables, sweeping, mopping, taking out garbage, doing laundry, cleaning the staff and communal bathrooms, cleaning the infirmary, barbering, shoveling snow, and buffing floors. (A.5). All detainees are responsible for cleaning their individual cells, but detainee-laborers are responsible for common areas on their assigned floor or unit, such as the recreation/day room, an adjoining multi-use room, television rooms, computer room, the medical infirmary, and staff and communal bathrooms. (A.5). The floor-buffing crew spans the entire building instead of exclusively covering the detainee-laborers' assigned unit. (A.6). In the winter, correctional officers also ask detainees to shovel snow. (A.6). Occasionally, correctional officers create additional work duties

for the detainee-laborers that facilitate the continued operation of the facility. (A.6).

Mr. Whyte and all others similarly situated operate under the control of the Suffolk County HOC. (A.6). The correctional officers on duty during a work shift oversee the time, place, and manner of the detainees' labor. (A.6). The Suffolk County Sheriff's Department controls the numerous terms and conditions of the work performed by detainee-laborers, including the following:

> (a) The Department issues and controls the list of detainees who are assigned work details and the schedules of the details. As a result, the HOC plays an active and ongoing role in determining whether and when a detainee laborer can work. The HOC has the power to deny, suspend, or terminate a detainee-laborer's work detail assignment.
>
> (b) The HOC determines the rate of pay for the detainee-laborers, which is $1.00 per day, and is responsible for paying them.
>
> (c) The HOC establishes the number and duration of daily shifts, as well as staffing needs per shift.
>
> (d) The HOC directs the standard of performance. Correctional officers inspect the detainee-laborers' work, and if the officer finds the work unsatisfactory, the detainee-laborer must redo the job until the officer approves of the result.

(A.6-7).

The Suffolk County Sheriff's Department, among other operations, operates a business as an ICE contractor housing immigration detainees. (A.7). This includes the maintenance and upkeep of the detention facilities, and the services provided by the immigration detainees are in the usual course of, and indeed are an essential part of, that business. (A.7).

Detainee-laborers receive only $1.00 per day for their work, regardless of the number of hours worked, which may range from 1 to 8 hours a day. (A.7). Detainee-laborers work seven days a week. (A.7). During the two to three days prior to a Massachusetts Department of Correction or ICE inspection, correctional officers require detainee-laborers to do significantly more cleaning than usual, often doubling the usual amount of cleaning time. (A.7). Inspections occur about two to three times a year. (A.7). Some detainees work over 40 hours a week during inspection weeks. (A.7).

At the beginning of each month, the HOC deposits each detainee-laborer's monthly earnings for the previous month into their respective accounts. (A.7). These payments are not immediately available as liquid funds due to the Department's standard delays in

issuing checks from detainee-laborers' financial accounts. (A.7).

B. Prior Proceedings

Mr. Whyte filed a complaint against the Suffolk County Sheriff's Department and the Commonwealth of Massachusetts in Superior Court on February 18, 2015, alleging violations of the Massachusetts Independent Contractor Law, G.L. 149, § 148B, the Massachusetts Minimum Fair Wage Law, G.L. 151, § 1, and the Massachusetts Payment of Wages Law, G.L. 149, § 148, as well as common law claims for breach of contract or quasi contract, or, in the alternative, *quantum meruit* or unjust enrichment. (A.1, 3-11). On May 1, 2015, the defendants filed a motion to dismiss. (A.1, 12-13). Mr. Whyte opposed the motion (A.34-133), and the defendants filed a reply to Mr. Whyte's opposition (A.134-153). The defendants also filed a motion to strike certain materials accompanying Mr. Whyte's opposition (A.154-157), and Mr. Whyte opposed that motion (A.158-160). The Superior Court held a hearing on December 7, 2015. (A.1). On December 18, 2015, Mr. Whyte filed a notice of supplemental authority, notifying the Superior Court that he had been released from custody following a ruling that his confinement

was unwarranted. (A.161-184). On or about January 8, 2016, the Superior Court allowed the defendants' motion to dismiss. (A.185-191). In short, the Superior Court held that Mr. Whyte was an "inmate" rather than an "employee," and therefore not entitled to the wage protections afforded to employees. (A.189-190). The Superior Court deemed the defendants' motion to strike to be moot and took no further action on it. (A.192). Judgment entered for the defendants on January 11, 2016. (A.193). Mr. Whyte filed a notice of appeal on February 4, 2016. (A.194-195).

