

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2017-347

COMMITTEE FOR PUBLIC COUNSEL SERVICES & others

v.

ATTORNEY GENERAL of MASSACHUSETTS & others

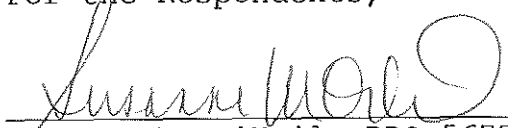
RESPONDENTS' STATUS REPORT ON REVIEW OF CASES TO  
IDENTIFY INMATES ENTITLED TO RELIEF

In response to the Court's decision of October 11, 2018, ordering the vacatur and dismissal of additional classes of G.L. c. 94C cases that were analyzed at the Amherst Laboratory, the Respondents have taken steps to identify inmates who may be entitled to relief and modification of their sentence. This Report incorporates the attached statements of the Respondent District Attorneys' Offices<sup>1</sup> setting forth the steps taken to identify potentially impacted incarcerated individuals and the status of those efforts, if not yet complete.

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<sup>1</sup> The Status Report from the Office of the Bristol District Attorney will be sent under separate cover.

Respectfully submitted  
For the Respondents,

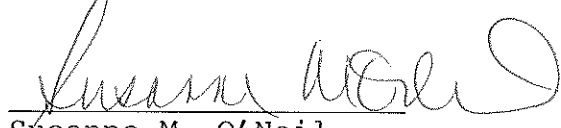


Susanne M. O'Neil, BBO 567769  
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for the Norfolk District Attorney  
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CERTIFICATE OF SERVICE

I, Susanne M. O'Neil, do hereby certify that I have mailed the enclosed Omnibus Status Report to the Court and sent the same by electronic mail to Judd Carhart, J. (ret.), Special Master, and Eric Wetzel, First Assistant Clerk, and counsel for the parties on this 14<sup>th</sup> day of December 2018:

Matthew Segal, Esq., ACLU  
Rebecca Jacobstein, Esq., CPCS  
Thomas Caldwell, Assistant Attorney General  
Joseph Pieropan, Assistant District Attorney  
Patrick Bomberg, Assistant District Attorney  
Robert Kidd, Assistant District Attorney  
Shoshana Stern, Assistant District Attorney  
Elizabeth Sweeney, Assistant District Attorney  
Michael Donovan, Assistant District Attorney  
Catherine Semel, Assistant District Attorney  
Catherine Sullivan, Assistant District Attorney  
John Wendel, Assistant District Attorney  
Kate McMahon, Assistant District Attorney  
Sara DeSimone, Assistant District Attorney  
Tom Ralph, Assistant District Attorney  
Hallie Speight, Assistant District Attorney  
Bethany Lynch, Assistant District Attorney  
Thomas Townsend, Assistant District Attorney  
Gail McKenna, Assistant District Attorney  
Vincent DeMore, Assistant District Attorney  
Ian Leson, Assistant District Attorney  
Jane Sullivan, Assistant District Attorney

  
Susanne M. O'Neil  
Assistant District Attorney

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, ss.

NO. SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
HAMPDEN COUNTY LAWYERS FOR JUSTICE, INC.,  
HERSCHELLE REAVES, and NICOLE WESTCOTT,  
*Petitioners,*

v.

ATTORNEY GENERAL OF MASSACHUSETTS, DISTRICT ATTORNEY FOR  
BERKSHIRE COUNTY, DISTRICT ATTORNEY FOR BRISTOL COUNTY,  
DISTRICT ATTORNEY FOR THE CAPE AND THE ISLANDS, DISTRICT  
ATTORNEY FOR ESSEX COUNTY, DISTRICT ATTORNEY FOR HAMPDEN  
COUNTY, DISTRICT ATTORNEY FOR MIDDLESEX COUNTY, DISTRICT  
ATTORNEY FOR NORFOLK COUNTY, DISTRICT ATTORNEY FOR THE  
NORTHWESTERN DISTRICT, DISTRICT ATTORNEY FOR PLYMOUTH  
COUNTY, DISTRICT ATTORNEY FOR SUFFOLK COUNTY, and DISTRICT  
ATTORNEY FOR WORCESTER COUNTY,  
*Respondents.*

