COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-11764

KEVIN BRIDGEMAN, YASIR CREACH & MIGUEL CUEVAS,
Petitioners,

V.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,

AND

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT,
Defendant-Respondent.

BRIEF AND APPENDIX FOR THE DISTRICT ATTORNEYS ON RESERVATION AND REPORT FROM THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

ESSEX & SUFFOLK COUNTY

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I. Whether this Court, consistent with the apparent unanimous weight of authority, should deny the petitioners' unripe request for a presumption of prosecutorial vindictiveness, where the return to the *status quo ex ante* following the hypothetical vacatur of the petitioners' pleas is entirely proper and does not constitute retaliation.

II. Whether (1) the petitioners face undue delay in receiving postconviction relief, where they have voluntarily elected *not to seek* such relief, even though the existing modified Rule 30 procedure created by this Court is provably efficient and fair, and affords them a conclusive presumption of government misconduct, and where any delay in the resolution of their postconviction claims is thus the result of their voluntary decision not to act; and whether (2) Dookhan defendants not named in the petition -- assuming they have not *already received* postconviction relief -- face undue delay in violation of due process, where they are also free to utilize the modified Rule 30 procedure and the conclusive presumption of misconduct afforded to them by this Court.

III. Whether any of the remedies requested by the petitioners are legally justified, equitable, or practicable, where the existing remedial framework has provided, and will continue to provide, a just and speedy process by which to resolve motions for new trial filed by Dookhan defendants.

IV. Whether this court should deny the Committee for Public Counsel Services' ("CPCS") motion to intervene where any interest reflected in the remedy sought is adequately represented by the petitioners; CPCS has not shown that it has other interests that would be impaired by the disposition of the petition; and CPCS seeks meritless remedies the petitioners do not seek which far exceed the scope of the petition.

STATEMENT OF THE CASE

The three petitioners, Kevin Bridgeman, Yasir Creach, and Miguel Cuevas, have each pled guilty to drug offenses; on the drug certificate on file in each of their cases chemist Annie Dookhan appears as either the primary or confirmatory chemist. They claim that (1) the automatic return to the *status quo ex ante* following a defendant's choice to pursue vacatur of his guilty plea on Dookhan grounds constitutes prosecutorial vindictiveness in violation of due process; (2) they and other Dookhan defendants[1] not named in the petition are suffering undue prejudicial delay in receiving postconviction relief on Dookhan grounds, notwithstanding their failure to pursue their claims; and (3) that the Committee for Public Counsel Services should be permitted to intervene and raise

[1] A discussion of the phrase "Dookhan defendants" and precisely how it should be defined can be found *infra* pp. 51-53. The District Attorneys infer that the petitioners use the phrase to mean those defendants potentially affected by the misconduct who were listed in David Meier's report. See *infra* pp. 51-53.

additional claims that seek remedies far exceeding the scope of the petition.

I. THE PETITIONERS' CRIMES, CHARGES AND CHANGES OF PLEA.

A. Kevin Bridgeman.

1. The 2005 Arrest & Conviction, SUCR2005-10357.

On April 8, 2005, members of the Boston Police Department's Drug Control Unit conducted an undercover drug operation in Boston's theater district (R.A. 436).[2] P.O. Gregory Walsh, acting in his capacity as an undercover officer, approached Kevin Bridgeman and purchased two plastic bags of cocaine for $40, using previously recorded buy money (R.A. 437). When the officers attempted to place Bridgeman under arrest he violently resisted, striking the officers with a closed fist several times (R.A. 438). Following his arrest, the officers searched him and recovered twenty-two additional bags

[2] The Record Appendix will be cited as (R.A. __), the District Attorney's Supplemental Appendix as (DA.A. __), the petitioners' brief as (P. Br. __), and the intervener's brief will be cited as (I. Br. __).

of cocaine and the pre-recorded buy money (R.A. 438-39).

The Commonwealth[3] sought indictments and, on June 2, 2005, a Suffolk County grand jury ultimately charged Bridgeman with [001] possession with intent to distribute a class (B) substance, as a subsequent offense, in violation of G.L. c. 94C, § 32A(b); [003] distribution of a class (B) substance, as a subsequent offense, in violation of G.L. c. 94C, § 32A(b); [002 & 004] two drug violations near a school or park, in violation of G.L. c. 94C, § 32J; [005] assault and battery on a police officer, in violation of G.L. c. 265, § 13D; and [006] resisting arrest, in violation of G.L. c. 268, § 32B (R.A. 421-28).

On October 4, 2005, Bridgeman pled guilty to indictments 001, 003, 005, and 006 (R.A. 417). On indictment 001 he was sentenced to a term of imprisonment of three years to three years and one day (R.A. 417). On indictments 003, 005, and 006 he was sentenced to concurrent three-year terms of probation, consecutive to the sentence imposed on 001

[3] The case was prosecuted by former ADA Stacey Garry (R.A. 415).

(R.A. 417-18). The Commonwealth dismissed the balance of the charges in consideration of Bridgeman's change of plea (R.A. 417-18).

2. The 2007 Arrest & Conviction, SUCR2007-10959.

On July 26, 2007, the Boston Police Drug Control Unit conducted an undercover operation in the Public Gardens (R.A. 459). An undercover officer approached Bridgeman and purchased two bags of cocaine in exchange for $40 of previously marked buy money (R.A. 464). Bridgeman was then placed under arrest and a subsequent search resulted in the recovery of the buy money and ten additional bags of cocaine (R.A. 465-66).

The Commonwealth[4] sought indictments and, on September 24, 2007, a Suffolk County grand jury ultimately charged Bridgeman with [001] distribution of a class (B) substance, as a subsequent offense, in violation of G.L. c. 94C, § 32A(b); [003] possession with intent to distribute a class (B) substance, as a subsequent offense, in violation of G.L. c. 94C,

[4] The case was prosecuted by former ADA Philip O'Brien (R.A. 450).

§ 32A(b); and [002] a drug violation near a school or park, in violation of G.L. C. 94C, § 32J (R.A. 479-83).

On October 4, 2005, Bridgeman pled guilty to indictments 001 and 003 (R.A. 452). He was sentenced to concurrent terms of imprisonment of three to five years (R.A. 452). The Commonwealth dismissed the school zone charge in consideration of Bridgeman's change of plea (R.A. 452).

B. Yasir Creach, 0501CR000142.

On January 7, 2005, members of the Boston Police Department's Drug Control Unit were conducting surveillance in the area of Chinatown (R.A. 513). They observed Yasir Creach engage in a brief conversation with another individual before they entered an alley marked "no trespassing" (R.A. 513). The officers followed them down into the alley and observed Creach smoking from a glass tube which had been modified into a crack pipe (R.A. 513). Creach was then placed under arrest (R.A. 513).

Later that same day, the clerk of the Central Division of the Municipal Court Department issued a complaint charging him with [001] trespassing, in

violation of G.L. c. 266, § 120; and [002] possession of a class (B) substance, in violation of G.L. c. 94C, § 34 (R.A. 512). On April 20, 2005, Creach pled guilty to both counts (R.A. 507).[5] He was sentenced to concurrent terms of incarceration totaling one year in the house of correction (R.A. 507).[6]

C. Miguel Cuevas, ESCR2007-01535

On January 5, 2007, members of the Salem Police Department conducted an undercover drug investigation in the "the Point" area of Salem (R.A 539). An undercover officer contacted Miguel Cuevas via cell phone, they met, and Cuevas sold the officer a twist of cocaine for $40 of previously marked buy money (R.A. 540-42).

