



criminal defense lawyers, and their members in the performance of their mission to ensure justice and due process for persons accused of crime, and; (c) obstructs Plaintiff Committee for Public Counsel Services (CPCS) from carrying out its statutory mandate to provide counsel to indigent defendants entitled to the assistance of counsel who are incarcerated at SBCC.

2. Plaintiffs' entitlement to relief arises from the facts, the federal and state constitutional entitlements to effective assistance of counsel and reasonable access to the courts, and the Defendants' policies and procedures, which violate existing regulations governing attorney visits, protected communications, and inmate possession of legal paperwork, and amount to an amendment to those existing regulations. Under the circumstances, the procedures adopted by the Defendants cannot be implemented unless and until Defendants follows the steps set forth in the Administrative Procedures Act, G. L. c. 30 (the "APA"). Because the Defendants have not followed those steps, their procedures cannot lawfully be implemented and Plaintiffs are entitled to an injunction.

### **Introduction**

3. In the aftermath of an alleged assault on a corrections officer in N-1, a north side unit at SBCC, on January 10, 2020, Plaintiffs Carl Larocque, Robert Silva-Prentice, and Tamik Kirkland, like all other inmates at SBCC, were denied attorney visits and phone calls for almost three weeks. Additionally, they were and continue to be denied access to their legal paperwork so that they could not and cannot litigate their pending criminal cases. Many inmates have described lawless and inhumane conditions during this time. Plaintiff Silva-Prentice reports that ten to twelve officers rushed his cell, and in unprovoked attacks repeatedly tased him and his cellmate, beat them, confiscated all of their legal paperwork, and denied them phone calls to their lawyers. An-

other inmate at SBCC, Dwayne Moore, reports that on or about January 20, 2020, guards came to his cell, placed him in handcuffs, punched him in the head in an unprovoked attack, took all his belongings including his legal paperwork, and moved him from his south side unit to N-1 (the north side unit where the January 10 incident occurred), and denied him attorney visits and phone calls until January 27, 2020. Other inmates report dogs biting prisoners, officers using tasers, officers wearing “plastic knuckles” on gloves, and striking and choking inmates. Tactical teams are carrying tasers, paintball guns, OC spray, and bean bag guns at all times. Inmates who see anything are threatened to keep silent.

4. Moore and Plaintiff Silva-Prentice, as well as other inmates incarcerated at SBCC, report that the north side has been converted into a “super max” prison where inmates are deprived of all property. Some reported that they were stripped of their clothing until this past weekend when they received grey jumpsuits. They are now locked in their cells for at least 23.75 hours per day, without access to programming, media, legal materials, or writing materials. One effect of this dramatic restriction on movement is that north side inmates are forced to choose in their fifteen minutes outside their cell between basic hygiene (e.g., taking a shower) and trying to contact their attorney or family by collect call. Moreover, even if they choose to try to contact their attorneys, there is no way to ensure that the attorney will be available during the single fifteen-minute window when north side inmates can access a payphone. They also cannot call their attorneys unless they have memorized the attorney’s phone number since they do not have access to their legal paperwork. These are material limitations of the constitutional right of access to counsel.

5. For approximately seventeen days after the January 10 incident, all attorney vis-

its were prohibited. Based on information and belief, all north side inmates continue to be denied contact visits with their attorneys and any writing materials or access to mail so that they can send written legal work to their attorneys. Furthermore, without their confiscated legal paperwork, they cannot send letters unless they have memorized their attorneys' addresses.

6. When north side inmates inquired about the basis for this collective punishment, correctional officers responded that it was retribution for the assault on correctional officers on January 10, 2020. As one officer put it, "If you put hands on an officer, you will all pay."

7. During the period of time when defense counsel were barred entirely, counsel for the Department of Correction (DOC) and the Executive Office of Public Safety and Security (EOPSS) provided numerous and varying reports about whether counsel would be permitted entry, and whether the visits would be non-contact.

8. Some attorneys were deterred from visiting their clients because they did not want to drive the distance to Shirley—approximately one and one-half hours one way from Boston—only to be turned away at the gate.

