

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

No. SJ-2021-0129

CHRIS GRAHAM, JORGE LOPEZ, MEREDITH RYAN, KELLY AUER,  
COMMITTEE FOR PUBLIC COUNSEL SERVICES, and HAMPDEN COUNTY  
LAWYERS FOR JUSTICE,  
Petitioners,

v.

DISTRICT ATTORNEY FOR HAMPDEN COUNTY,  
Respondent.

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**PETITIONERS' MOTION FOR LEAVE TO FILE REPLY BRIEF<sup>1</sup>**

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Petitioners respectfully request leave to file a brief reply of no more than 15 pages and by June 11, 2021, to Respondent's Opposition to their Petition for Relief under G.L. c. 211, § 3.

The Petition seeks to ensure that the Commonwealth, which prosecutes defendants in Hampden County, is properly responding to egregious misconduct by members of the largest police department in that county. In asking this Court to exercise its superintendence powers to ensure that the Commonwealth investigates misconduct by the Springfield Police Department (SPD), and that the Hampden County District Attorney's Office properly discloses it, the Petition makes two basic arguments. First, it argues that evidence of egregious SPD misconduct has triggered the Commonwealth's duty to investigate. *See, e.g., Commonwealth v. Cotto*, 471 Mass. 97 (2015), and *Commonwealth v. Ware*, 471 Mass. 85 (2015). Second, citing the apparent absence of any clear HCDAO policy of ensuring that misconduct by SPD officers is properly disclosed to defendants, the petition asks the Court to issue guidance to the HCDAO.

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<sup>1</sup> Counsel for Petitioners have consulted with counsel for Respondent, and Respondent does not object to the relief requested in this motion.

In response, the HCDAO concedes that the Commonwealth has a duty not only to disclose, but to “learn of,” exculpatory evidence. Opp. at 13 (quoting *Cotto*, 471 Mass. at 112). Yet it does not deny that, even in the wake of the July 2020 Department of Justice report on the SPD’s Narcotics Bureau, no one on behalf of the Commonwealth is investigating the full scope and gravity of the SPD’s misconduct. See HCDAO Opp. at 14. And the HCDAO admits that it has not obtained the SPD documents on which the DOJ relied—either from the SPD or from the DOJ—and is therefore failing to disclose those documents to the defendants it prosecutes. *Id.* at 16-18; see also Complaint ¶ 74, *Gulluni v. U.S. Attorney for the District of Massachusetts*, No. 3:21-cv-30058 (D. Mass. May 19, 2021) (“As of May 18, 2021, the SPD had not provided any documents [requested by the HCADO] for review”). But the HCDAO claims that the non-investigation and non-disclosure of SPD misconduct, though ongoing, are not its problems.

These revelations by the HCDAO should alarm criminal defendants and attorney practitioners who are involved in a Hampden County case in which SPD officers are members of the prosecution team, as well as the courts who are presiding over these cases. In their reply brief, Petitioners would explain that the HCDAO’s contentions are not only alarming, but based on a fundamental misunderstanding of the Petition and the law.

With respect to the Commonwealth’s non-investigation of the SPD, the HCDAO argues principally that *it* should not be ordered to investigate. Opp. at 18-20. But the Petition does not request such an order. It argues that the duty to investigate falls to *the Commonwealth*, and it nowhere argues that this duty must or should be discharged by the HCDAO. Indeed, in attempting to distinguish the Amherst drug lab scandal, the HCDAO repeatedly, and mistakenly, points to facts that were uncovered only after the Attorney General (not the HCDAO) initiated an investigation in response to this Court’s holding that “[i]t is imperative that *the Commonwealth* thoroughly investigate the timing and scope of Farak’s misconduct at the Amherst drug lab.” *Cotto*,

471 Mass. at 115 (emphasis added). *See, e.g.*, Opp. at 4, 8 (referring to the large number of cases now known to have been implicated by the Amherst drug lab scandal, as opposed to the relatively small number of cases that had been identified before the court-prescribed investigation); *id.* at 4 n.2, 25 n.16, 26 n.19 (referencing Sonja Farak’s admissions in grand jury testimony that occurred only because of the court-prescribed investigation).

With respect to the non-disclosure of exculpatory evidence possessed by SPD, it is unclear why the HCDAO believes this is the DOJ’s responsibility rather than its own. In the lab scandals, although Annie Dookhan and Sonja Farak were employed by the Department of Public Health, the duty to “learn of and disclose” their misconduct arose from their inclusion on prosecution teams led by state prosecutors. *Cotto*, 471 Mass. at 112. Here, Hampden County prosecutors, not federal prosecutors, are choosing to include SPD officers on their prosecution teams. What is more, it has been nearly a year since the DOJ issued its report, not to mention longer since all the other indictments of SPD officers and other evidence of misconduct cited in the Petition. If the HCDAO has not insisted that the SPD turn over the documents on which the DOJ relied so that those documents can be disclosed to criminal defendants (Opp. at 16-18), and if the HCDAO is still working on its policies (*id.* at 30), and if the HCDAO still has numerous questions about its disclosure obligations (*id.* at 24-27), then those are reasons to reserve and report this case—not to discard it.

Finally, to the extent the HCDAO believes that the present alarming circumstances do not cry out for the kind of interim remedies that this Court imposed in the Amherst drug lab scandal, *see* Pet. 23-24, 26-27 (citing *Cotto*, 471 Mass. at 111-15; *Ware*, 471 Mass. at 96), or that the Petition should be dismissed on standing grounds, it is likewise mistaken for reasons that Petitioners are prepared to address in their reply brief.

Wherefore, Petitioners respectfully request leave to file a reply brief of no more than 15 pages by June 11, 2021.

Dated: June 2, 2021

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on June 2, 2021, I served the attached Motion to counsel for the

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