On January 8, 2007, an undercover officer again contacted Cuevas via cell phone and arranged to purchase cocaine (R.A. 543). Cuevas directed the officer to meet him near his residence at the corner of Bridge and Rice Streets (R.A. 543). There, Cuevas

[5] The prosecutor at the plea hearing was former ADA Richard Abati (R.A. 507).

[6] This sentence was to run concurrent with that imposed on 0201CR002586, charging the defendant with larceny over $250, in violation of G.L. c. 266, § 30 (R.A. 507).

exited a home and the officer drove him to 22 Palmer Street where Cuevas exited the vehicle, walked out of sight for a few minutes, and then returned with cocaine that he gave to the officer in exchange for previously marked buy money (R.A. 544-46).

Two days later, January 10, 2007, the undercover officer contacted Cuevas again via cell phone (R.A. 546). The officer then picked up Cuevas at his residence and drove him to Palmer Street where Cuevas got out of the vehicle, briefly entered Theo's Market, and then returned to the vehicle where he sold both cocaine and heroin to the officer for $90 of previously marked money (R.A. 547, 549).

The Commonwealth[7] sought indictments and, on October 5, 2007, an Essex County grand jury ultimately charged Bridgeman with [001-003] three counts of distribution of cocaine, as a subsequent offense, in violation of G.L. c. 94C, § 32A(d); and [004] distribution of a class (A) substance, as a subsequent offense, in violation of G.L. c. 94C, §32(b)

[7] The case was originally prosecuted by ADA Karen Hopwood (R.A. 525). The case is currently assigned to ADA Jessica Strasnick (R.A. 527).

(R.A. 557-66). On January 30, 2009, Cuevas pled guilty and was sentenced to concurrent terms of imprisonment of four and one half to five years (R.A. 526-27). The Commonwealth dismissed the subsequent offense portions of the indictments in consideration of Cuevas' change of plea (R.A. 526-27).

II. THE CLOSING OF THE HINTON LABORATORY AND THE PROSECUTION OF ANNIE DOOKHAN.

This Court, in *Commonwealth v. Scott*, 467 Mass. 336 (2014), summarized Annie Dookhan's misconduct as follows:

> Until 2012, the Hinton drug lab was overseen by the Department of Public Health (department). By statute, the department, and by extension the lab, was required to perform chemical analyses of substances on request from law enforcement officials. Chemists employed by the lab were responsible for testing substances according to lab protocols and for safeguarding evidence samples throughout the testing process, and they were expected to testify as expert witnesses in criminal prosecutions.
>
> In July, 2012, as part of the Commonwealth's budget bill, the Legislature transferred oversight of the lab from the department to the State police. At that time, State police assigned to the Hinton drug lab became aware of a 2011 incident that first raised questions regarding Dookhan's conduct in the lab. In June, 2011, a lab supervisor discovered that approximately ninety samples had been removed from the lab's evidence

locker in violation of internal protocol. Lab supervisors conducted an informal investigation and concluded that Dookhan had removed the samples without authorization and subsequently forged the initials of an evidence officer in the evidence log book in an attempt to hide her breach of protocols. As a result of this investigation, Dookhan was relieved of her duties in the lab effective June 21, 2011, and was assigned to perform administrative tasks outside the lab such as drafting policies and procedures. The informal investigation later triggered a formal inquiry by the Commissioner of Public Health limited to the incident involving the ninety samples. This inquiry ultimately led to Dookhan’s resignation in lieu of termination proceedings in March, 2012.

In July, 2012, when the State police took control of the lab and became aware of the 2011 incident, the officers assigned to the lab asked the State police detective unit of the Attorney General’s Office to launch a broader formal investigation into lab practices and Dookhan to ensure that her misconduct was limited to the incident involving the ninety samples. As it turned out, this incident was the proverbial tip of the iceberg.

The State police investigation into the Hinton drug lab revealed numerous improprieties surrounding Dookhan's conduct in the lab. Perhaps most concerning, Dookhan admitted to ‘dry labbing’ for two to three years prior to her transfer out of the lab in 2011, meaning that she would group multiple samples together from various cases that looked alike, then test only a few samples, but report the results as if she had tested each sample individually. Dookhan also admitted to contaminating samples intentionally, including turning negative samples into positive samples on at least a

few occasions. Moreover, Dookhan has acknowledged to investigators that she may not be able to identify those cases in which she tested the samples properly and those in which she did not.

Additionally, Dookhan admitted to State police investigators that she deliberately committed a breach of lab protocols by removing samples from the evidence locker without following proper procedures and that she postdated entries in the evidence log book and forged an evidence officer’s initials. The investigation also revealed that Dookhan falsified another chemist's initials on reports that were intended to verify the proper functioning of the machine used to analyze the chemical composition of certain samples (gas chromatography-mass spectrometer machine or ‘GC-MS’), and she falsified the substance of reports intended to verify that the GC-MS machine was functioning properly prior to her running samples through it. Dookhan also had an unusually high productivity level in the lab. She reported test results on samples at rates consistently much higher than any other chemist in the lab, starting as early as 2004, during her first year of employment. Indeed, she is estimated to have been involved in testing samples in over 40,000 cases. According to the Hinton drug lab internal inquiry report, dated November 13, 2012 (Hinton internal inquiry), ‘Dookhan's consistently high testing volumes should have been a clear indication that a more thorough analysis and review of her work was needed.’

Based on the information gathered in the investigation, Dookhan’s misconduct appears to have taken place during both phases of testing conducted at the Hinton drug lab. According to the Hinton internal inquiry, Hinton drug lab protocols required chemists

to execute two levels of testing on each substance submitted for analysis. 'Primary' tests are 'simple bench top tests' that include 'color tests, microcrystalline analyses, and ultraviolet visualization.' These tests have only 'moderate discriminatory power, and are not associated with data that can be memorialized with a[n] instrument-generated paper or computer trail and reviewed.' These tests were carried out by the 'primary chemist,' who also prepared a sample of the substance for use in the secondary tests. The primary chemist was also responsible for the full evidence sample during the entire testing process. Next, secondary, or 'confirmatory,' tests were conducted, which 'utilize sophisticated instrumentation such as Mass Spectrometry, Infrared Spectroscopy and Gas Chromatography, have high discriminatory power, and . . . produce instrument-generated documentation of test results.' These tests were carried out by another chemist, referred to as the 'secondary' or 'confirmatory' chemist. A chemist serving as a secondary or confirmatory chemist was responsible for carrying out the secondary tests and for verifying the proper functioning of the GC-MS machine prior to each 'run' of samples through the machine. The secondary chemist then reported the results of the secondary tests to the primary chemist and the two chemists conferred to ensure aligned results. When testing of a sample was complete, the primary chemist returned the sample to the lab's evidence officer who prepared a document certifying the results of the tests and the chemical composition of the substances (drug certificate) for notarized signature by both chemists.

Thus, Dookhan's admitted wrongdoing in the form of 'dry labbing' and converting 'negatives to positives' likely took place

> while Dookhan was serving as the primary chemist responsible for those samples. Her failure to verify the proper functioning of the GC-MS machine, and her forgery of those reports to hide her wrongdoing, likely took place while Dookhan was serving as a secondary chemist. However, there is no suggestion in the investigative reports that Dookhan's misconduct extended beyond cases in which she served as either the primary or the confirmatory chemist. For example, the record does not indicate that Dookhan engaged in any wrongdoing in cases where she merely served as a notary public and certified the signatures of other chemists on drug certificates. Indeed, it appears that the motive for her wrongdoing was in large part a desire to increase her apparent productivity. Additionally, Dookhan stated in her interview with the State police that no one, including other chemists in the lab, was aware of, or involved in, her deliberate misconduct. Although the record does suggest other improprieties surrounding Dookhan's conduct in the lab, such as her accessing the evidence database to look up the status of cases at the request of certain prosecutors in breach of proper reporting protocols, there is no indication that she engaged in any wrongdoing through use of her access to the database or as a result of her apparently close relationship with some prosecutors. Therefore, it appears from the record of the investigation before us that Dookhan's misconduct was limited to cases in which she served as either the primary or secondary chemist.

