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 REPLY BRIEF

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ARGUMENT

The Commonwealth cannot establish that Mr. Whyte was an "inmate," so the superior court erred when dismissing the complaint for failure to state a claim.

The Suffolk County Sheriff's Department and the Commonwealth (collectively, the "Commonwealth") offer one principal argument in response to appellant Anthony Whyte's brief: because Mr. Whyte was an inmate,[1] he was not protected by the Massachusetts wage laws. That argument aims at the wrong target. Mr. Whyte did not bring his claim as an inmate or on behalf of inmates. And he does not contend that inmates – whether convicted criminals, criminal detainees, or committed sexual offenders – are employees. As a result, the many cases on which the Commonwealth relies do not help here, because this case raises a different issue.

The issue in this appeal is *whether* Mr. Whyte, a contractually-held civil detainee, was an inmate. Indeed, the "statement of issues" in Mr. Whyte's principal brief asks whether *non-inmates* are protected by the Massachusetts wage laws, not whether *inmates*

[1] "Inmates" and "prisoners" are defined in the same way, M.G.L. c. 125, § 1, so they are used interchangeably here.

are protected. (Appellant's Brief, p.1). As set forth in his brief, Mr. Whyte contends that ICE detainees being held at the Suffolk County House of Correction ("Suffolk County HOC"), under a contract rather than as the result of any judicial proceedings, are not inmates as that term is defined under Massachusetts law.

In short, the term "inmate" includes both a "committed offender[]" (which Mr. Whyte plainly was not) and "such other person as is placed in custody in a correctional facility *in accordance with law*." M.G.L. c. 125, § 1 (emphasis added). In the context of houses of correction, the term "in accordance with law" encompasses only persons who are confined pursuant to a judicial proceeding. That is made clear from the Legislature's creation of "houses of correction," which are statutorily-authorized to hold only "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). Mr. Whyte was not committed to the Suffolk County HOC by any "courts [or] magistrates," so he was not an inmate.

The Commonwealth responds by arguing that Mr. Whyte is somehow precluded from arguing that his detention was not "in accordance with law." (Appellees' Brief, pp.22-24). Tellingly, it cites no Massachusetts authority for that position. Instead, it cites to a single decision of the U.S. Supreme Court, *Heck v. Humphrey*, 512 U.S. 477 (1994).

In *Heck*, the Supreme Court addressed the narrow issue of "whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983." *Id.* at 478. The Court answered "no," holding that a person cannot recover for harm arising from an allegedly *unconstitutional* conviction or confinement *unless* that conviction or confinement has first been invalidated on direct appeal, by executive order, by an authorized state tribunal, or through issuance of a writ of habeas corpus. *Id.* at 486-87. Once a conviction or confinement has been invalidated, however, the person can pursue a claim under section 1983, seeking damages for his unconstitutional conviction or confinement. *Id.* at 487.

Mr. Whyte is not arguing that his detention by ICE (or at the Suffolk County HOC) was

unconstitutional, and he does not need to make such a showing to succeed with his claim. Instead, he is making a more basic argument that he was not an inmate as that term is defined under Massachusetts law. This is a matter of statutory construction, not an allegation of constitutional violations. Unlike a finding that an inmate's confinement is unconstitutional, a ruling that he was not an inmate would not require that he be released from ICE custody.

Significantly, *Heck* did not deprive parties of the right to bring a section 1983 claim; it simply imposed a condition on when such a claim could be brought. As a result, if the Commonwealth is relying on *Heck*, it should agree that any person being held in a house of correction whose conviction or sentence is later invalidated would be able to bring a wage claim, because the person was not being held "in accordance with law" and therefore was not an inmate. And, here, it must agree that the superior court erred, because the court was on notice when dismissing the complaint

that Mr. Whyte's confinement had been invalidated by the First Circuit.[2] (A.161-184).