9. Since ending the total bar on attorney visits, the Defendants have maintained an unwritten policy of restricting visits and legal paperwork for inmates housed on the north side of SBCC. Specifically, they have refused to permit contact attorney visits or to allow inmates access to legal materials. Throughout, DOC has refused to provide any written policy regarding the bar on attorney visits or any determinations that limit attorney visits to non-contact for some inmates. None of the named inmate Plaintiffs has been charged with a crime or a disciplinary infraction as a result of the January 10 assault on correctional officers.

10. None of the inmates currently housed on the north side were involved in the January 10, 2020, incident. Rather, the north side inmates were either housed on the north side at the time of the incident, or were transferred to the north side subsequent to January 10, 2020. Those involved in January 10, 2020 incident were transferred out of SBCC by the following day.
11. Since January 27, 2020, north side inmates have only been permitted non-contact visits with their attorneys. The non-contact visits do not adequately permit attorneys to communicate, review legal paperwork, or prepare their clients' cases.
12. The actions of Defendants, first in barring all attorney meetings and then in curtailing attorney access by permitting only non-contact visits for those inmates on the north side, as well as denying meaningful access to attorney phone calls and all access to legal paperwork, are unlawful because the Sixth Amendment to the United States Constitution, applicable to the states via the Fourteenth Amendment, requires that criminal defendants be provided with a right to effective assistance of counsel and the right to meaningful access to the courts. Article 12 of the Massachusetts Declaration of Rights likewise requires effective assistance of counsel in all trial and post-conviction matters where an attorney is appointed, including the right to a confidential meeting with his or her attorney. Defendants also violated the Massachusetts Civil Rights Act by interfering with the right to counsel "by threats, intimidation, or coercion." G.L. c. 12, § 11I.
13. Plaintiffs seek, among other things, an injunction and declaratory relief as follows: (a) a preliminary and permanent injunction that prohibits the Defendants from barring attorney visits going forward; restricting visits by offering only non-contact visits, without specific and articulable facts supporting the need for such a visit, particular-

ized as to the inmate at issue; restricting access to other modes of communication between inmates and their attorney such as telephone, postal services and email; and restricting access to legal paperwork; (b) a declaration that the actions of SBCC are unconstitutional; and (c) further declaratory and injunctive relief that the acts of the Defendants targeting the inmates' rights to effective assistance of counsel and meaningful access to the courts violate the inmate Plaintiffs' rights secured by article 12 and the Sixth Amendment and their rights under the Massachusetts Civil Rights Act and should be enjoined.

#### **Parties**

14. Plaintiff Carl Larocque is an inmate currently housed at SBCC, Harvard Road, Shirley, MA 01464.
15. Plaintiff Robert Silva-Prentice is an inmate currently housed at SBCC, Harvard Road, Shirley, MA 01464.
16. Plaintiff Tamik Kirkland is an inmate currently housed at SBCC, Harvard Road, Shirley, MA 01464.
17. Plaintiff Massachusetts Association of Criminal Defense Lawyers (MACDL) is a non-profit organization whose members are licensed members of the Massachusetts Bar and whose mission is to preserve the adversary system of justice, to maintain and foster independent and able criminal defense lawyers and to ensure justice and due process for persons accused of crime, including those directly affected by the illegal conduct of the Defendants. Its principal place of business is at One Mercantile Street, Suite 740, Worcester, MA.
18. The Committee for Public Counsel Services is a state entity mandated by statute to provide counsel to indigent persons in Massachusetts who are entitled to the assis-

tance of counsel. Its principal place of business is at 44 Bromfield Street, Boston, MA.

19. Defendant Thomas Turco is Secretary of the Executive Office of Public Safety and Security of the Commonwealth of Massachusetts (EOPSS). As such, he oversees the Department of Correction and all of its programs, including SBCC. *See* G. L. c. 6A, § 18. He maintains an office at 1 Ashburton Place, Boston, MA 02108. He is sued in his individual and official capacities.

20. Defendant Carol Mici is the Commissioner of the Massachusetts Department of Correction. By statute, Defendant Mici is responsible for the administration of all correctional facilities in Massachusetts, including SBCC. *See* G.L. c. 124, § 1. She is responsible for creating and/or enforcing the violative policies that denied Plaintiffs Larocque, Silva-Prentice, and Kirkland their constitutional rights. Defendant Mici maintains an office at 50 Maple Street, Suite 3, Milford, MA 01757. She is sued in her individual and official capacities.