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BERKSHIRE DISTRICT ATTORNEY'S REPORT  
ON THE IDENTIFICATION OF INCARCERATED DEFENDANTS

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The Berkshire District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018, decision of the Supreme Judicial Court in the matter of *Committee for Public Counsel Services, et. al. v. Attorney General's Office, et. al.*, 480 Mass. 700 (2018):

1. On October 19, 2018, the Berkshire District Attorney's Office received a spreadsheet from Doug Levine, special counsel for the Executive Office of Public Safety and Security ("EOPSS"), containing a list of all inmates from all counties serving a sentence at the Department of Correction relative to any G.L. c. 94C offense, although the c. 94C may not be the inmates' governing offense.
2. The Berkshire District Attorney's Office sorted the list to include only the Superior and District Courts within its jurisdiction.
3. The sorting resulted in the names of ten (10) inmates serving narcotics-related sentences.
4. Cross-referencing the EOPSS data, the DAMION case management system used within the Berkshire District Attorney's Office, and the Board of Probation criminal records of each identified inmate, the Berkshire District Attorney's Office can now report the following:

- One (1) inmate (Docket No. 1476CR00169) had his convictions vacated and dismissed by this Court on November 13, 2018;
  - Three (3) inmates are serving sentences for convictions for offenses occurring between January 1, 2009, and January 13, 2013, but none are "Farak defendants" as defined in *Committee for Public Counsel Services, et. al. v. Attorney General's Office, et. al., supra*, because the narcotics in these cases were not analyzed at the Amherst laboratory;
  - One (1) inmate is not a "Farak defendant" because he is serving a sentence for a conviction for an offense committed in 2015, long after the closure of the Amherst laboratory;
  - Five (5) inmates are serving lead sentences, including Manslaughter, Armed Robbery, Armed Assault, Aggravated Rape, and Mayhem, with a concurrent c. 94C sentence.
5. As a result of this review of the data provided by EOPSS, the Berkshire District Attorney's Office is not aware of any inmates currently serving a sentence of incarceration based solely on a

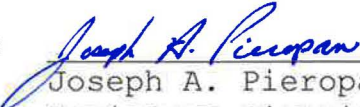
conviction, with an offense date prior to January 13, 2013, founded upon a narcotics analysis performed between January 1, 2009, and January 18, 2013, at the Amherst drug laboratory, or who was convicted as a subsequent or habitual offender based upon such an offense.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

**PAUL J. CACCAVIELLO**  
**DISTRICT ATTORNEY**  
**BERKSHIRE DISTRICT**

By:

  
\_\_\_\_\_  
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Date: December 6, 2018

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES, et. al.,

v.

ATTORNEY GENERAL OF MASSACHUSETTS, et. al.

Respondents

CAPE AND ISLANDS DISTRICT ATTORNEY'S OFFICE REPORT ON THE  
IDENTIFICATION OF INCARCERATED DEFENDANTS

The Cape and Islands District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018 decision of the Supreme Judicial Court in the matter of Committee for Public Counsel Services, et. al. v. Attorney General of Massachusetts, et.al., 480 Mass 700 (2018).

1. On October 19, 2018, the Cape and Islands District Attorney's Office received a spreadsheet from Doug Levine, special counsel for the Executive Office of Public Safety and Security ("EOPSS"), containing a list of inmates serving a sentence at the Department of Correction relative to a G.L. c. 94C offense, regardless of whether that 94C offense is the governing offense.
2. The list from EOPSS contained all inmates from all counties.
3. The Cape & Islands District Attorney's Office sorted the list to include only the courts within its jurisdiction.
4. The list was further sorted based on date of offense and disposition date to exclude cases where testing obviously occurred outside of the relevant time frame established in

CPCS et.al. v. Attorney General's Office et. al., 480 Mass. 700 (2018).

