

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk, ss

No. SJC-2017-0347

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

v.

ATTORNEY GENERAL OF MASSACHUSETTS, et al.,
Respondents.

PETITIONERS' STATUS REPORT

Petitioners respectfully submit this status report regarding our efforts to identify and provide relief to defendants who are entitled to be released from incarceration as a consequence of the full court's October 11, 2018, decision.

Pursuant to that decision, three categories of defendants were entitled to the vacatur and dismissal of their adverse dispositions:

- i. the drugs were tested by Sonja Farak;
- ii. the drugs tested were methamphetamine; and
- iii. the drugs were tested at the Amherst Lab by any chemist after January 1, 2009.

To determine who was incarcerated on drug charges, petitioners reached out to Doug Levine, Special Counsel to the Executive Office of Public Safety and Security (EOPSS). EOPSS was immediately responsive and we had a list of incarcerated 94C defendants the very next day.

Upon receipt of the list of incarcerated individuals from EOPSS, Nasser Eledroos, technology fellow at the American Civil Liberties Union Foundation of Massachusetts

(ACLUM), compared that list with the 94C data we had previously received from the court and with the Amherst Drug Lab data in order to identify incarcerated individuals who may be entitled to relief. *See attached* Affidavit of Nasser Eledroos.

ACLUM sent this list of preliminary matches to the CPCS Drug Lab Crisis Litigation Unit (DLCLU). Daniel Jaffe, paralegal for DLCLU, determined whether individuals listed were entitled to relief. As a result of these efforts, seven individuals were identified and released from their unlawful incarceration. *See attached* Affidavit of Daniel Jaffe.

On October 23, 2018, we sent an email to the respondents asking for drug certificates in twenty-four cases where we could not determine whether the person was entitled to relief. The DLCLU reports that the respondents sent them the certificates in those cases.

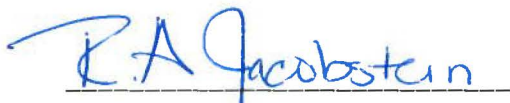
Respectfully submitted,

COMMITTEE FOR PUBLIC COUNSEL
FOR SERVICES,

HAMPDEN COUNTY LAWYERS
FOR JUSTICE,
HERSCHELLE REAVES, and
NICOLE WESTCOTT

By its attorneys,

By their attorneys,



Rebecca A. Jacobstein, BBO 651048
Benjamin H. Kechn, BBO 542006
Committee for Public Counsel Services
Public Defender Division
44 Bromfield Street
Boston, MA 02108
(617) 910-5726
rjacobstein@publiccounsel.net



Matthew R. Segal, BBO 654489
Ruth A. Bourquin, BBO 552985
ACLU Foundation of Massachusetts, Inc.
211 Congress Street
Boston, MA 02110
(617) 482-3170
msegal@aclum.org

DATED: December 13, 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.

CERTIFICATE OF SERVICE

I certify that on December 13, 2018, I served a copy of this Petitioners' Status Report by mailing via the United States Post Office, First Class mail postage paid, and via email to all parties on the attached list.


Rebecca Jacobsstein

Attorney General Maura Healey
Attorney Thomas Caldwell
Attorney General's Office
Criminal Bureau
One Ashburton Place
Boston, MA 02108
Thomas.Bocian@state.ma.us

District Attorney Paul Caccaviello
Attorney Joseph Pieropan
Berkshire District Attorney's Office
7 North Street
P.O. Box 1969
Pittsfield, MA 01202-1969
Joseph.A.Pieropan@state.ma.us

District Attorney Thomas Quinn
Attorney Robert Kidd
Bristol District Attorney's Office
888 Purchase Street, 5th Floor
New Bedford, MA 02740
Robert.P.Kidd@state.ma.us

District Attorney Michael O'Keefe
Attorney Michael Donovan
Office of the District Attorney for the
Cape and Islands
3231 Main Street
P.O. Box 455
Barnstable, MA 02630
MDonovan@massmail.state.ma.us

District Attorney Jonathan Blodgett
Attorney Catherine Semel
Office of the District Attorney/Essex
Ten Federal Street
Salem, MA 01970
Catherine.Semel@state.ma.us

District Attorney Anthony Gulluni
Attorney Kate McMahon
Office of the District
Attorney/Hampden
Hall of Justice
50 State Street
Springfield, MA 01103-0559
Kate.McMahon@state.ma.us