21. Defendant Stephen Kenneway is the Superintendent of SBCC. By statute, he is “responsible for the custody and control of all prisoners” at SBCC. G.L. c. 125, § 14. He oversees day-to-day operations at SBCC and is responsible for creating and/or enforcing the violative policies that denied the Plaintiffs their constitutional rights. Defendant Kenneway maintains an office at SBCC, Harvard Road, Shirley, MA 01464. He is sued in his individual and official capacities.

### **Factual Background**

22. In the aftermath of the alleged assault on a corrections officer at SBCC on January 10, 2020, criminal defense attorneys across the state reported that they were barred for a period of approximately seventeen days from visiting their clients at SBCC, a maximum security DOC facility in Shirley, Massachusetts. These reports include attor-

neys who were refused entry after driving from their local offices to Shirley to visit their clients, as well as lawyers who called SBCC ahead of a planned visit only to be told that they would not be permitted to visit their clients, all in violation of the Sixth Amendment right to effective assistance of counsel and meaningful access to the courts. *See Ching v. Lewis*, 895 F.2d 608, 610 (9<sup>th</sup> Cir. 1990) (“[A] prisoner’s right of access to the courts includes contact visitation with his counsel”); *Dreher v. Sielaff*, 636 F.2d 1141, 1146 (7<sup>th</sup> Cir. 1980) (“[A]n inmate’s opportunity to confer with counsel is a particularly important constitutional right which the courts will not permit to be unnecessarily abridged”); *Johnson v. Avery*, 393 U.S. 483, 485 (1969) (“[I]t is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed”).

23. Upon information and belief, all of the inmates who were directly involved in the incident were moved out the same date.

24. Attorney Timothy Murphy, a MACDL member with an office in Leominster, represents Plaintiff Larocque, who is serving a sentence at SBCC. On January 21, 2020, Attorney Murphy drove from his office in Leominster to SBCC to discuss developments in his client’s case and discuss legal strategy including whether to exercise his right of appeal within the thirty-day time period prescribed by applicable rules. While waiting to be admitted to the institution, Attorney Murphy was informed that he would not be allowed to meet with his client. On January 29, 2020, Attorney Murphy was admitted into SBCC but was permitted only a non-contact visit, which interfered with his



ability to communicate with his client.<sup>1</sup>

25. Attorney Esther Horwich, a MACDL member with an office in Brookline, represents a client held at SBCC.<sup>2</sup> On January 10, 2020, Attorney Horwich drove one hour to SBCC only to be denied entrance. Her visit was precipitated by a request from her client to discuss his case.

26. Attorney Elizabeth Matos, the Director of Prisoners Legal Services, visited with four inmates housed in SBCC's north side on January 29, 2020. All four were non-contact visits.

27. Attorney Katherine Essington, a MACDL member who is licensed in Massachusetts, has an office in Providence, Rhode Island, and represents Jose Vasquez-Ardon, who is incarcerated at SBCC. On January 15, 2020, Attorney Essington went to SBCC to discuss a time-sensitive matter with her client pertaining to his case and was denied entry. She was permitted entry on January 28, 2020, when officers told her that north side inmates were receiving only non-contact visits.

28. Attorney Lisa Newman-Polk is a MACDL member who represents a juvenile lifer with a parole matter pending.<sup>3</sup> CPCS performance standards require that she visit her client at least once a month. She was due to see him on January 17, 2020. Regular communication including visits and phone calls has been the core of her work with this client, but she was barred from performing her job functions at the same time that her client was deprived of his right to counsel.

29. Attorney Rosemary Scapicchio is a MACDL member who has an office in Bos-

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<sup>1</sup> Reports from attorneys were made to undersigned counsel for MACDL and/or CPCS and are true upon information and belief.

<sup>2</sup> Attorney Horwich is concerned about retaliation and so has not named her client.

<sup>3</sup> Attorney Newman-Polk is concerned about retaliation and so has not named her client.

ton and represents two inmates at SBCC. Her clients report that all legal materials were removed from their cells while they suffered unprovoked violent assaults. Her clients were prevented from calling her until January 27, 2020.