ARGUMENT

A. Standard of review.

On appeal, a superior court's allowance of a motion to dismiss is reviewed de novo. *Galiastro v. Mortgage Elec. Registration Sys., Inc.*, 467 Mass. 160, 164 (2014) (citation omitted). In its review, this Court will "accept as true the facts alleged in the...complaint as well as any favorable inferences that reasonably can be drawn from them." *Id.*

B. ICE detainees who work for the Suffolk County HOC are employees entitled to a minimum wage and to timely payment of wages.

Whether ICE detainees who perform work for the Suffolk County HOC are covered by the Massachusetts

wage laws turns on two principal questions: (1) are they "employees" for purposes of those laws, and (2) do they fall within any exemptions? Based on clear and straightforward statutory language, these questions are easily answered: yes, they are employees; no, they do not fall within any exemptions.

In answering these questions, it is critical to keep in mind that the Suffolk County HOC is not holding these detainees pursuant to any state proceeding; it is holding them pursuant to a contract. That is critical, because ICE can and does contract with private companies to hold detainees, just as it contracts with the Suffolk County HOC. American Civil Liberties Union of Massachusetts, *Detention and Deportation in the Age of Ice* ("*Detention and Deportation*") (2008), at 2. (A.58). As a result, if ICE detainees who perform services for Suffolk County HOC are not protected by the Massachusetts wage laws, neither would ICE detainees who perform services for private contractors, creating a substantial risk of abusive employment practices.

First, Mr. Whyte, like all members of the proposed class, was an "employee" to the extent he performed services for the Suffolk County HOC. For

purposes of the Massachusetts wage laws, an "employee" is defined pursuant to M.G.L. c. 149, § 148B. Under that statute, an employee is "an individual performing *any* service," unless

> (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; *and*
>
> (2) the service is performed outside the usual course of the business of the employer; *and*
>
> (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

M.G.L. c. 149, § 148B(a) (emphasis added). This test is conjunctive, so an individual performing any service is an employee for purposes of the wage laws unless the defendant can prove all three prongs. *Somers v. Converged Access, Inc.*, 454 Mass. 582, 590-91 (2009). It does not matter whether an employee allegedly agreed or acknowledged - by written agreement or otherwise - that he was not an employee. *Awuah v. Coverall North America, Inc.*, 707 F. Supp. 2d 80, 83-84 (D. Mass. 2010), *citing Somers*, 454 Mass. at 591 (other citations omitted).

As alleged in the complaint, Mr. Whyte and other ICE detainees agreed to provide services for the Suffolk County HOC. Among other things, those services have included serving food and drink, cleaning tables, sweeping, mopping, taking out garbage, doing laundry, cleaning the staff and communal bathrooms, cleaning the infirmary, barbering, shoveling snow, and buffing floors. (A.5). Detainees perform this work under the supervision and control of the Suffolk County HOC, and these duties are performed within the usual course of business for the Suffolk County HOC. (A.6-7). As a result, the complaint alleges facts sufficient to establish that the detainees are employees under M.G.L. c. 149, § 148B.

In its decision, the Superior Court concluded, without citing any authority, that section 148B was "inapposite," because that statute only "serves to distinguish between employees and independent contractors." (A.190). Nothing in the text of section 148B limits its application in that way. On the contrary, the statute begins by broadly stating its applicability: "For the purpose of this chapter [chapter 149] and chapter 151, an individual performing any service, except as authorized under

this chapter, shall be considered to be an employee under those chapters unless...." M.G.L. c. 149, § 148B. There is no legal basis, therefore, for disregarding section 148B here.

Second, ICE detainees are not subject to any exemptions. Pursuant to the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, § 1, it is unlawful for any employer "to employ any person in an occupation in this commonwealth at an oppressive and unreasonable wage...." Until January 2015, when the minimum wage was increased to $9.00 per hour, the statute provided that any wage below $8.00 per hour was, by definition, "oppressive and unreasonable." *Id.*[1] The statute defines "occupation" to exempt *only* the following classes of work: "professional service, agricultural and farm work, work by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions, or work by members of religious orders," as well as some outside sales work. M.G.L. c. 151, § 2. ICE detainees do not fall into any of these exempt categories. Even

[1] As of January 2015, the minimum wage rose to $9.00 per hour and will increase by one dollar each year until January 2017, when it will become $11.00 per hour.

if they were being "rehabilitated or trained" (and they are not, either under the allegations of the complaint or in reality), they are not in a rehabilitation or training program of a "charitable, educational or religious institution."