District Attorney Marian Ryan
Attorney Thomas Ralph
Middlesex District Attorney's Office
15 Commonwealth Avenue
Woburn, MA 01801
Tom.Ralph@massmail.state.ma.us

District Attorney Michael Morrissey
Attorney Susanne O'Neill
Office of the District Attorney/Norfolk
45 Shawmut Avenue
Canton, MA 02021
Susanne.O'Neil@state.ma.us

District Attorney David Sullivan
Attorney Bethany Lynch
Northwestern District Attorney's Office
One Gleason Plaza
Northampton, MA 01060
Bethany.Lynch@state.ma.us

District Attorney Timothy Cruz
Attorney Gail McKenna
Office of the District Attorney/Plymouth
116 Main Street
Brockton, MA 02301
Gail.McKenna@state.ma.us

District Attorney Daniel Conley
Attorney Ian Leson
Suffolk District Attorney's Office
1 Bulfinch Place, 3rd Floor
Boston, MA 02114
Ian.Leson@state.ma.us

District Attorney Joseph Early
Attorney Jane Sullivan
Worcester District Attorney's Office
225 Main Street, Room G-301
Worcester, MA 01608
Jane.Sullivan@state.ma.us

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2017-0347

COMMITTEE FOR PUBLIC COUNSEL SERVICES,
and others

v.

ATTORNEY GENERAL,
and others.

Affidavit of Nasser Eledroos

I, Nasser Eledroos, state as follows:

1. I am a technology fellow at the American Civil Liberties Union Foundation of Massachusetts, Inc. (ACLU). As part of my fellowship, I design and program systems that analyze criminal justice data.

2. Following the Full Court's October 11 decision in *Committee for Public Counsel Services v. Attorney General*, I was asked by attorneys with ACLU and CPCS to help identify incarcerated defendants who may have been entitled to be released as a result of the decision.

3. Working under the supervision of ACLU attorneys and together with CPCS's Drug Lab Crisis Litigation Unit ("DLCLU"), I took receipt of the following datasets to start my work:

a. "EOPSS Data": This data, supplied by the Executive Office of Public Safety & Security ("EOPSS"), contained all incarcerated persons whose convictions included charges under G.L. c. 94C or c. 269 § 10G charges.

b. "94C Data": This data, supplied by the Trial Court in February 2018, contained a list of every defendant with at least one drug charge under G.L. c. 94C, and all associated charges that may or may not be G.L. c. 94C charges.

c. "Drug Lab Data": These spreadsheets contained a list of every sample that was marked as tested¹ in the Amherst and Hinton State Drug Labs. It is my understanding

¹ It was later understood that there are a handful of charges that were marked as tested by Sonja Farak, but had not actually been tested by Farak as she was no longer an employee of Mass DPH.

that the Massachusetts Department of Public Health created these spreadsheets and that they were delivered to counsel by the Attorney General's Office.

4. Once in possession of these datasets, I began to make sense of their underlying fields. Each dataset contained information that was relevant to the agency that administers the data. For example, EOPSS had a record of exactly which Drug Class a defendant had been incarcerated on, and when their offense date was. The DPH had a list of dates pertaining to each drug sample: the date the sample was received and when it was tested. The 94C data contained information about what M.G.L. c. 94C charge a defendant had been charged with, which would theoretically ease identification across all other datasets.

5. It quickly became clear that there is no mechanism for these various spreadsheets to "talk" to each other. That is, there was no existing way to match a particular person or case in one dataset with the same person or case in another dataset.

6. Typically, record management systems, or databases, have what is called a "Primary Key" to uniquely identify a specific record. The Primary Key² theoretically represents the data no matter in what agency or department it lives. Here, it appeared that the three different record management systems were administered by different agencies, each of which had an individual way of managing internal records. Consequently, and unfortunately, the datasets did not have a shared Primary Key.

7. This problem made it extremely challenging to determine whether someone identified in Drug Lab Data as a person whose sample was tested at the Amherst Lab was *also* someone identified in the EOPSS Data as a person who was presently incarcerated.

8. Solving this problem was going to be crucial in order to identify incarcerated Amherst Lab defendants who may have been entitled to relief based on the Full Court's October 11 decision.