30. Attorney Merritt Schnipper is a MACDL member with an office in Greenfield and represents Plaintiff Kirkland who is incarcerated at SBCC. His client was prevented from using all forms of communication with Attorney Schnipper until January 27, 2020, including telephone, mail, and the Corrlinks email, all of which Attorney Schnipper has used to communicate with his client in the past.

31. Plaintiff Kirkland reported that all of his legal papers were taken from his cell and that no one has access to the law library. Mr. Kirkland also reports seeing dogs biting prisoners, officers using tasers, officers wearing “plastic knuckles” on gloves and striking inmates.

32. Attorney Schnipper states that there was an evidentiary hearing on January 28, 2020, addressing one of the significant issues raised in Mr. Kirkland’s new trial motion. Without his legal papers, Mr. Kirkland was unable to prepare for the hearing effectively between Attorney Schnipper’s last visit on January 8, 2020, and the hearing date. Moreover, Mr. Kirkland’s case is on a tight deadline for amending the new trial motion to add a new issue, so Attorney Schnipper needs Mr. Kirkland to understand the issues and goal of the amendment but without his legal paperwork, Mr. Kirkland cannot do so.

33. Attorney James Sultan is a MACDL member with an office in Boston. He was told by personnel at SBCC during a call on January 21, 2020, that he would not be permitted to see his client that day.

34. Attorney Kathryn Karczewska Ohren has an office in Boston and is a MACDL

member. She represents Plaintiff Robert Silva-Prentice, an inmate presently housed at SBCC. Attorney Karczewska Ohren called SBCC on January 21, 2020, and was told that no attorney visits would occur until Saturday, January 25, 2020. She was finally able to visit her client on January 29, 2020, but was allowed only a non-contact visit. She could not hear her client through the plexiglass, and could see him only partially. He reported that all of his legal materials were taken from him, and that he no longer has access to his trial record. Because he could not review his materials, Attorney Karczewska Ohren is unable to proceed with his appeal.

35. Attorney Chauncey Wood is a MACDL member and counsel for Dwayne Moore. On January 29, Attorney Wood met with Mr. Moore. Attorney Wood explicitly requested a contact visit, which was denied. He was granted a non-contact visit which restricted his ability to communicate with Mr. Moore.

36. Mr. Moore has been denied access to any legal materials or writing materials since January 10, and therefore has been unable to work on his pending direct appeal of his criminal conviction or communicate effectively with Attorney Wood.

37. Attorney Rebecca Jacobstein met with SBCC inmate Troy Harrigan in a non-contact visit at SBCC on January 30, 2020. The only way to get a document to an inmate during a non-contact attorney visit is to give it to a guard to bring to the inmate, which makes it difficult to discuss and leads to confidentiality problems. In this non-contact visit area, the inmates are in a room that has bars on one side. Guards could be on the other side and able to hear. Other inmates could be walking by, to and from their attorney visits, and hear what are supposed to be private conversations.

38. Mr. Harrigan told Attorney Jacobstein that, even though he was housed on the south side on January 10, 2020, his unit was locked down on that date. Inmates in that

unit were not allowed to leave their cells, even to shower, for a week and a half. On Tuesday, January 21, 2020, five officers from a tactical team came into Mr. Harrigan's cell, which was a single cell that he had earned through good behavior, stripped him to his boxers, put handcuffs on him, and took him out of his cell. A correctional officer took a shirt and put it over Mr. Harrigan's head. The officers then moved Mr. Harrigan to the north side without any of his belongings, including hygiene products, his address book, and his legal paperwork. When he requested a grievance form to complain about the denial of access to his legal paperwork, the unit CPO told Mr. Harrigan that they were not authorized to give out grievance forms per the superintendent. Mr. Harrigan was not allowed to make phone calls until Saturday, January 25, 2020. He could not write to Attorney Jacobstein because the COs refused to give him his address book and because he had not memorized Attorney Jacobstein's address. He further stated that unless you know your attorney's number by heart, you cannot call them.

39. Mr. Harrigan also reported seeing violence perpetrated against other inmates. Once he was moved to the north side, he saw officers go into a cell and beat up an inmate, choke him, and use a taser. The inmate's cellmate reported that the tactical team told him that if he said anything that they would make his bid even worse than it is now. Tactical teams are carrying tasers, paintball guns, OC spray, and bean bag guns at all times.