5. After sorting, the Cape & Islands was left with fourteen cases involving twelve defendants that required further review.
6. One of the twelve defendants was included on the list in error; upon review the case in question had previously been dismissed with prejudice, as it was included in the Cape & Islands "Formatted Final List" previously submitted pursuant to this litigation. This defendant is currently serving a sentence on unrelated cases.
7. As to the remaining defendants, each potentially affected case file was physically examined; in each instance the drug certificate came from a lab other than the Amherst lab; none of the eleven were "Farak Defendants" as defined in CPCS et.al. v. Attorney General's Office et. al., 480 Mass. 700 (2018).
8. As part of its review, the Cape & Islands also sorted the EOPPS list for any defendants from our jurisdiction currently serving sentences for second and subsequent 94C violations, regardless of the date of offense.
9. Through cross-referencing of that list with the DAMION case management system and/or the records of each affected inmate, it was determined that where the second and subsequent 94C charge was the governing offense, none of the predicate offenses that formed the basis for the "second and subsequent" charge were "Farak" affected cases as defined in CPCS et.al. v. Attorney General's Office et. al., 480 Mass. 700 (2018).
10. As a result, the Cape & Islands District Attorney's Office is not aware of any inmates currently serving a sentence of incarceration based solely on a conviction, with an offense date prior to January 13, 2013, founded on a narcotics analysis performed between January 1, 2009 and January 18, 2013 at the Amherst drug lab, or who was convicted as a second or subsequent offender based on such an offense.

Respectfully Submitted,

MICHAEL D. O'KEEFE  
District Attorney  
Cape & Islands District

By,

A handwritten signature in dark ink, appearing to read "Michael D. Donovan", written over a horizontal line.

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COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK

NO. SJ-2017-0347

**COMMITTEE FOR PUBLIC COUNSEL SERVICES, ET AL.**

**v.**

**ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.**

ESSEX COUNTY DISTRICT ATTORNEY'S OFFICE REPORT  
ON THE IDENTIFICATION OF INCARCERATED DEFENDANTS

The Essex District Attorney's office has taken the following steps to identify defendants, incarcerated and otherwise, whose convictions may have been impacted by the October 11, 2018 decision of the Supreme Judicial Court in the above-captioned matter, 480 Mass. 700 (2018).

1. On October 19, 2018, the Essex District Attorney's Office received a spreadsheet from Doug Levine, special counsel for the Executive Office of Public Safety and Security ("EOPSS"), containing a list of inmates serving a sentence at the Department of Correction relative to G.L. c. 94C offenses, although the 94C offense may not be the governing offense.

2. The list from EOPSS contained all the inmates from all counties, including Essex.
3. An assistant district attorney from the Essex County District Attorney's office sorted the list to include only the courts, and hence defendants, within its jurisdiction.
4. The sorting resulted in the names of three hundred forty-three cases involving prosecution under G.L. c. 94C in Essex County. None of these prosecutions involved testing done by the chemists identified as having worked at the Amherst lab for the time period on or after January 1, 2009 and through January 18, 2013, as those defendants were identified in lists from the Department of Public Health previously provided to the counties.
5. Additional sorting of the October 19, 2018 list from EOPPS also reflects approximately 32 defendants currently incarcerated as a result of conviction pursuant to G.L. c. 269, § 10G, i.e., involving predicate and/or subsequent offenses, where a 94C offense may or may not be the governing offense. Although approximately thirteen of these Essex County prosecutions reflect that they may be based on prior convictions in other counties, none are "Farak defendants" as defined in Committee

for Public Counsel Services, et al v. Attorney General's Office, et al.,  
480 Mass. 700 (2018).