Id. at 338-41 (internal citations omitted).

III. THE MODIFIED RULE 30 PROCEDURE CREATED TO BENEFIT DEFENDANTS SEEKING POSTCONVICTION RELIEF ON DOOKHAN GROUNDS.

In response to the discovery of the misconduct, the Superior Court and this Court took steps to facilitate the handling of postconviction claims of defendants who believed they had been affected by the misconduct. The first of these steps were described by this Court in *Commonwealth* v. *Charles*, 466 Mass. 63, 65-7 (2013):

> In October, 2012, the Chief Justice of the Superior Court assigned specific judges in seven counties to preside over special 'drug lab sessions' that would deal with these postconviction matters. The first round of hearings focused on incarcerated defendants who had filed motions to stay the execution of their sentences in cases where the lead offense was a violation of the Controlled Substances Act, G.L. c. 94C, and Dookhan was the primary or confirmatory chemist. From October 15 to November 28, the judges presiding over the drug lab sessions held 589 hearings, placing an enormous burden on the Superior Court.
>
> On November 9, 2012, this [C]ourt issued an order to facilitate the expeditious handling of matters relating to the alleged misconduct at the Hinton drug lab. The order provided, in relevant part: '[A] Chief Justice of a Trial Court Department may assign for all purposes, including disposition, any postconviction motion in which a party seeks relief based on alleged misconduct at the Hinton [drug lab] to any

> judge of that Trial Court Department. The assigned judge may reassign the motion to the original trial judge where the interests of justice require.'
>
> On November 26, 2012, in accordance with the provisions of Mass. R. Crim. P. 47, 378 Mass. 923 (1979), the Chief Justice of the Superior Court appointed five retired Superior Court judges as 'Special Judicial Magistrate[s] of the Superior Court, to preside over criminal proceedings in connection with cases relating to the [Hinton drug lab].' These special magistrates were assigned to six counties, and the Chief Justice of the Superior Court issued to each one an 'Order of Assignment' delineating his or her authority and responsibilities. It provides, in part: '[T]he Special Judicial Magistrate shall have the powers, duties, and authority to preside at arraignments, to set bail, to assign counsel, to supervise pretrial conferences, and to mark up motions for hearing. The Special Judicial Magistrate shall also have the power and authority to conduct hearings on postconviction motions, to issue orders regarding discovery, and other matters, and to make proposed findings and rulings to the Regional Administrative Justice.... Further, the Special Judicial Magistrate shall perform such other duties as may be authorized by order of the Superior Court.'
>
> As of March 6, 2013, the special magistrates had conducted more than 900 hearings, a substantial number of which pertained to defendants' motions to stay the execution of their sentences.

Id.

The Court in *Charles* then made two critical holdings to facilitate Dookhan defendant's postconviction proceedings: it (1) affirmed as constitutional the power of the special magistrates to hold hearings on the postconviction motions and make proposed findings and rulings to the Regional Administrative Justices, *Id*. at 90; and (2) held that Superior Court judges were permitted to stay the execution of Dookhan defendants' sentences pending the resolution of their motions for new trial, in an exception to Mass. R. Crim. P. 31. *Id*. at 79.

The Court later held, in *Scott*, that a defendant seeking to withdraw a guilty plea was entitled to a conclusive presumption of egregious government misconduct, if his conviction was based in part on a test where Dookhan was the primary or confirmatory chemist.[8] *Scott*, 467 Mass. at 352. Such defendants

[8] In a companion case, *Commonwealth* v. *Gardner*, the Court held that defendants claiming misconduct based on a lesser degree of involvement by Dookhan were not entitled to the conclusive presumption. 467 Mass 363 (2014) (where Dookhan was notary public on certificate of analysis for marijuana seized from another individual arrested as part of same drug transaction as defendant, defendant was not entitled to conclusive presumption of misconduct).

thus could automatically satisfy the first prong of the two-pronged test applied when a defendant seeks to vacate a guilty plea as a result of underlying government misconduct. *Ferrara* v. *United States*, 456 F.3d 278, 290 (1st Cir. 2006). The Court held that a defendant seeking to withdraw his plea on Dookhan grounds was still required to show that "knowledge of Dookhan's misconduct would have materially influenced his decision to plead guilty," in order to satisfy the second prong of the test relating to the materiality of the misconduct. *Scott*, 467 Mass. at 360.

The defendant in *Scott* asked the Court to "invoke its superintendence power to allow all Rule 30 motions in all cases in this Commonwealth where Dookhan may have tainted the drug evidence," and parties who filed amicus briefs on his behalf requested similar remedies involving a mass dismissal of cases. *See* Brief for Scott at 45, and amicus briefs filed by the Committee for Public Counsel Services, the American Civil Liberties Union, and the Massachusetts Association of Criminal Defense Lawyers, *Commonwealth* v. *Scott*, SJC-11465; and Brief for Rodriguez at 24-9,

Commonwealth v. *Rodriguez*, SJC-11462.[9] The Court rejected such a remedy, holding that while "we cannot expect defendants to bear the burden of a systemic lapse . . . we also cannot allow the misconduct of one person to dictate an abrupt retreat from the fundamentals of our criminal justice system." *Scott*, 467 Mass. at 354, n. 11, citing *Commonwealth* v. *Chatman*, 466 Mass. 327, 333 (2013) ("The defendant has the burden of proving facts upon which he relies in support of his motion for a new trial").

By these rulings, the Court created a modified Rule 30 procedure[10] to benefit defendants seeking postconviction relief on Dookhan grounds. Since the *Scott* decision, motions have been filed and heard in the special sessions pursuant to that procedure (DA.A 1-16).

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[9] The petitioners and CPCS again request this remedy in the instant case.

[10] The phrase "modified Rule 30 procedure" specifically refers to: (1) the special sessions and the powers of the presiding special magistrates; (2) the holding in *Charles* that a sentence may be stayed in the absence of a pending appeal *or* postconviction motion, 436 Mass. 63; and (3) the holding in *Scott* that certain defendants seeking postconviction relief on Dookhan grounds are afforded a conclusive presumption of misconduct.

IV. THE PETITION TO THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY.

On January 9, 2014, while *Scott* was under advisement, the petitioners sought relief pursuant to G.L. c. 211, § 3 alleging violations of their due process and common law rights in the handling of cases under the modified Rule 30 procedure, claiming they have suffered undue delay notwithstanding their failure to bring motions, or alternatively that the exercise of their constitutional rights has been chilled by their fear that they will no longer receive the benefit of the bargain they seek to repudiate (R.A. 10-1). On May 27, 2014, the Committee for Public Counsel Services ("CPCS") filed a motion to intervene, raising procedural issues relative to the conduct of evidentiary hearings pursuant to *Scott* (R.A. 823-24). The petitioners characterize CPCS' motion as raising "two issues closely related to the relief sought by petitioners" (P. Br. 9), this notwithstanding that the petitioners seek relief relative to their penal exposure and a complete repudiation of the procedures outlined in *Scott* whereas CPCS seeks rulings relative to evidentiary

issues alleged to arise in the same *Scott* hearings the petitioners urge this court to abandon (823-24).