Pursuant to the Massachusetts Payment of Wages Law, M.G.L. c. 149, § 148, wages must be paid on a timely basis. The statute identifies various exemptions, none of which apply here. M.G.L. c. 149, § 148. On the contrary, the statute specifically covers the work performed by detainees - i.e., it states that "the commonwealth, its departments, officers, boards and commissions shall so pay [i.e., shall pay weekly or bi-weekly to each employee the wages earned by him to within six days of the termination of the pay period, etc.] every mechanic, workman and laborer employed by it or them, *and every person employed in any other capacity by it or them in any penal or charitable institution.*" M.G.L. c. 149, § 148 (emphasis added).

As a result, because Mr. Whyte and other detainees fall within the statutory definition of "employee" and are not subject to any exemptions, the

complaint states claims for which relief can be granted.

C. ICE detainees are not "inmates" subject to different wage rules under Massachusetts law.

In the proceedings below, the defendants argued that Mr. Whyte was an "inmate," and therefore not subject to the wage laws, and the Superior Court agreed. (A.12, 187-190). According to the relevant statutory language, however, Mr. Whyte was not an inmate, and the authority upon which the Superior Court relied is neither binding nor persuasive here.

On a warrant from the Attorney General of the United States, immigration officers have broad powers to arrest, detain, and transport aliens without judicial authorization or time limits. 8 U.S.C. § 1226(a); 8 C.F.R. § 287.5. Pursuant to statute, these administrative powers are not subject to judicial oversight or review:

> The Attorney General's discretionary judgment regarding the application of this section [8 U.S.C. § 1226(e)] shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226(e).[2]

As noted in a study, increased enforcement activities by ICE has meant that, across the country, "new private prisons and local county jails are signing contracts with the federal government to house the [tens of thousands of] persons held in immigration detention every day." *Detention and Deportation, supra,* at 2. (A.58). Given their status, detainees fare even worse than those incarcerated for committing a crime:

> [B]ecause the immigration system is a civil system - not a criminal one - the rules and safeguards of criminal incarceration do not apply. Persons in ICE detention are called 'detainees' instead of 'inmates;' they are not entitled to a free lawyer; they are not entitled to Miranda warnings; there is no jury trial; there is no set date for release; and in many cases detained immigrants are not entitled to bail.

Id. at 3. (A.59).

Mr. Whyte, like other ICE detainees, was in ICE custody for civil proceedings. Indeed, it is well established that immigration detention is "civil, not criminal." *Zadvydas*, 533 U.S. at 690. *See also Arizona*

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[2] The United States Supreme Court has ruled, however, that Constitutional considerations may preclude excessively-long detentions. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

v. U.S., 567 U.S. ___, 132 S.Ct. 2492, 2499 (2012) ("[immigration r]emoval is a civil, not criminal, matter"). It is equally clear that ICE detainees are housed in the Suffolk County HOC not pursuant to any Massachusetts law or legal proceeding, but pursuant to a contract entered into between ICE and the HOC.[3]

Pursuant to M.G.L. c. 127, § 48A, the Commissioner of Correction "shall establish a system of compensation for *inmates* of the correctional institutions of the commonwealth[4] who perform good and satisfactory work...in the servicing and maintenance of the correctional institutions...." (Emphasis added). While that authority undeniably gives the Commissioner the power to regulate wages for "inmates," it does not apply here, because ICE detainees are not inmates.

Under Massachusetts law, an "inmate" is defined as "a committed offender or such other person as is

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[3] As discussed above, that unique status comes at a high cost to detainees, because they lack some of the basic protections afforded to those charged with or convicted of crimes.

[4] With the abolishment of county governments, "the sheriff, all deputies, jailers, superintendents, keepers, officers, assistants and other employees of the sheriff," became employees of the Commonwealth. M.G.L. c. 34B, §§ 14.

placed in custody in a correctional facility in accordance with law." M.G.L. c. 125, § 1(i). An ICE detainee plainly is not a "committed offender," which is defined as "a person convicted of a crime and committed, under sentence, to a correctional facility." M.G.L. c. 125, § 1(c). ICE detainees also are not persons "placed in custody in a correctional facility *in accordance with law*," as might be the case for pretrial detainees. *Id.* (emphasis added). As alleged in the complaint, Mr. Whyte and his fellow detainees are being detained by ICE for non-criminal proceedings. The Suffolk County HOC houses the detainees pursuant to a contract with ICE (in the same way that private prisons across the country enter into contracts with ICE), not pursuant to any custodial authority arising by operation of law.