6. An assistant district attorney from our office analyzed the EOPPS data regarding those 32 incarcerated defendants by running those defendants' names through the DAMION case management system within the Essex District Attorney's office. The names were also compared to a list provided by Tom Caldwell regarding testing done at the Amherst Lab for the specific time period 2008-2012, which was provided to the District Attorneys offices on or about November 9, 2018.
7. As a result of this research, the Essex District Attorney's Office is not aware of any inmates currently serving a sentence of incarceration based solely on a conviction, with an offense date prior to January 13, 2013, founded on a narcotics analysis performed between January 1, 2009 and January 18, 2013, at the Amherst drug lab, or who was convicted as a subsequent or habitual offender based on such an offense.

Respectfully submitted,

FOR THE COMMONWEALTH,

JONATHAN W. BLODGETT  
DISTRICT ATTORNEY FOR  
THE EASTERN DISTRICT

  
CATHERINE PATRICK SULLIVAN

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Dated: December 11, 2018

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES, et al.,  
Petitioners,

v.

ATTORNEY GENERAL OF MASSACHUSETTS, et al.,  
Respondents

**HAMPDEN COUNTY DISTRICT ATTORNEY'S OFFICE REPORT  
ON THE IDENTIFICATION OF INCARCERATED DEFENDANTS**

The Hampden County District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018, decision of the Supreme Judicial Court in the matter of Committee For Public Counsel Services, et al. v. Attorney General, et al., 480 Mass. 700 (2018):

1. On October 18, 2018, the Hampden County District Attorney's Office received a spreadsheet from the Executive Office of Public Safety and Security ("EOPSS"), containing a list of inmates serving sentences with the Department of Correction ("DOC") for violations of G.L. c. 94C. This list contained the names of all inmates who had received such sentences,

though the 94C offense may not be the governing offense.

2. The list from EOPSS contained all DOC inmates from all counties.

3. The sorting and review of the list resulted in the names of 355 inmates on the list serving sentences as a result of Hampden County convictions. The Hampden County District Attorney's Office reviewed all 355 cases, either by cross-referencing the EOPSS list with the DAMION case management system used by the Hampden County District Attorney's Office and the inmates criminal records or, where necessary, by review of a court file or by means of contacting the arresting agency. As a result of this review, the Hampden County District Attorney's Office can now report the following:

- Of the 355 inmates, it was determined that 32 inmates' drug samples had been sent to the Amherst Drug Laboratory ("Amherst Lab") for analysis during the pendency of the case. Of the other samples, 311 inmates' samples were analyzed at either the State Police laboratory in Sudbury, the Worcester Drug Laboratory, or laboratories run by the federal Bureau of

Alcohol, Tobacco, and Firearms or the Drug Enforcement Administration.

- The Hampden County District Attorney's Office was unable to locate drug analysis certificates for 12 cases. A review of these 12 cases revealed that the defendants were serving sentences for other offenses in addition to a 94C violation and/or the timing of the case was such that they would not be entitled to relief under the Supreme Judicial Court's recent decision.
- A review of the 32 cases from the Amherst Lab identified seven inmates who were serving sentences solely for narcotic violations and whose arrest and/or sentence was within the established time frame and who are therefore entitled to stays of their sentences. The Hampden County District Attorney's Office has assented to stays of all seven inmates' sentences.
- Of the 32 cases from the Amherst Lab, one inmate is serving a sentence solely for narcotics violations, but his dates of arrest and sentencing are outside of the established

time frame. That defendant is currently serving a sentence solely because he defaulted after his guilty plea but prior to the imposition of his sentence, which sentence was imposed upon his re-apprehension in 2016.

- Of the remaining 24 cases, 19 inmates are serving additional sentences stemming from other charges not involving narcotic violations, which sentences necessarily preclude the defendants from obtaining relief.
- In the remaining 5 cases out of the 24 mentioned above, inmates are either serving a sentence ordered to run concurrently with a 94C Amherst Lab matter; from and after a 94C Amherst Lab matter; or concurrent with or from and after a sentence imposed upon a violation of probation in an Amherst Lab matter. The Commonwealth would not assent to a motion for a stay of these sentences or to a motion for a new trial on these remaining 5 cases.