On October 21, 2014, the Honorable Margot Botsford, in her capacity as Single Justice, reserved and reported the entire case, reserving for the full Court whether or not CPCS should be permitted to intervene. Judge Botsford also asked "the full court, when deciding the case, to consider whether it might be fruitful for the court to undertake to examine the possibility of a more systemic approach to addressing the impacts of the controversy than the individualized, case-specific remedy that the court envisioned in *Scott*" (R.A. 1132). The case entered in this Court on October 29, 2014.

ARGUMENT

I. THIS COURT, CONSISTENT WITH THE APPARENT UNANIMOUS WEIGHT OF AUTHORITY, SHOULD REJECT THE PETITIONERS' UNRIPE REQUEST FOR A PRESUMPTION OF PROSECUTORIAL VINDICTIVENESS WHERE THE RETURN TO THE *STATUS QUO EX ANTE* FOLLOWING THE HYPOTHETICAL VACATUR OF THE PETITIONERS' PLEAS DOES NOT CONSTITUTE RETALIATION.

A. The Petitioners' Claims Are Not Ripe Because None Has Suffered, Or Is In Imminent Danger Of Suffering, The Speculative And Hypothetical Harm Complained Of.

"As a general rule, this [C]ourt will not review [a] matter until the entire case is ripe for review due to the burdensome nature of 'piecemeal appellate review.'" *Campana v. Board of Directors of Massachusetts Housing Finance Agency*, 399 Mass. 492, 515 at n. 16 (1987). With regard to constitutional questions, the "'traditional and salutary practice'" of the Commonwealth's appellate courts "is not to answer them in the abstract [but] to wait 'until the circumstances of a case are established' that require an answer to such questions." *Commonwealth v. Bankert*, 67 Mass. App. Ct. 118, 121 (2006), *quoting Commonwealth v. Two Juveniles,* 397 Mass. 261, 264 (1986); *See also Commonwealth v. Casimir*, 68 Mass. App. Ct. 257, 259-60 (2007) (in motion for new trial context, defendant's claim not ripe when he has made no showing that he is actually facing any of the consequences complained of in his motion).

Ripeness considerations apply to petitions under G.L. c. 211, § 3, and this Court has denied such petitions on the grounds that the claims asserted are not ripe for review. *See Frates v. Fay*, 432 Mass. 1001, 1001 (2000) (denial of G.L. c. 211, § 3 petition

affirmed when petitioner requested Court intervene in an ongoing proceeding to modify a 209A order; Court held "petitioner has not demonstrated that this proceeding is ripe for review"); *Barbara F. v. Bristol Div. of Juvenile Court Dept.*, 432 Mass. 1024 (2000) (denial of G.L. c. 211, § 3 petition affirmed where petitioner's allegations were insufficient to confer standing because "[t]o have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury," and the alleged "[i]njuries [were] speculative, remote, and indirect . . ."), *quoting Slama v. Attorney Gen.*, 384 Mass. 620, 624 (1981), and *Ginther v. Commissioner of Ins.,* 427 Mass. 319, 323 (1998).

Further, this Court has held that challenges to hypothetical future sentences are not ripe for review. In *Commonwealth v. Doe*, the Commonwealth filed a G.L. c. 211, § 3 petition, challenging a trial judge's pretrial order barring the Commonwealth from trying a defendant on charges the Commonwealth had previously agreed to drop (thus reducing the defendant's mandatory minimum sentence) in exchange for the defendant's cooperation with law enforcement.

412 Mass. 815, 821-22 (1992). On reservation and report, this Court held that the trial judge's order was premature, because the Commonwealth could still choose, at a later stage, to reduce the prison time the defendant faced. *Id*.

Similarly in this case, the harm alleged -– a greater sentence following reprosecution –- remains hypothetical. For any of the petitioners to actually suffer such harm, the following sequence of events would have to unfold:

- (1) the petitioner files a motion to withdraw his plea;
- (2) the motion is allowed;
- (3) original charges, for more serious offenses than those to which he pled guilty, are reinstated;
- (4) the Commonwealth elects to re-prosecute the case;
- (5) the petitioner is convicted; and
- (6) a greater sentence is imposed than when the petitioner first pled guilty to reduced charges.

Neither Bridgeman nor Creach has undergone any of these six steps, and Cuevas has completed only the first step (R.A. 418, 453, 507, 527). Thus, because

any injury remains "speculative, remote, and indirect," their claims are not ripe for review. *See Barbara F.*, 432 Mass. at 1024.

To avoid the ripeness considerations described above, the petitioners argue that they are suffering a present harm, namely that they "face a reasonable likelihood of vindictiveness," (P. Br. 27), and that such a possibility "chills the exercise of their postconviction rights" (P. Br. 22). This Court, on several occasions, has previously rejected such an attempt to circumvent the ripeness requirement where petitioners claimed that their rights to perform some future action had been chilled. *See In re Subpoena Duces Tecum*, 445 Mass. 685, 685-86 (2006) (Court rejected argument that disclosure to defense of video-taped interviews with children who had made allegations of sexual abuse would chill future communications between law enforcement and citizens); *Barbara F.*, 432 Mass. at 1024 (affirming denial of petition in which petitioner argued her rights had been chilled, holding that she had not suffered sufficient injury to confer standing). The Court should do so again here: the petitioners' rhetorical

equivocation that they fear a future harm does not change the fact that no harm has been suffered or is imminent.

B. Revival Of The Original Charges And A Return To The *Status Quo Ex Ante* Does Not Comprise "Retaliation" Giving Rise To A Presumption Of Prosecutorial Vindictiveness.

The petitioners' argument begins with an unproven *a priori* assumption. They presume that the revival of the original charges upon vacatur of the guilty plea to reduced charges would "'up[] the ante' with more serious charges" (P. Br. 23). However, the revival of original charges requires no action by the prosecutor and thus cannot carry a vindictive intent. In short, they ask this Court to create a presumption of vindictiveness to satisfy an intent requirement for which there is no corresponding act.[11] In fact, such revival is consistent with the long-standing practice in Massachusetts and the overwhelming weight of authority in other jurisdictions. *See infra* pp. 30-3.

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[11] The petitioners never articulate how this presumption of vindictiveness would operate. To the extent they are asking this Court to impose a *conclusive* presumption of vindictiveness, they have never expressly articulated it. The District Attorneys are unaware of any jurisdiction which has created such a conclusive presumption.

It is well settled that "[d]ue process of law, . . . requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial." *North Carolina v. Pearce*, 395 U.S. 711, 725 (1969). This rule constrains the behavior of judges, *id.* at 726, and prosecutors. *Blackledge v. Perry*, 417 U.S. 21, 28-9 (1974). This Court, in *Commonwealth v. Hyatt*, has established a slightly larger scope to the prohibition on vindictive prosecution and sentencing, holding that the presumption applies even where the second sentencing judge is different. 419 Mass. 815, 823 (1995).[12] These principles are not in dispute.