Indeed, the use of a county house of correction to house detainees is actually *contrary* to Massachusetts law, not *in accordance* with it. The creation and uses of houses of correction are governed by a specific statute, which reads as follows:

> The county commissioners in each county, except Dukes, shall at the expense of the county provide a house or houses of correction . . . for the safe keeping, correction, government and employment of

> *offenders* legally committed thereto *by the courts and magistrates of the commonwealth or of the United States*.

M.G.L. c. 126, § 8 (emphasis added). The use of houses of correction to hold detainees exceeds the authority provided by this statute in two ways. First, Mr. Whyte, like other ICE detainees, is not an "offender," as discussed above. And, second, he has not been committed to the house of correction "by the courts and magistrates of the commonwealth or of the United States." He has, instead, been detained pursuant to an extra-judicial, administrative proceeding of ICE, and then housed in the Suffolk County HOC under contract. ICE detainees, therefore, are not being held at the Suffolk County HOC "in accordance with law."

That detainees are not inmates is further confirmed by how they are paid and otherwise treated. In terms of how they are paid, M.G.L. c. 127, § 48A, empowers the Commissioner to regulate wages for inmates in the Commonwealth. Pursuant to that express authority, the Commissioner has set minimum rates for inmates at correctional facilities. 103 CMR 405.08 (establishing minimum wage rates for inmates). These minimum rates apply to all Massachusetts correctional facilities. 103 CMR 405.04 ("103 CMR 405.00 applies to

all...inmates...of Massachusetts correctional institutions and facilities"). There is no dispute that detainees are not being paid the inmate rates set forth in that regulation, which demonstrates that they are not being recognized or treated as inmates.[5]

That detainees are not inmates is further demonstrated by the differences between, on the one hand, detailed Massachusetts regulations governing the treatment of inmates at correctional facilities, and, on the other hand, detailed federal regulations governing the treatment of ICE detainees housed at contract detention facilities. The Massachusetts

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[5] While there are additional regulations governing county correctional facilities, those regulations are silent on wage rates. The regulations, which appear at 103 CMR 944.01-944.04, require sheriffs to "develop and implement a written *inmate* work assignment plan," subject to various requirements. 103 CMR 944.01 (emphasis added). The required work assignment plans "shall provide for any incentives and/or compensation approved by the Sheriff or designee for *inmates in work programs*." 103 CMR 944.04 (emphasis added). Those regulations do not apply here given that detainees are not inmates. Moreover, that Sheriffs have regulatory authority to "provide for any incentives and/or compensation" does not mean that they have the authority to set wage rates, because that power is vested solely with the Commission pursuant to chapter 127. Finally, even if such a written plan could authorize payment of a sub-minimum wage to detaineees, the defendants have not pointed to any written plan that has been duly promulgated for the Suffolk County HOC, so they have failed to show that any such plan authorizes a sub-minimum wage.

regulations, appearing at 103 CMR 900.00-979.00, provide highly detailed rules for "inmates," including provisions for inmate records (103 CMR 918.00), inmate legal rights (103 CMR 934.00), inmate services and programs (103 CMR 936.00), inmate admission and release (103 CMR 944.00), inmate classification (103 CMR 942.00), inmate rules and discipline (103 CMR 943.00), inmate mail and communication (103 CMR 948.00), inmate visiting (103 CMR 950.00), and inmate release preparation and temporary release (103 CMR 952.00).[6] ICE, meanwhile, has a separate set of detailed standards, exceeding 400 pages, governing the treatment of ICE detainees. Performance-Based National

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[6] Likewise, it is evident from publicly-available information that the Suffolk County HOC has detailed procedures for handling its inmate population. *See* http://www.scsdma.org/facilities/hoc.shtml ("During their incarceration, inmates have the opportunity to progress from their initial classification as maximum-security inmates to minimum-security inmates as they conclude their sentence. For classification advancement, an inmate must demonstrate exemplary behavior, including adherence to institutional rules, compliance with staff orders, and active, voluntary participation in various rehabilitative programs available throughout the facility. Such programs include, six month therapeutic community, anger management classes, vocational training, English for Speakers of Other Languages (ESOL), educational courses ranging from basic literacy to general equivalency, AIDS education, and parenting skills. The programs are designed to emphasize accountability and responsibility for inmates."). (A.130).