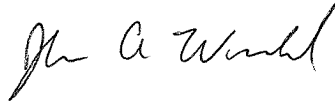
4. As a result of the above, the Hampden County District Attorney's Office is aware of only one inmate who may currently be serving a sentence of incarceration based solely on a conviction for which

the office relied upon narcotics analyzed at the Amherst Lab between January 1, 2009, and January 18, 2013.

5. In addition to the above, the Hampden County District Attorney's Office has begun to review the cases of incarcerated inmates who were charged pursuant to G. L. c. 269, § 10G, to determine whether any such inmates' predicate offenses are Amherst Lab cases and those inmates are therefore entitled to resentencing. In so reviewing, the Hampden County District Attorney's Office has presently identified 108 individuals who were charged pursuant to G. L. c. 269, § 10G, and is presently reviewing those individuals' cases to determine whether those individuals were convicted as charged and, if so, whether an Amherst Lab case in fact serves as a predicate conviction for said sentence enhancement. This review is ongoing. At this time, the Hampden County District Attorney's Office has no specific information as to any individual cases.

14 December 2018      Respectfully submitted,

THE COMMONWEALTH  
ANTHONY D. GULLUNI  
District Attorney for the  
Hampden District

A handwritten signature in black ink, appearing to read "John A. Wendel". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

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COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2017-347

COMMITTEE FOR PUBLIC COUNSEL SERVICES & others

v.

ATTORNEY GENERAL of MASSACHUSETTS & others

MIDDLESEX DISTRICT ATTORNEY'S OFFICE STATUS REPORT ON OUR REVIEW  
TO IDENTIFY INCARCERATED DEFENDANTS ENTITLED TO RELIEF

The Middlesex District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018, decision of the Supreme Judicial Court in the matter of *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700 (2018).

1. On October 19, 2018 The Middlesex District Attorney's Office received a spreadsheet from Doug Levine, special counsel for the Executive Office of Public Safety and Security ("EOPSS"), which included data to assist our office in identifying any inmate serving a G.L. c. 94C sentence based on an Amherst Laboratory drug certificate as well as inmates serving sentences based on a sentencing enhancement under G.L. c. 269, §10G. It is

our understanding that all District Attorney's Offices received such a list.

2. The list from EOPSS contained all inmates from all counties. We sorted the list for all relevant Middlesex County cases within our jurisdiction.
3. We first determined that there was no one currently incarcerated for a primary offense related to the October 11, 2018 decision of the Supreme Judicial Court in the matter of Committee for Public Counsel Services, et. al. v. Attorney General's Office, et. al., 480 Mass. 700 (2018).
4. We also examined cases where the EOPSS data showed a conviction for a subsequent offense pursuant to G.L. c. 94C as well as any conviction pursuant to G.L. c. 269, § 10G.
5. We compared the data in this subset of cases involving subsequent offenses pursuant to G.L. c. 94C and convictions pursuant to G.L. c. 269, § 10G. to one or more of the following sources of information to determine if the primary offense or a predicate offense was impacted by testing by any analyst at the Amherst Lab: testing data from the Hinton Lab from 2003 to 2012, testing data from the Amherst Lab from 2008 to January 2013, the trial

court 94C data, information on an individual defendant's court docket and CJIS criminal histories.

6. We did not identify any cases with primary or predicate offenses impacted by the Court's October 11, 2018 decision.

Respectfully submitted  
For the Commonwealth,

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DISTRICT ATTORNEY

  
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December 7, 2018

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SJ-2017-347

COMMITTEE FOR PUBLIC COUNSEL SERVICES, et al.,  
Petitioners,

v.