Unlike their cases, all the cases upon which the petitioners rely involve an affirmative step by the prosecutor or court to augment the charges or increase the penalty the defendant receives based upon the same charges. In *Pearce*, for example, the defendant successfully challenged his jury trial conviction and,

[12] This represents a departure from the rule announced under the federal Due Process clause in *Texas v. McCullough*, 475 U.S. 134 (1986).

following a re-trial, received an increased sentence. *Pearce*, 395 U.S. at 726. The Court ruled that a judge imposing a more severe sentence upon retrial must place his reasons, based on objective information, on the record, thus creating a rebuttable presumption of judicial vindictiveness. *Id.* Later, in *Perry*, the prosecutor brought more serious charges against the defendant following his invocation of a statutory right to a trial *de novo* following his conviction on misdemeanor counts; the Court extended the *Pearce* rebuttable presumption of vindictiveness to prosecutors. *Perry*, 417 U.S. at 27-8. The petitioners presume that they face choices analogous to those presented to the defendants in *Perry* and *Pearce,* namely that there will be some corollary action taken by the government to "punish" them for invoking their appellate rights. Undoubtedly, "*Pearce* would have application, if a prosecutor for no valid reason charged a defendant whose first conviction had been set aside, with a more serious offense based upon the same conduct." *United States ex rel. Williams v. McMann*, 436 F.2d 103, 105 (2nd Cir. 1970). But that is not the case here. Rather, the original charges will

be revived by operation of law, as they have been in this Commonwealth for over one-hundred years. *Murphy v. Massachusetts*, 177 U.S. 155 (1900); *Commonwealth v. Therrien*, 359 Mass. 500 (1971); *Commonwealth v. Rollins*, 354 Mass. 630 (1968); *see also Commonwealth v. DeJesus*, 468 Mass 174 (2014); *Commonwealth v. DeMarco*, 387 Mass. 481 (1982). When the plea bargain is repudiated, the case reverts to its procedural posture before the defendant's guilty plea was accepted and the plea bargain was effectuated.

"[The petitioners] rather simplistically urge [the Court] to apply the *Pearce* rule to [create a presumption of vindictiveness], because [the Commonwealth] recites no such justification [for proceeding on the original indictments]. But [the petitioners] straightforward argument overlooks the glaring fact that [any prospective] sentence [will be] imposed upon conviction for a more serious crime. Given this complete and obvious explanation for the longer sentence, [this Court should] see no need to demand the type of justification ordered in *Pearce*." *Ex rel. Williams,* 436 F.2d 103.

"[If the petitioners are] successful in revoking [their] part of the bargain by having [their] plea[s] of guilty set aside, it is hardly surprising, and scarcely suggestive of vindictiveness, that the district attorney in turn [should] withdr[aw] his consent to the reduced charge. Indeed, all that [will] happen[] [is] that the prosecution [will be] forced to proceed on the original charge which the grand jury had returned in the first instance –- felonious sale of a narcotic drug." *Id.* 106. This is a view which this Court, in the context of implied acquittal, has previously endorsed. "As the New York Court of Appeals has said in a case closely resembling the present '[The withdrawal of the guilty plea to second degree murder] removed . . . the only prop which sustained alike the conviction, as also the constructive acquittal, of the defendant of the higher crime. . . . [T]he withdrawal of the plea involved the waiver of all which depended on the plea, and this included a waiver of the benefit of the implication which existed, so long as the plea remained, of an acquittal of the higher crime.'" *Therrien*, 359 Mass.

at 505, quoting, *People v. Cignarale*, 110 N.Y. 23 (1888).

The petitioners cases are unlike that in *United States v. LaDeau*, 734 F.3d 561 (6th Cir.), upon which they rely (P. Br. 26-7). There the prosecutor obtained a superseding indictment for a more serious offense *after* the defendant successfully litigated a motion to suppress. *Id.* at 564-65. The court reasoned "the evidence relating to the conspiracy remained unchanged over the entire course of the prosecution; there is no new revelation or discovery to support the government's sudden shift to a receipt theory from a possession theory." *Id.* at 571. That, however, is where the similarities between the petitioners' cases and *LaDeau* ends. Here, reinstatement of the charges would reflect the prosecutor's *original* theory and *original* exercise of discretion in selecting the unit of prosecution, not a superseding theory or charge.

The overwhelming weight of authority is contrary to the analysis that the petitioners urge this Court to adopt. The federal circuits have approached the question with apparent unanimity, rejecting the

premise that reinstituting the original charges fallowing vacatur of a plea constitutes retaliation triggering a presumption of vindictive prosecution. *See e.g. United States v. Greatwalker*, 285 F.3d 727 (8th Cir. 2002); *United States v. Warda*, 285 F.3d 573 (7th Cir. 2002); *United States v. Alvarez*, 66 F. Supp. 2d 1295 (11th Cir. 1999); *United States v. Moulder*, 141 F.3d 568 (5th Cir. 1998); *United States v. Bunner*, 134 F.3d 1000 (10th Cir. 1998); *United States v. Podde*, 105 F.3d 813 (2nd Cir. 1997); *Taylor v. Kincheloe*, 920 F.2d 599 (9th Cir. 1990); *United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985); *Hawk v. Berkemer*, 610 F.2d 445 (6th Cir. 1979); *United States v. Myles*, 430 F.2d 161 (D.C. Cir. 1978); *United States v. Johnson*, 537 F.2d 1170 (4th Cir. 1976); *ex rel. Williams,* 436 F.2d 103.

The same results have been reached by our sister states. *See e.g., Clark v. State*, 318 So. 2d 805 (Ala. 1974) (prior second degree murder plea no bar to prosecution for first degree murder); *People v. Collins*, 577 P.2d 1026 (Cal. 1978) (counts dismissed pursuant to plea may be restored following vacatur); *Brown v. State*, 367 So. 2d 616 (Fla. 1979) (second prosecution on original charge not barred, despite

previous vacated plea for lesser degree of criminality); *People v. Evans*, 673 N.E. 2d 244 (Ill. 1996) (parties return to *status quo* following withdrawal of plea); *State v. Burkett*, 648 P.2d 716 (Kan. 1982) (no indication of vindictiveness where state refiled original charge); State *v. Boudreaux*, 402 So. 2d 629 (La. 1981) (prior plea to lesser offense no bar to prosecution after plea set aside); *Sweetwine v. State*, 421 A.2d 60 (Md. 1980) (due process no bar to prosecution on greater charge following repudiation of guilty plea); *State v. Spaulding*, 296 N.W.2d 870 (Minn. 1980) (no vindictiveness where earlier plea was set aside); *State v. Rhein*, 283 A.2d 759 (N.J. 1971) (fairness dictates reinstatement of charges dismissed collateral to earlier plea); *People v. Miller*, 482 N.E.2d 892 (N.Y. 1985) (once sentence based upon plea agreement was reversed, slate wiped clean and the prosecution began anew); *State v. Bethel*, 854 N.E.2d 150 (Ohio 2006) (no prosecutorial vindictiveness where original charges reinstated); *Commonwealth v. Ward*, 425 A.2d 401 (Pa. 1981) (where defendant revokes plea bargain, not vindictive to require him to assume pre-agreement

status); *State v. Jackson,* 366 A.2d 148 (R.I. 1976) (distinction from "*Pearce* so great as to make *Pearce* inapposite"); *Asimakis v. State*, 210 N.W.2d 161 (S.D. 1973) (original sentence no bar to greater sentence on subsequent reprosecution); *State ex rel. Austin v. Johnson,* 404 S.W.2d 244 (Tenn. 1966) (accused not entitled to avoid the jeopardy in which he previously stood); *Alvarez v. State*, 536 S.W.2d 357 (Tex. Ct. App. 1976) (prosecution cannot be held to punishment secured upon original guilty plea); *State v. Maunsell*, 743 A.2d 580 (Vt. 1999) (plea agreement becomes a nullity and State free to prosecute as originally charged); *State v. Taylor*, 589 P.2d 1250 (Wash. 1979) (state may re-file original arson charges); *Brooks v. Narick*, 243 S.E.2d 841 (W.Va. 1978) (defendant entitled to specific performance of plea agreement or to be tried on original charges); *State v. Powell*, 957 P.2d 595 (Utah 1998) (anomalous to allow defendant to keep benefit of an agreement he repudiated while requiring State to proceed to trial); *State v.* Soutar, 272 P.3d 154 (N.M. Ct. App. 2012) (prior plea no bar to prosecution following withdrawal of plea).