40. In addition to the above listed constraints on visitation, other attorney members of MACDL decided not to attempt to visit their clients at SBCC because of the policy barring visits. *See Wolff v. McDonnell*, 418 U.S. 539, 577 (1974) (considering the chilling effect on the Sixth Amendment right to counsel of a prison's mail-handling policy where the subjective beliefs of inmates that their private attorney-client communi-

cations were being read could chill the right to counsel).

41. MACDL President Victoria Kelleher communicated on numerous occasions with Daryl Glazer, Legal Counsel for the Commissioner of the DOC, and with Susan Terrey, Legal Counsel for EOPSS, which oversees DOC.

42. On January 16, 2020, Attorney Kelleher emailed and called Attorney Terrey and advised her of concerns that criminal defense lawyers were barred until further notice from visiting their clients at SBCC. The following day, January 17, 2020, Attorney Kelleher called Attorney Terrey and Attorney Glazer, reiterated that the bar was unlawful, and demanded that lawyers be permitted to visit their clients. On January 21, 2020, Attorney Kelleher again called Attorneys Terrey and Glazer regarding the bar and was told that it would be lifted and that lawyers would be permitted to visit their clients starting that day. On January 22, 2020, Attorney Kelleher again received notice that an attorney had been barred from visiting her client and called both Attorneys Terrey and Glazer and reported a lawsuit was imminent. On January 25, 2020, Attorney Kelleher received an email from Attorney Terrey asserting that contact visits with attorneys will be allowed for some inmates, and non-contact visits will continue for other inmates based on security concerns. Attorney Terrey did not provide a particular policy or identify how DOC would make such determinations.

43. Legal Counsel for DOC and EOPSS maintained that the bar on attorney contact visits was necessary to maintain security in the aftermath of the alleged assault on a corrections officer at SBCC on January 10, 2020. However, the Defendants have not produced a policy or otherwise informed the Plaintiffs of the basis for any security concerns as to each inmate.

44. The Commissioner's and/or Superintendent's policy of first barring all attorney

visits and now restricting attorney visits has impaired MACDL members' ability to provide the services they formed to provide, including preservation of the adversary system of justice, the constitutional right to the effective assistance of criminal defense counsel, due process, and justice. Thus, the organization itself is suffering irreparable on-going harm. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

45. The Commissioner's and/or Superintendent's actions have an on-going chilling effect on MACDL members insofar as some attorneys have suspended meeting with clients at SBCC due to the lack of certainty that they will be permitted entry to see their clients. The no-contact visiting policy also has a deterrent effect insofar as lawyers have been put on notice that they cannot review paperwork with their clients, and thus cannot use their time constructively to prepare their clients' cases. Moreover, the Commissioner's and/or Superintendent's policy has required MACDL members to expend considerable resources, including time spent traveling to visit clients at SBCC only to be turned away.

46. CPCS is an entity established by G. L. c. 211D, §1 to "plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services" to indigent defendants in Massachusetts. As such, CPCS is responsible for (a) assigning counsel to prisoners incarcerated at SBCC who are entitled to the assistance of counsel on their pending cases, direct appeals, and certain post-conviction and parole matters, (b) ensuring the quality of the legal assistance that is provided, and; (c) paying counsel for their services.

47. The MACDL members whose experiences are outlined above are assigned by CPCS, which has expended significant resources to have assigned counsel travel to SBCC only to be denied entry or a meaningful contact attorney visit. Moreover, when

an appointed attorney must make a trip to SBCC that they would not have otherwise had to make if Defendants were not depriving inmates of their legal paperwork and meaningful access to attorney phone calls, and when appointed attorneys must spend extra time going over paperwork because the inmate did not have access to his legal paperwork, CPCS must expend significantly more resources than would otherwise be necessary. Additionally, there are a limited number of attorneys on CPCS's post-conviction panel and the added time spent bringing paperwork for inmates to review and the extra time necessary to wait for them to review it limits CPCS' ability to assign these attorneys other cases. Therefore, CPCS has a compelling interest in these issues as they are directly connected to the ability of assigned counsel to provide representation for indigent defendants at SBCC.