As an alternative position, the Commonwealth argues that Mr. Whyte was, in fact, being held at the Suffolk County HOC "in accordance with law." (Appellees' Brief, pp.26-28). The basis for its argument is this: when the Legislature provided that houses of correction were authorized to hold offenders "committed by the courts and magistrates of the Commonwealth or of the United States," M.G.L. c. 126, § 8, the Legislature did not mean to limit a sheriff's authority; according to the Commonwealth, a sheriff could "house others as well." (Appellees' Brief, p.27). The Commonwealth provides no authority – statutory or otherwise – for that claim, and it makes no attempt to mark the limits of a sheriff's confinement authority. It defies logic and common sense to suggest that the Legislature intended to grant sheriffs such boundless power.[3] Indeed, if the

[2] The First Circuit granted Mr. Whyte's petition to vacate his removal order, ruling that he had not been convicted of a "crime of violence." *Whyte v. Lynch*, 807 F.3d 463, 465 (1st Cir. 2015).

[3] The Commonwealth's reliance on M.G.L. c. 127, § 115 (Appellees' Brief, p.27) does not help. That sheriffs have the authority to transfer "inmates" between jails

Legislature intended to do so, M.G.L. c. 126, § 8 would be superfluous, for why define one particular thing that an entity can do if it can do anything, without limit?

Beyond the fact that ICE detainees do not fit within the statutory definition of an inmate, the divide between ICE detainees and inmates is made clear by the fact that they are subject to entirely different regulations. (Appellant's Brief, pp.16-19). Perhaps most telling is that the Suffolk County HOC pays ICE detainees only $1 per day; it does not pay them the amounts that it is required to pay "inmates" pursuant to 103 CMR 405.08. Simply put, the Commonwealth cannot have it both ways: it cannot deprive detainees of wage rights on the grounds that they are inmates, but then deprive them of other rights on the basis that they are not inmates.

It is important to address two points the Commonwealth makes in an effort to garner sympathy for its position. First, although the Commonwealth asserts that it pays to house and feed ICE detainees like it does for its own inmates (Appellees' Brief, p.27),

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and houses of correction just begs the question of who is an "inmate."

there is no support in the record for that assertion. On the contrary, it is reasonable to infer that *ICE* pays those costs, pursuant to its contract with the Suffolk County HOC. Why else would the Suffolk County HOC agree to take on the expense of housing federal detainees for whom it has no responsibility under Massachusetts law?

Second, it is inaccurate for the Commonwealth to say that the Suffolk County HOC "does not operate in a marketplace." (Appellees' Brief, p.12). ICE can and does contract with private companies to house detainees, and presumably ICE enters into contracts based, at least in part, on "marketplace" factors, including cost. (Appellant's Brief, p.7).

Indeed, that ICE contracts with both public and private detention facilities underscores why the Commonwealth's reliance on the term "inmate" is so problematic here. Detainees being held at private facilities plainly would not be "inmates" under Massachusetts law, so those facilities could not avail themselves of this technical defense. That would mean that detainees who are otherwise similarly situated would have vastly different rights depending on what type of detention facility they landed in, private or

public. That is, ICE detainees in private facilities would have the right to minimum wages; ICE detainees in public facilities would not.

While there is superficial appeal to the Commonwealth's position that detainees should not enjoy the same employment rights as others, it is important to recognize the context in which these claims arise. As alleged in the complaint, ICE detainees are not required to work for the Suffolk County HOC (which is being compensated by the federal government for housing detainees), but they may sign up to work. (A.5). As a result, when detainees provide services to the Suffolk County HOC, the Suffolk County HOC is not only getting paid by ICE, but it is reaping the benefit of the detainees' labor. And when detainees do sign up to work, they are employed to perform tasks that otherwise would have to be performed by county or private workers. (A.4). This case makes a simple claim: those detainees should not have to work for "an oppressive or unreasonable wage," meaning they should be entitled to the lawful minimum wage. M.G.L. c. 151, § 1. Not only is that fair to the detainee-laborers, but it ensures that the Suffolk

County HOC does not take work away from others simply to take advantage of artificially cheap labor.

CONCLUSION

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

Respectfully submitted,

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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 12th day of October, 2016.

_____
Stephen Churchill

CERTIFICATE OF SERVICE

Pursuant to Mass. R. App. P. 13(d), plaintiff-appellant, through his counsel, hereby certifies that on October 12, 2016, two copies of this document were served, by regular mail (or electronic mail), on counsel for the defendants-appellees:

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