ATTORNEY GENERAL OF MASSACHUSETTS, et al.,  
Respondents

MIDDLE DISTRICT ATTORNEY'S OFFICE REPORT ON THE  
IDENTIFICATION OF INCARCERATED DEFENDANTS

The Middle District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018, decision of the Supreme Judicial Court in the matter of Committee for Public Counsel Services, et. al. v. Attorney General's Office, et. al., 480 Mass. 700 (2018).

1. On October 19, 2018, the Middle District Attorney's Office received a spreadsheet from Doug Levine, special counsel for the Executive Office of Public Safety and Security ("EOPSS"), containing a list of inmates serving a sentence at the Department of Correction relative to a G.L. c. 94C offense,

although the 94C offence may not be the governing offense.

2. That list contained all inmates from all counties

3. The Middle District Attorney's office sorted the list to include only the superior and district courts within its jurisdiction.

4. That sorting resulted in a list of 261 entries. The Middle District Attorney's Office also sorted the EOPSS lists for subsequent drug offenses and G.L. c. 269, § 10G, convictions, in an effort to identify subsequent or habitual offenders based on a narcotics analysis performed between January 1, 2009, and January 18, 2013, at the Amherst drug lab. The names on the sorted lists were then compared with the Amherst Lab lists which the Middle District Attorney's office received from the Attorney General's Office on November 9, 2018. That comparison resulted in a match of twenty-two (22) names. After reviewing the Worcester County court dockets and board of probation records connected with those names, it was determined that none of the cases or convictions involved or depended upon a narcotics analysis performed between

January 1, 2009, and January 18, 2013, at the Amherst  
drug lab.

Respectfully submitted,  
For the COMMONWEALTH

Joseph D. Early, Jr.,  
Middle District Attorney

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December 6, 2018



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2017-347

COMMITTEE FOR PUBLIC COUNSEL SERVICES & others

v.

ATTORNEY GENERAL of MASSACHUSETTS & others

NORFOLK DISTRICT ATTORNEY'S OFFICE STATUS REPORT ON  
REVIEW TO IDENTIFY INMATES ENTITLED TO RELIEF

The Norfolk District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018, decision of the Supreme Judicial Court in the matter of *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700 (2018).

1. On behalf of the respondent District Attorneys, I requested, through Doug Levine, special counsel, that the Executive Office of Public Safety and Security (EOPSS) provide the offices of the District Attorneys with appropriate data to assist us in identifying any inmate serving a G.L. c. 94C sentence based on an Amherst lab drug certificate. On October 19, 2018, Mr. Levine forwarded a data set inclusive of all counties and all inmates serving a sentence on a G.L. c. 94C

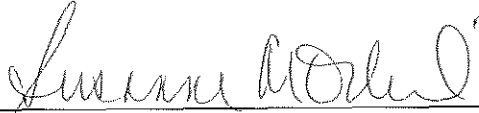
offense as well as inmates serving sentences based on a sentencing enhancement under G.L. c. 269, §10G.

2. I examined cases where the EOPSS data showed the court of conviction and docket reflected a Norfolk County case and the date of the offense was after 2004 and before 2014. For each G.L. c. 269, § 10G cases and cases with a subsequent offense conviction on the EOPSS list, I checked the Norfolk District Attorney's Office superior court file to identify the predicate offense(s).

3. I compared the data in this subset of cases to one or more of the following sources of information to determine if the primary offense or a predicate offense was impacted by testing by any analyst at the Amherst Lab: the Norfolk District Attorney's internal case management system, testing data from the Hinton Lab from 2003 to 2012, testing data from the Amherst Lab from 2008 to January 2013, testing information in the Massachusetts State Police laboratory management system, Superior Court case files, the trial court 94C data, and CJIS criminal histories.

3. I did not identify any cases with primary or predicate offenses impacted by the Court's October 11, 2018 decision.

Respectfully submitted  
For the Commonwealth

A handwritten signature in cursive script, appearing to read "Susanne M. O'Neil", written over a horizontal line.

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for the Norfolk District Attorney  
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December 7, 2018

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES, et. al.,

v.