48. CPCS also brings these claims on behalf of those inmates who are currently represented by assigned counsel but are not parties to this action because they are unable to assert their rights due to the conditions at SBCC. CPCS and these unnamed inmates share the same interest in being permitted meaningful contact attorney-client visits and restoring access to inmates' confiscated legal paperwork so that CPCS-assigned counsel is able to provide effective representation.

49. The policies and procedures implemented by the Defendants make it impossible as a practical matter for the inmate Plaintiffs to effectively access counsel and the courts. The Plaintiffs therefore believe that the notice and opportunity to comment mandated by the APA is required and will materially contribute to an appropriate balancing of interests.

50. In connection with the new practices described above, the Defendants have not followed the procedures contained in sections three and four of the APA.

### **Jurisdiction and Venue**

51. This Court has jurisdiction over this action pursuant to G. L. c. 231A, *et seq.*, G. L. c. 214, § 2, and G. L. c. 12, § 11I.

52. Suffolk Superior Court is a proper venue for this action because it is the usual place of business of Defendant Turco who oversees all of the other Defendants. It is also the usual place of business of Plaintiff CPCS.

### **Claims for Relief**

#### **Count I – Right to Counsel and Right of Access to the Courts**

53. The Plaintiffs reallege and incorporate all of the preceding allegations.

54. The Defendants' actions unconstitutionally impinge on the Plaintiffs Larocque, Silva-Prentice, and Kirkland's rights to effective assistance of counsel and meaningful access to the courts guaranteed by article 12 of the Massachusetts Declaration of Rights, as well as by the Sixth Amendment to the U.S. Constitution, made applicable to the states by the Fourteenth Amendment to the U.S. Constitution.

55. The Defendants have infringed, are infringing and, absent relief from this Court, will continue to infringe upon the constitutional rights of Plaintiffs Larocque, Silva-Prentice, and Kirkland to counsel and meaningful access to the courts.

56. As a result of the Defendants' actions, CPCS is unable to fulfill its statutory obligations under G. L. c. 211D.

#### **Count II – Massachusetts Civil Rights Act**

57. The Plaintiffs reallege and incorporate all of the preceding allegations.

58. The Defendants' actions violate the Plaintiffs' rights under the Massachusetts Civil Rights Act ("MCRA"), which provides a private cause of action to any person whose rights



have been interfered with or who are subject to an attempt at infringement through “threats, intimidation or coercion” by another. G. L. c. 12, § 11I.

59. The Defendants have interfered with the rights of Plaintiffs Larocque, Silva-Prentice, and Kirkland guaranteed under article 12 of the Massachusetts Declaration of Rights and the Sixth and Fourteenth Amendments of the United States Constitution to effective assistance of counsel and meaningful access to the courts by, among other things, undertaking the following acts through threats, intimidation, or coercion:

- a. Barring attorneys from meeting with their clients; and
- b. Permitting only non-contact visits between attorneys and their clients without demonstrating any individualized need;
- c. Denying inmates the ability to call their attorneys on the telephone, write or send mail to their attorneys, or otherwise communicate through the Corrlinks email system or postal system; and
- d. Denying inmates access to their legal paperwork.

### **Count III - Violation of Existing Regulations**

60. The Plaintiffs reallege and incorporate all of the preceding allegations.

61. Subjecting inmate Plaintiffs and their attorneys to non-contact visits without any individualized need violates the Defendants’ regulations, in particular 103 CMR 486.06(1).

62. Denying inmates Plaintiffs’ access to their legal property violates the Defendants’ regulations, in particular 103 CMR 403.10(c), which states that “[a]n inmate may possess a maximum of one cubic foot of legal documents containing legal material in his or her assigned living quarters.”

### **Count IV - Non-Compliance with the APA**

63. The Plaintiffs reallege and incorporate all of the preceding allegations.

64. Subjecting inmate Plaintiffs and their attorneys to non-contact visits is not authorized by the Defendants' existing regulations.

65. Subjecting inmate Plaintiffs and their attorneys to non-contact visits, as well as other restrictions on communication and paperwork, amounts to an amendment of Defendants' existing regulations.