9. I therefore endeavored to create a solution that could allow entries from these datasets to be matched to one another.

² Some examples of everyday Primary Keys are Driver's License Numbers, Telephone Numbers with an Area Code or Vehicle Identification Numbers (VIN).

10. The only reliable semi-unique attribute that was available in each dataset was the name of the defendant. Generally speaking, names are not used as Primary Keys because a name is a flawed attribute to attempt to match across datasets. Names can be misspelled, excluded, and duplicated as many individuals can have the same name. But, given no other alternative, I went ahead and prepared the names for a match across multiple datasets, using methodologies that sought to correct for problems like misspellings, exclusions, and duplications.

11. I spent about 14 hours writing algorithms that sought to match names to one another. These algorithms produced hundreds of names that were close matches, which I then checked against the 94C Data to narrow down my results.

12. Once my results were narrowed down, they were shared with the DLCLU so that its team could further narrow possible matches into actual matches.

13. So far, this process has yielded the names of seven individuals who were incarcerated on October 11 and entitled to be released as a result of the Full Court's decision. It is my understanding that those seven individuals have now been released from incarceration.

14. The search to identify other eligible individuals is ongoing.

15. Collectively, I estimate I have spent about 30 hours on this work thus far.

Signed under the pains and penalties of perjury this 13th day of December, 2018.


Nasser Eledroos

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2017-0317

COMMITTEE FOR PUBLIC COUNSEL SERVICES,
and others

v.

ATTORNEY GENERAL,
and others.

Affidavit of Daniel Jaffe

I, Daniel Jaffe, state as follows:

1. I am the paralegal for the Drug Lab Crisis Litigation Unit (DLCLU).
2. I received, from Nasser Eledroos, technology fellow at the American Civil Liberties Union Foundation of Massachusetts, Inc., a series of datasets, over approximately two weeks, listing the names of incarcerated individuals who were potentially entitled to immediate release as a result of the opinion in *Committee for Public Counsel Services v. Attorney General*. Specifically, the DLCLU received spreadsheets with lists of names in which there was a potential match between the list of incarcerated individuals from EOPSS and the names in the Amherst lab data.
3. In order to verify the accuracy of potential matches, I would do the following:
 - a. Confirm that the docket number associated with the defendant on the EOPSS list was inside the Farak timeline (i.e. the case was from between 2003-2013).
 - b. Confirm that the Amherst lab samples that triggered the match are associated with the case in question. This involved checking the dates of submission for samples and submitting agency in the Amherst lab data and comparing that to dates of offense and arresting agencies in the 911 data and the EOPSS list. This eliminated false matches made on name alone.

- c. Once it was determined the docket number and sample numbers were a match, I would determine whether the case fell into one of the three categories of defendants listed in *Committee for Public Counsel Services v. Attorney General* that were entitled to relief:
 - i. the drugs were tested by Sonja Farak;
 - ii. the drugs tested were methamphetamine; or
 - iii. the drugs were tested at the Amherst Lab by any chemist after January 1, 2009.
 - d. If the case fell into any one of these three categories, I summarized this information and passed it on to my supervisor, Nancy Caplan, for confirmation and assignment to a staff attorney in our unit.
 - e. Upon confirmation and assignment, the assigned staff attorney would contact the ADA working on Farak cases in their respective counties.
4. We identified seven individuals who were entitled to immediate release. In all seven cases we identified, the ADAs assented to motions to stay sentence.
 5. While our unit believes we have identified most of the individuals incarcerated entitled to relief, there are significant barriers in determining just who these people are. The Amherst Drug Lab data does not list all impacted individuals.
 6. It is also very likely that some individuals currently incarcerated on subsequent offense or habitual offense cases, on lesser charges after originally being charged as a subsequent or habitual offender, or Armed Career Criminal cases, have a predicate that is being dismissed, which entitles them to relief. To the best of our knowledge, no database exists which contains underlying predicates used to charge people as subsequent or habitual offenders or as Armed Career Criminals, therefore it is very difficult to identify these individuals.
 7. The DLCLU needs indictments in these cases in order to accurately determine if

individuals are getting the relief to which they are entitled. I have requested indictments in those cases we have been able to identify as potentially impacted by the court's decision.

Signed under the pains and penalties of perjury this 13th day of December, 2018.


Daniel Jalle