ATTORNEY GENERAL OF MASSACHUSETTS, et. al  
Respondents.

NORTHWESTERN DISTRICT ATTORNEY'S OFFICE REPORT  
ON THE IDENTIFICATION OF INCARCERATED DEFENDANTS

The Northwestern District Attorney's Office has taken the following steps to identify incarcerated defendants whose convictions may have been impacted by the October 11, 2018, decision of the Supreme Judicial Court in the matter of Committee for Public Counsel Services, et. al. v. Attorney General's Office, et. al., 480 Mass. 700 (2018).

1. On October 19, 2018, the Northwestern District Attorney's office received a spreadsheet from Doug Levine, special counsel for the Executive Office of Public Safety and Security ("EOPSS"), containing a

list of inmates serving a sentence at the Department of Correction relative to G.L. c. 94C offense, although the 94C offense may not be the governing offense.

2. The list from EOPSS contained all inmates from all counties.

3. The Northwest District Attorney's office sorted the list to include only the superior and district courts within its jurisdiction.

4. The sorting resulted in the names of thirty (30) inmates. Through the cross-referencing of the EOPSS data, the DAMION case management system used within the Northwestern District Attorney's office, and the criminal records of each identified inmate, the Northwestern District Attorney's office can now report the following:

- one (1) inmate was improperly listed as a Hampshire Superior Court case when, in fact, the case arose out of Hampden County;
- three (3) inmates were serving sentences on convictions for offenses occurring between January, 2009 and January, 2013, but none were "Farak defendants" as defined in Committee for Public Counsel Services, et.

al. v. Attorney General's Office, et. al.,

480 Mass. 700 (2018)<sup>1</sup>;

- twenty-six (26) inmates are serving sentences for which the offense either occurred after January 18, 2013, or offenses pursuant to G.L. c.269, §10G, and none are subsequent or habitual offenders whose prior conviction is subject to dismissal as a result of misconduct in the Amherst drug lab.

5. As a result, the Northwestern District Attorney's office is not aware of any inmates currently serving a sentence of incarceration based solely on a conviction, with an offense date prior to January 13, 2013, founded on a narcotics analysis performed between January 1, 2009, and January 18, 2013, at the Amherst drug lab, or who was convicted as

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<sup>1</sup> The first inmate is serving a lead sentence for forcible rape of a child, with a concurrent 94C sentence. The second inmate's narcotics were tested at the Massachusetts State Police laboratory. In addition, the second inmate is serving a sentence on a home invasion from Hampden County and has completed his sentence on his 94C offense. The third inmate is serving a 94C sentence where the narcotics were tested at the Massachusetts State Police laboratory.

a subsequent or habitual offender based on such an offense.

Date: 12/5/18

Respectfully submitted,

THE COMMONWEALTH,

DAVID E. SULLIVAN  
District Attorney  
Northwestern District

A handwritten signature in cursive script, appearing to read "Bethany Lynch", is written over a horizontal line.

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COMMONWEALTH OF MASSACHUSETTS  
THE SUPREME JUDICIAL COURT

SUFFOLK, SS

SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES, et al,

v.

ATTORNEY GENERAL, et al,

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STATUS REPORT: PLYMOUTH DISTRICT RE: POTENTIAL INCARCERATED  
FARAK DEFENDANTS

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The District Attorney for the Plymouth District respectfully submits the following status report concerning the steps taken to identify Farak defendants, see 480 Mass. 700 (2018) who potentially are incarcerated. None have been found to date.


This office received a spreadsheet from the Executive Office of Public Safety and Security which it represented to contain all inmates serving 94C offenses. The list was sorted to include only Plymouth District inmates.

That list was compared to the list already developed of Farak defendants. The list was also compared to a preliminary (draft) supplemental list of Farak defendants which has been

prepared, but is not complete, and is based on the court's latest decision.