Michigan was the only jurisdiction whose court departed from this common-sense rule. In *People v. McMiller*, 208 N.W.2d 451 (Michigan 1973), the Michigan Supreme Court adopted the rule now proposed by the petitioners. The rule was adopted, but only on strict policy grounds, with no constitutional dimension, to motivate prosecutors to take a more pro-active approach to assuring strict observance of plea procedures.[13] *Id.* at 454. Ultimately, the Michigan state legislature abrogated the rule by statute after concluding that the approach "encourages gamesmanship and does not enhance the administration of justice." *People v. Mazzie*, 413 N.W.2d 1, n.21 (Michigan 1987); c*ontra State v. Wagner* 572 S.E. 2d 777 (N.C. 2002) (state statute precludes imposition of greater sentence following successful appeal or collateral attack).

The illogic of the petitioners' claims is illustrated by the matter-of-fact observations of both the United States Supreme Court and this Court that

[13] How a prosecutor's more active participation could prevent collateral attacks, such as the ones McMiller made, is not made clear in the decision.

reinstatement of the charges is a natural consequence of the vacatur of a guilty plea. *See e.g., Santobello v. New York*, 404 U.S. 257, 263 n. 2 (1971) ("If the state court decides to allow withdrawal of the plea, the petitioner will, of course, plead anew to the original charge on two felony counts."); *DeMarco*, 387 Mass. at 486 ("Finally, when a defendant withdraws his plea after sentencing, he may receive a harsher sentence than was originally imposed."); *DeJesus*, 468 Mass 174 (noting without comment that motion judge "reinstated that portion of the indictment charging the defendant with trafficking in cocaine, which had been dismissed with the Commonwealth's agreement under the terms of the plea arrangement").

The petitioners' analysis hinges myopically on the potential for longer sentences, without regard for the distinctions from *Pearce*. "The possibility of a higher sentence was recognized and accepted as a legitimate concomitant of the retrial process." *Chaffin v. Stynchcombe*, 412 U.S. 17, 25 (1973). "[T]he Court [in *Pearce*] intimated no doubt about the constitutional validity of the higher sentences in the absence of vindictiveness despite whatever incidental

deterrent effect they might have on the right to appeal." *Id.* at 29. In short, a higher sentence alone does not raise the specter of vindictive prosecution. Rather, only increased exposure born of a retaliatory act by the government, placing the petitioners in greater jeopardy in response to the exercise of their rights can trigger a claim of vindictive prosecution.

A defendant who prevails on his motion for new trial is in no worse a position than he would have been had he not pled guilty in the first place. "There is no appearance of retaliation when a defendant is placed in the same position as he was in before he accepted the plea bargain." *United States v. Anderson*, 514 F.2d 583, 588 (7th Cir. 1975).

C. The Petitioners Do Not Face A Reasonable Likelihood Of Vindictive Prosecution.

The case is before this Court without an adversarial evidentiary hearing on the petitioners' claim of vindictive motivation, so there is no support in the record for their contention that they face the reasonable likelihood of vindictive prosecution as a matter of law. They point instead to the

"'institutional bias inherent in the judicial system against the retrial of issues that have already been decided'" (P. Br. 25). *United States v. Goodwin*, 457 U.S. 368, 376 (1982). The *Goodwin* Court refused to apply the presumption of vindictive prosecution where a prosecutor sought felony charges after the defendant refused to plead to a misdemeanor and demanded a jury trial. *Id.* at 370. The court posited that institutional biases -- embodied in doctrines such as *stare decisis* and *res judicata* -– "might also subconsciously motivate a vindictive prosecutorial or judicial response to a defendant's exercise of his right to obtain a retrial of a decided question." *Id.* at 377. In the petitioners' cases, however, there will be no "retrial" as there was never a trial in the first instance. In the words of the *Goodwin* Court, "the institutional bias against the retrial of a decided question that supported the decisions in *Pearce* and *Blackledge* simply has no counterpart in this case." *Id.* at 383.

The fact that there was never a trial also belies the petitioners' argument that they face likely vindictive prosecution in order to avoid the

"duplicative expenditure of prosecutorial resources" (P. Br. 25). *Id.* at 383. A return to the *status quo* following vacatur of a guilty plea by its very definition involves no duplication of resources. No new indictment or complaint is issued and rulings remain intact on motions litigated before the entry of the plea. In short, "no party is asked 'to do over what it thought it had already done correctly.'" *Id*. at 383, quoting, *Colten v. Kentucky*, 407 U.S. 104, 117 (1972). The parties simply carry on as if the plea had never occurred. The petitioners also vastly overstate the risk of self-vindication (P. Br. 26). *Stynchcombe*, 412 U.S. at 27. Even in the unlikely event the same prosecutor is assigned to the case after a guilty plea is vacated,[14] a prosecutor cannot be said to have a personal stake in a prosecution

[14] As the petitioners remind us, defendants who face this alleged "stark choice" are those who have long since served their sentences and who were prosecuted as long ago as ten years (P. Br. 36). Prosecutors from that era are more likely to be members of the bench than Assistant District Attorneys still prosecuting narcotics cases with their respective offices. In fact, none of the three petitioners would be prosecuted by the same prosecutor. In the cases of Bridgeman and Creach, those attorneys no longer work as prosecutors, and the prosecutor in Cuevas was reassigned independent of this petition (R.A. 527).

where the Commonwealth was never held to its burden in the first instance.

Lastly, the petitioners badly misconstrue the significance of the changed circumstances described in *Alabama v. Smith*, 490 U.S. 794 (1989). The petitioners presume that the only relevant changed circumstances arise from Dookhan's misconduct, which they characterize as a new-found weakness in the Commonwealth's case (P. Br. 30-3). As an initial matter, they overstate this weakness because the empirical evidence -– anecdotal though it may be –- strongly suggests that juries are unpersuaded by this defense. *See e.g. Commonwealth v. Travis Curry,* SUCR2011-10371 (Dookhan as primary chemist, drugs retested, defendant subsequently convicted at trial); *Commonwealth v. Julio Medina*, SUCR2009-10991 (Dookhan as secondary chemist, drugs retested, defendant subsequently convicted at trial). In any event, the state of the Commonwealth's evidence is relevant to guilt or innocence, not sentencing.