Detention Standards 2011, available at https://www.ice.gov/detention-standards/2011 (excerpt accessed June 5, 2015). (A.131-133).[7]

Unsurprisingly, and as noted by the Superior Court (A.188), courts have held that *inmates* or *civilly committed sexually dangerous persons* are not entitled to wage protections. *See, e.g., Shea v. Spencer*, 2013 WL 6858589 (Mass. Super. Nov. 29, 2013) (inmates); *Miller v. Dukakis*, 961 F.2d 7 (1st Cir. 1992) (civilly committed sexually dangerous persons). In *Shea*, the plaintiff was indisputably an *inmate* at a state correctional facility, 2013 WL 6858589 at *1, so that case did not address the treatment of ICE detainees who are not inmates. Likewise, *Miller* involved sexual dangerous persons ("SDPs") who had committed "serious crimes" and who were held at state correctional facilities. 961 F.2d at 9. Not only did the case involve *inmates* held in state correctional facilities for criminal behavior, but Massachusetts law expressly provides that SPDs "shall be subject to all laws, rules, and regulations which govern *inmates* of the institution to which they have been

[7] Nothing in the ICE standards precludes the Suffolk County HOC from paying detainees in accordance with the Massachusetts wage laws.

committed...." *Id.* (citations omitted; emphasis added). There is no similar provision for ICE detainees.

The Superior Court also relied on cases decided under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* (A.188-189). Any such reliance is misplaced for at least two reasons. First, Massachusetts employers must comply with Massachusetts wage laws in addition to the FLSA. As the Supreme Judicial Court has recognized, the FLSA itself "makes clear that the wage and hour standards set forth in the FLSA are the floor, and that 'the FLSA does not preempt any existing state law that establishes a higher minimum wage or a shorter workweek than the federal statute.'" *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 170-71 (2000), *quoting Cosme Nieves v. Deshler*, 786 F.2d 445, 452 (1st Cir.), *cert. denied*, 479 U.S. 824 (1986). While Massachusetts courts may look to federal decisions construing parallel federal laws for guidance, federal interpretations are not binding on this Court's interpretations of a state statute. *Lopez v. Commonwealth*, 463 Mass. 696, 709 n.17 (2012).

Second, with one exception, all of the cases the Superior Court cited involved prisoners or criminal detainees, not ICE detainees. (A.189). ICE detainees, who are not inmates and who are being held pursuant to a contract with ICE, are in a materially different status than prisoners or criminal detainees, so those cases are readily distinguishable.

The one case that involved FLSA claims by immigration detainees is *Alvarado Guevara v. I.N.S.*, 902 F.2d 394 (5th Cir. 1990). That case is not binding on this Court, and it lacks persuasive value given the material differences between Massachusetts and federal law. In *Guevara*, the court concluded that immigration detainees were not covered under the FLSA because they do not fit that statute's definition of employee, and because the FLSA was intended to "protect the standard of living and general well-being of the worker in American industry." 902 F.2d at 396.

Unlike the FLSA, the Massachusetts wage laws define an "employee" through the operation of the three-prong test of M.G.L. c. 149, § 148B, and detainees who work for the Suffolk County HOC are employees under that test, as discussed above. The First Circuit Court of Appeals has expressly

recognized that Massachusetts law casts a far wider net than the FLSA with respect to defining who is an employee for wage purposes. *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 438 (1st Cir. 2016). As a result, the *Guevara* court's first rationale, which turns on the FLSA's narrower definition of employee, does not apply here.

The court's second reason - i.e., the limited reach of the FLSA - also does not apply here. Unlike what the *Guevara* court deemed as the limited purpose of the FLSA, the broad purpose of the Massachusetts Minimum Wage Law is "to correct inequities and to create a floor below which *no employer* may go in payment of wages to his employees." *Swift v. AutoZone, Inc.*, 441 Mass. 443, 448 (2004) (citation omitted; emphasis added).[8] A daily wage of only $1 is well below the floor that the Massachusetts Legislature has established.