66. In order to implement a procedure pursuant to which inmate Plaintiffs and their attorneys are lawfully subjected to non-contact visits, the Defendants must amend applicable regulations following the procedures set forth in the APA.

67. As a direct and proximate result of the violations listed in Counts 1-4, Plaintiffs Larocque, Silva-Prentice, and Kirkland have suffered and are suffering actual harm, including, but not limited to, denial of their constitutionally based rights to counsel and access to the courts, and mental and emotional distress.

68. As a direct and proximate result of the violations listed in Counts 1-4, attorney members of MACDL have suffered and are suffering actual harm, including but not limited to deterrence of their ability to perform essential parts of their job, and financial harm in time spent traveling to SBCC only to be turned away.

#### **Jury Trial Demand**

69. Plaintiffs request a jury trial on all causes of action so triable.

#### **Prayer for Relief**

Wherefore, the Plaintiffs respectfully ask this Honorable Court to:

70. Issue a short order of notice and, after hearing, enter a preliminary injunction prohibiting all Defendants from denying Plaintiffs' sufficient time out of their cells during business hours to make attorney phone calls and denying inmate access to legal paperwork;

71. Issue a permanent injunction prohibiting all Defendants from barring or curtailing attorney visits without adequate justification, denying inmates adequate access to phones during business hours, and denying inmate access to legal paperwork;
72. Declare that the cumulative effect of barring contact visits, denying phone access, and denying inmates access to their legal paperwork is unconstitutional in that it violates article 12 of the Massachusetts Declaration of Rights and the Sixth and Fourteenth Amendments of the United States Constitution, as well DOC regulations permitting attorney visits, codified at 103 CMR 486.06(1);
73. Declare that DOC may not use non-contact attorney visits or other restrictions on communication with attorneys except in accordance with a regulation duly promulgated pursuant to the procedures set forth in the APA;
74. Declare that DOC may not deny access to legal paperwork except in accordance with a regulation duly promulgated pursuant to the procedures set forth in the APA;
75. Find and declare that the Defendants deprived the inmate Plaintiffs of their right to effective assistance of counsel and meaningful access to the courts under article 12, as well as the Sixth Amendment;
76. Find and declare that Defendants' actions violated and continue to violate the Plaintiffs' rights under the Massachusetts Civil Rights Act;
77. Award Plaintiffs' attorneys their reasonable attorneys' fees and costs; and
78. Award such other and further relief as the Court deems proper, just, and equitable.

Respectfully Submitted on Behalf of the Plaintiffs,

Victoria Kelleher, BBO# 637908  
MACDL President  
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Rebecca Jacobstein  
Rebecca Jacobstein, BBO# 651048  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, MA 02108

**Verification of Complaint as to Massachusetts Association of Criminal Defense Lawyers**

I, Victoria Kelleher, President of the Massachusetts Association of Criminal Defense Lawyers (MACDL), hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to the MACDL are true and correct to the best of my information and belief.

\_\_\_\_\_  
Victoria Kelleher

Date:

**Verification of Complaint as to Mr. Robert Silva-Prentice**

I, Kathryn Karczewska Ohren, counsel for Mr. Silva-Prentice, hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to Mr. Silva-Prentice are true and correct to the best of my information and belief.

\_\_\_\_\_  
Kathryn Karczewska Ohren

Date:

**Verification of Complaint as to Mr. Carl Larocque**

I, Timothy Murray, counsel for Mr. Carl Larocque, hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to Mr. Larocque are true and correct to the best of my information and belief.

\_\_\_\_\_  
Timothy Murphy

Date:

**Verification of Complaint as to Mr. Tamik Kirkland**

I, Merritt Schnipper, counsel for Mr. Tamik Kirkland, hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to Mr. Kirkland are true and correct to the best of my information and belief.

Merritt Schnipper (KAT)  
Merritt Schnipper

Date: 1/31/20

**Verification of Complaint as to Committee for Public Counsel Services**

I, Rebecca Jacobstein, Director of Strategic Litigation for CPCS, hereby affirm under the pains and penalties of perjury that the allegations in the Complaint that relate to CPCS and Troy Harrigan are true and correct to the best of my information and belief.

RA Jacobstein

Rebecca Jacobstein

Date: 1/31/20