To the extent there are changed circumstances relevant to sentencing upon reconviction, they will come from the full picture of the petitioner adduced

at trial, or through the petitioners' intervening conduct. "Consideration of a criminal conviction obtained in the interim between an original sentencing and a sentencing after retrial is manifestly legitimate." *Wasman v. United States*, 468 U.S. 559, 569 (1984). In the context of these petitioners, though, Mssrs. Bridgeman and Creach have done themselves no favors (DA.A. 22-40, 48-56). Less than ninety days ago, Kevin Bridgeman was convicted of 3rd Offense Shoplifting in Cambridge District Court. *See Commonwealth v. Kevin Bridgeman*, 1452CR000116;[15] (DA.A. 48). Mr. Creach's conduct has been more eventful. He has been *convicted ten additional times in Massachusetts*, after he pled guilty in the case at issue, including an indictment and state prison sentence in Suffolk Superior Court and most recently in Holyoke District Court just last month. *Commonwealth v. Yasir Creach*, 1317CR003601; (DA.A. 22). He has also been recently arrested and

[15] The petitioners Board of Probation Reports and Interstate Records are found in the District Attorney's Supplemental Appendix and have been redacted to remove identifying information and juvenile records (DA.A. 22-56).

convicted in New York and Maine (DA.A. 29-40). Thus, the most significant changed circumstances are not to the strength of the Commonwealth's case, but to the petitioners' amenability to rehabilitation, their inability or outright refusal to comply with the rule of law, and the greater insight into their character that their behavior in the intervening years has provided. *See King v. United States*, 410 F.2d 1127, 1128 (9th Cir. 1969) ("It is well settled that under the 'modern philosophy of penology that the sentence should fit the offender and not merely the crime.'").

The overarching theme of the petitioners' argument is that, by virtue of their status as "Dookhan defendants," they are owed a "more favorable outcome" (P. Br. 36) and that to achieve a special remedy, this Court must suspend the ordinary rules and ignore the overwhelming weight of authority (P. Br. 37). This Court has already accorded appropriate, and unique, remedies to Dookhan defendants, namely, special hearings, the availability of a stay of execution of sentence upon the filing of a new trial motion, and the *Scott* presumption; these remedies far exceed those available to all other

defendants who must who must establish actual wrongdoing to prevail on a new trial motion. *See Padilla v. Kentucky,* 559 U.S. 356 (2010). Now, the petitioners seek another unique remedy that would broadly expand the law, namely, the capping of the charges to those to which they originally pled guilty. This remedy is not available to any other defendant, even those who have established actual wrongdoing, such as those with a valid *Padilla* claim, and is not necessary to remedy the harm caused by Dookhan.[16] The existing remedies -- special hearings and a conclusive presumption of misconduct provide significant protection for Dookhan defendants. Beyond that, the public has a substantial interest in prosecuting a defendant for charges based on the evidence rather than based upon the structure of a repudiated plea agreement.

"May a defendant strike a bargain with the State, repudiate that bargain so far as his obligations under it are concerned and yet retain all

[16] CPCS goes further, asking that all Dookhan defendants be relieved of their obligation to even file a motion for new trial (I. Br. 26-28).

of the advantages he ostensibly bargained for? The answer is an immediate and absolute, 'No'." *Sweetwine v. State*, 398 A.2d 1262, at 1263-64 (Md. Ct. Spec. App. 1979), upheld by *Sweetwine*, 421 A.2d 60). "This is nothing more than a 'heads-I-win-tails-you-lose' gamble," *ex rel. Williams,* 436 F.2d at 107, and must be rejected. "It [is the petitioners] who chose to plead guilty and then to withdraw [their] plea[s]. The intervening [*Scott*] decision did not *compel* [them] to do so –- it merely gave [them] that opportunity. Whatever the[ir] motivation for pleading guilty and for withdrawing [their] plea, [their] voluntary choice to do so releases the government from its obligation not to prosecute and there is no double jeopardy bar to retrying [them] on the charges in the original indictment. "'The Double Jeopardy Clause . . . does not relieve a defendant from the consequences of his voluntary choice.'" *Podde*, 105 F.3d at 817-18.

II. THE PETITIONERS FACE NO UNDUE DELAY IN RECEIVING POSTCONVICTION RELIEF WHERE THEY HAVE VOLUNTARILY ELECTED *NOT TO SEEK* SUCH RELIEF, DESPITE THE FACT THAT THE EXISTING MODIFIED RULE 30 PROCEDURE CREATED BY THIS COURT IS PROVABLY EFFICIENT AND FAIR, AND HAS ALREADY PROVIDED POSTCONVICTION RELIEF FOR MANY "DOOKHAN DEFENDANTS" WHO HAVE FILED MOTIONS FOR NEW TRIAL.

A. The Petitioners And CPCS Identify No Defect Whatsoever In The Modified Rule 30 Procedure Created By This Court, A Procedure Which Has Already Provided Expedient Relief For Many Dookhan Defendants, And Will Continue To Provide Such Relief.

In sections II(B)-(E), below, the District Attorneys refute the petitioners' claims of undue delay in light of the operative due process standard. Before doing so, it is worth summarizing how the existing modified Rule 30 procedure was created:

- The Court's decision in *Charles* affirmed the constitutionality of the special sessions created by the Chief Justice of the Superior Court, allowing the special magistrates to continue holding hearings on postconviction motions filed by Dookhan defendants, and to issue proposed findings and rulings to the Regional Administrative Justices, 446 Mass. at 63;

- The Court in *Charles* further held that the extraordinary circumstances allowed the special magistrates to stay sentences of Dookhan defendants pending the disposition of their motions for new trial, 446 Mass. 63; and

- The Court's decision in *Scott* afforded a conclusive presumption of egregious misconduct to

> Dookhan defendants in all cases where Annie Dookhan had served as either the primary or confirmatory chemist.

467 Mass. at 336.

The modified Rule 30 procedure is supplying rapid and fair adjudication to those Dookhan defendants who have chosen to file postconviction motions. This is borne out by the facts: of the approximately 1,187 cases which have been brought, approximately 72 remain.[17] In contrast to the petitioners' unsupported suggestion that the sessions are overcrowded, motions have been proceeding at a brisk pace, and are heard at the earliest date convenient for defense counsel (DA.A. 8, 15).

One denial of a motion for new trial has been appealed and overturned in part, *see Commonwealth v. Gaston*, 86 Mass. App. Ct. 568 (2014), while a denial of a motion to withdraw a guilty plea has been appealed and affirmed. *Commonwealth v. Mgaresh*, 2014 Mass. App. Unpub. LEXIS 834 (2014); *see also, e.g.,*

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[17] Statistics derived from affidavits submitted by Bristol, Essex, Middlesex, Norfolk, Suffolk and Worcester Counties detailing the historical and current caseloads in the special sessions (DA.A. 1-16).

Wilkins v. United States, 754 F.3d 24, 27 (1st Cir. 2014) (federal case wherein the First Circuit applied *Ferrara/Scott* test in affirming denial of a motion to vacate guilty plea on Dookhan grounds). For those defendants whose motions for new trial were denied, appellate review is proceeding in the ordinary course. *See e.g. Commonwealth v. Kelly Tongo*, 2014-P-1507.

It reflects extremely well on the existing procedure that the petitioners and intervenors are unable to identify ***any delay whatsoever*** in the modified Rule 30 procedure. The petitioners claim, absent citation to the record, that "despite this Court's decisions in *Scott* and *Charles*, little progress has been made toward remedying [the] injustice [that resulted from the misconduct]," but they offer no example of a Dookhan defendant who has been actually prevented or delayed from seeking such a remedy (P. Br. 3, citation omitted). They further assert that "Dookhan defendants still face substantial uncertainty about how to obtain meaningful postconviction relief and how long proceedings may take," but do not identify the cause or nature of the

alleged "uncertainty" beyond reinstatement of the original charges (P. Br. 40). Similarly, CPCS claims that "the delays inherent in [*Scott*'s] case-by-case approach are profound, with each case winding its way through the postconviction labyrinth," but offer absolutely no basis for such a claim (I Br. 23). Describing the modified Rule 30 procedure as "labyrinthine" utterly disregards what is happening in the special sessions. In reality, Dookhan defendants are able to file postconviction motions with ease, and such motions are being promptly resolved or scheduled for a hearing. *See e.g. Commonwealth v. Fritz Blanchard*, SUCR2009-10380 (motion heard within sixty days of initial appearance); *Commonwealth v. Jerry Carrasquillo*, SUCR2006-10361 (case resolved by agreement eleven days after initial appearance). In the event of an adverse result, defendants have utilized the routine and long-established appellate process to challenge such a ruling. Contrary to CPCS's claims, the way forward for Dookhan defendants is both certain and clear.