More generally, Massachusetts courts repeatedly have recognized the broad reach of Massachusetts wage laws. Those laws must be construed "according to the

[8] That remedial purpose is so compelling that the Legislature expressly declared "null and void" any alleged agreement for a lower wage. M.G.L. c. 151, § 1.

intent of the Legislature ascertained from all the words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Depianti v. Jan-Pro Internat'l, Inc.*, 465 Mass. 607, 620 (2013) (citations and internal quotation marks omitted). In keeping with this general principle, a court should not "read into the statute a provision which the Legislature did not see fit to put there." *Commissioner of Correction v. Superior Court Dep't of Trial Court for County of Worcester*, 446 Mass. 123, 126 (2006) (citations omitted). That admonition applies with particular force to remedial statutes, like the wage laws. *Psy-Ed Corp. v. Klein*, 459 Mass. 697, 708 (2011). Indeed, it is "an error," when construing remedial statutes, to "imply [any limitations] where the statutory language does not require it." *Id.* While the Massachusetts Legislature included specific exemptions to the wage laws, it did not include any exemption even arguably applicable here. On the contrary, the payment of wages law specifically provides that the Commonwealth and its

subdivisions must follow the wage law with respect to "*every person employed in any other capacity by it or them in any penal or charitable institution.*" M.G.L. c. 149, § 148.

As a result, neither *Guevara* nor any other case provides a basis for deviating from a plain reading of the Massachusetts wage laws. Mr. Whyte and his fellow class members can state claims under the Massachusetts wage laws, because they worked as employees when performing services for the Suffolk County HOC and are not subject to any exemptions.

D. The common law counts state claims for which relief can be granted.

The Superior Court dismissed Mr. Whyte's common law claims based on its ruling that he was not entitled to the protections of the Massachusetts wage laws. (A.190). Because that ruling was incorrect, so was the dismissal of the common law claims.

It is well established that employees may assert common laws claims arising from wage-related issues. *See, e.g., Manning v. Boston Medical Ctr. Corp.*, 725 F.3d 34, 55-57 (1st Cir. 2013) (reversing trial court's dismissal of wage-related common law claims, including claims for breach of contract and unjust

enrichment, ruling that such claims preexisted and are not preempted by wage laws). Here, for example, Mr. Whyte asserts that his contract to perform services for the Suffolk County HOC had an implied term requiring the Suffolk County HOC to adhere to Massachusetts wage laws. Alternatively, if that contract were illegal and therefore unenforceable - because, for example, it had provisions that violated the Massachusetts wage laws - then Mr. Whyte would have a claim for having been deprived by the defendants of the fair value of his services (A.10), a claim that it is deeply imbedded in Massachusetts law. *See, e.g., J.A. Sullivan Corp. v. Com.*, 397 Mass. 789, 797 (1986) ("The amount of recovery on a claim based in quantum meruit is the fair and reasonable value of material and labor supplied to the benefiting party.").[9] As a result, the common law claims should not have been dismissed.

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[9] In its decision, the Superior Court stated that Mr. Whyte did not challenge the validity of his contract. (A.190). That is not a fair reading of the complaint. In Count V, and pursuant to standard pleading practice, Mr. Whyte asserted an alternative claim for *quantum meruit* or unjust enrichment "[i]f the contract fails completely." (A.10).

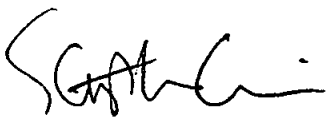
CONCLUSION

For these reasons, the Superior Court erred in entering judgment for the defendants. Accordingly, Mr. Whyte respectfully requests that the Court reverse the Superior Court's judgment and remand the case for further proceedings.

Respectfully submitted,

ANTHONY WHYTE, on behalf of himself and all others similarly situated,

By his attorneys,



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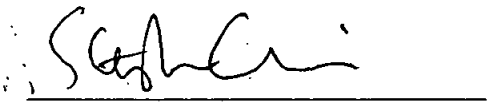
CERTIFICATION OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. App. P. 16(a)(6); Mass. R. App. P. 16(e); Mass. R. App. P. 16(f); Mass. R. App. P. 16(h); Mass. R. App. P. 18; and Mass. R. App. P. 20.

Signed under the penalties of perjury this 25th day of July, 2016.



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CERTIFICATE OF SERVICE

Pursuant to Mass. R. App. P. 13(d), plaintiff-appellant, through his counsel, hereby certifies that on July 25, 2016, two copies of this document, as well as two copies of the Record Appendix, were served, by regular mail (or electronic mail), on counsel for the defendants-appellees:

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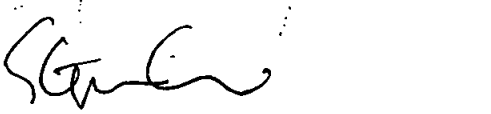

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