Respectfully submitted,

TIMOTHY J. CRUZ  
District Attorney

BY:   
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For the Plymouth District  
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Date: December 7, 2018

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES, HAMPDEN  
COUNTY LAWYERS FOR JUSTICE, INC.,  
HERSCHELLE REAVES, and NICOLE WESTCOTT,  
Petitioners,

v.

ATTORNEY GENERAL OF MASSACHUSETTS, DISTRICT ATTORNEY  
FOR BERKSHIRE COUNTY, DISTRICT ATTORNEY FOR BRISTOL  
COUNTY, DISTRICT ATTORNEY FOR THE CAPE AND THE  
ISLANDS, DISTRICT ATTORNEY FOR ESSEX COUNTY, DISTRICT  
ATTORNEY FOR HAMPDEN COUNTY, DISTRICT ATTORNEY FOR  
MIDDLESEX COUNTY, DISTRICT ATTORNEY FOR NORFOLK  
COUNTY, DISTRICT ATTORNEY FOR THE NORTHWESTERN  
DISTRICT, DISTRICT ATTORNEY FOR PLYMOUTH COUNTY,  
DISTRICT ATTORNEY FOR SUFFOLK COUNTY, and DISTRICT  
ATTORNEY FOR WORCESTER COUNTY,  
Respondents.

SUFFOLK COUNTY DISTRICT ATTORNEY'S REPORT ON THE  
IDENTIFICATION OF INCARCERATED DEFENDANTS

1. The Suffolk County District Attorney's  
Office has taken the following steps to identify  
incarcerated defendants whose convictions may have  
been impacted by the October 11, 2018, decision of the  
Supreme Judicial Court in the matter of Committee for  
Public Counsel Services, et al. v. Attorney General's  
Office, et al., 480 Mass. 700 (2018).

2. On October 19, 2018, Special Counsel Doug Levine, of the Executive Office of Public Safety and Security ("EOPSS"), distributed to all parties a list of defendants currently incarcerated on cases involving at least one G.L. c 94C offense, among other possible offenses. The Suffolk County District Attorney's Office was able to sort this list to isolate those cases which originated in the courts of Suffolk County: Suffolk Superior Court, Chelsea District Court, and the eight divisions of the Boston Municipal Court.

3. These lists were then sorted by date of offense in order to identify those cases where the narcotics could have been analyzed during the relevant timeframe.

4. One case was identified in the Dorchester Division of the Boston Municipal Court, CW v. John McFarlane, docket #1202CR004140. The offense date was October 18, 2012. The drugs at issue were tested at the MA State Police Crime Lab at Sudbury on March 14, 2013. Lab #12-16414.

5. The remaining cases from the relevant time period originated in the Suffolk Superior Court. None of these cases involve narcotics that were tested at

the Amherst Lab. The Suffolk County District Attorney's Office verified this through the examination of physical files where available, as well as by obtaining drug certificates through the MA State Police LIMS database. All of the cases involved drug certificates which originated at the Sudbury Lab or the Jamaica Plain Lab.

6. On October 22, 2018, the Respondents received an email from Attorney Rebecca Jacobstein, indicating that the Petitioners had identified 24 defendants who were believed to possibly be incarcerated on the basis of Amherst Lab drug certificates generated on or after January 1, 2009. She asked the various district attorneys' offices to investigate their respective cases. There were three such cases prosecuted by the Suffolk County District Attorney's Office. Dominic Dicenso, 0784CR10549; Victor Hernandez, 0984CR10884; Justin Dematos, 1184CR10099.

7. These three cases each involved drug certificates not generated by the Amherst Lab. The narcotics in the Dicenso and Dematos cases were tested at the MA State Police Sudbury Lab, and the narcotics

in the Hernandez case were tested at the DEA Lab in  
New York.

December 6, 2018

Respectfully Submitted,  
The Commonwealth,  
JOHN P. PAPPAS  
District Attorney for the  
Suffolk District

A handwritten signature in dark ink, appearing to read 'Ian Leson', written over a horizontal line.

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