The petitioners claim the Court's decision in *Scott* left some issues unresolved, including whether

the "undue delays" in these cases violate due process (P. Br. 42). But the petitioners confuse resolutions of new trial motions ***unfavorable*** to them with "***unresolved***" issues. For one thing, due process was explicitly considered in *Scott*: "[w]e must account for the due process rights of defendants, [and] the integrity of the criminal justice system." *Scott*, 467 Mass. at 352. The Court was aware of the timeline of the misconduct when *Scott* was issued, yet eschewed the remedy of global dismissal for all Dookhan defendants, crafting instead a forward-looking remedy of a conclusive presumption of government misconduct in their postconviction proceedings. *Id*. at 354, n. 11 ("we cannot expect defendants to bear the burden of a systemic lapse . . . *we also cannot allow the misconduct of one person to dictate an abrupt retreat from the fundamentals of our criminal justice system*") (emphasis added).

In sum, the modified Rule 30 procedure has succeeded at expediting the postconviction proceedings of Dookhan defendants, and expedition is the antonym of delay. Data from the sessions bears this out, and the petitioners offer no examples of any Dookhan

defendant who has ***actually*** been prevented or delayed from seeking postconviction relief. The unquestioned accessibility and speediness of the modified Rule 30 procedure is reason *alone* to deny the petitioners' claim that Dookhan defendants are suffering from "undue delays" (P. Br. 37).

B. Standard For Undue Delay Of A Motion For New Trial.

Although the Sixth Amendment right to a speedy trial is not applicable after a defendant has been convicted, undue delay in a postconviction setting "'may rise to the level of constitutional error.'" *Commonwealth v. Gonzalez*, 86 Mass. App. Ct. 253, 257 (2014), *quoting Commonwealth v. Swenson*, 368 Mass. 268, 279-80 (1975); a*ccord In re Williams*, 378 Mass. 623, 625 (1979). Such circumstances include the "'deliberate blocking of appellate rights or inordinate and prejudicial delay without a defendant's consent.'"[18] *Id*. This Court has considered a claim of

[18] In the petitioners' brief, they cite this language from *Swenson* and *Williams* but omit the phrase "without a defendant's consent" (P. Br. 38). This is a significant omission, because much of the "undue delay" they claim is due to their voluntary (or consensual) choice not to seek postconviction relief. See discussion *e.g. infra* pp. 53-54.

undue delay in the context of a motion for new trial, and in doing so has applied the same standard applicable to a claim of undue delay of a direct appeal.[19] *See Commonwealth* v. *Latimore*, 423 Mass. 129, 133 (1996).

The petitioners do not apparently claim that their postconviction rights, or those of any Dookhan defendant, were "deliberat[ly] block[ed]." *Gonzalez*, 86 Mass. App. Ct. at 257. Rather, they argue that they have suffered "[i]nordinate and prejudicial delay [without their consent]" (P. Br. 38). "To prevail on a claim that due process was violated due to nondeliberate delay in the appellate process, a defendant must affirmatively demonstrate that the delay at issue was prejudicial." *Latimore*, 423 Mass. at 133.

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[19] The petitioners cite *United States* v. *Yehling* for the proposition that a claim of undue appellate delay can be made with regard to both postconviction motions and direct appeals. See 456 F.3d 1236, 1243 (10th Cir. 2006) (there is "no reason to exempt a motion for a new trial based on newly discovered evidence from protection against unreasonable delay"); see also Id. at 1246 (four-year delay in deciding defendants motion for new trial was not a constitutional violation).

C. The Petition Is Fatally Overbroad Because It Generally Alleges That "Dookhan Defendants" Have Suffered Undue Delay, But Does Not Distinguish Among Individual Defendants Whose Cases Are At Many Different Procedural Stages, And An Undue Delay Analysis Cannot Be Uniformly Applied To All "Dookhan Defendants".

Before addressing the merits of the petitioners' undue delay claim, it must be noted that it is fatally overbroad: the claim must fail because its application to all Dookhan defendants is a logical impossibility. The petitioners argue that "[u]ndue delays in providing postconviction relief to the petitioners *and other Dookhan defendants* violate due process" (P. Br. 37) (emphasis added). The term "Dookhan defendants" is not defined in the petitioners' brief or the County Court's reservation and report, but the figure of 40,323 cited in the petition[20] can be traced to the Meier Report, which identified "40,323 individuals whose drug cases potentially may have been affected by the alleged conduct of Ms. Dookhan." D.E. Meier, The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie

[20] *See*, *e.g.*, (P. Br. 18-19).

Dookhan at the Hinton Drug Laboratory: Final Report to Governor Deval Patrick (Aug. 2013); (R.A 327-48).

To claim generally that the 40,323 "Dookhan defendants" named in the Meier report are suffering from the ***same*** undue delay in receiving postconviction relief ignores the fact that individuals within that extremely broad category ***are at very different stages of postconviction proceedings***. Though further distinctions are possible, every such defendant can fairly be placed in one of the following five procedural subgroups:

- defendants ***who have filed no motion for postconviction relief*** (this subgroup includes petitioners Bridgeman and Creach, see R.A 418, 453, 507);

- defendants ***who have filed motions for new trial that have yet to be adjudicated*** (this subgroup includes petitioner Cuevas, see R.A 527);

- defendants ***whose motions for new trial have been allowed*** (e.g., in Suffolk County, Michael Gemma, SUCR2007-10404);

- defendants ***whose motions for new trial have been denied, who have not appealed that denial*** (e.g., in Suffolk County, Cory Robinson, SUCR2005-10842); and

- defendants ***whose motions for new trial have been denied, who have appealed that denial*** (e.g., in Middlesex County, Ahamad Mgaresh, 2013-P-1431).

The petitioners do not distinguish among defendants in these five distinct subgroups, but broadly assert that "Dookhan defendants" have suffered undue delay (P. Br. 40-5).

D. None of the five procedural subgroups have suffered undue delay.

Given the impossibility of assessing a claim of undue delay on behalf of all 40,323 defendants the petitioners purport to represent, the District Attorneys assess the claim with regard to each of the five subgroups of Dookhan defendants described *supra* § II(B). Members of the first subgroup, which includes two of the three petitioners, simply have not met a basic precondition for a claim of undue delay: that is, ***they have never moved for or otherwise sought postconviction relief***, despite the existence of the modified Rule 30 procedure. As such, the petitioners' claim that "the delays in resolving defendants' new trial motions are largely beyond defendants' control," is entirely without merit (P. Br. 41). They have chosen not to seek postconviction relief: thus, "delays" are not merely within their control, they are entirely subject to their control and have occurred

exclusively at their election. The petitioners' claim that Dookhan defendants have been "forced to wait for many years while the justice system stumbles[21] toward a solution" is similarly meritless (P. Br. 41). In fact, nothing has "forced" them to abstain from the modified Rule 30 procedure. The decision was entirely their own. *See Swenson*, 368 Mass. at 280 (undue appellate delay can arise from "deliberate blocking of appellate rights or inordinate and prejudicial delay ***without a defendant's consent***") (emphasis added).

This Court has previously held that a defendant suffered no undue delay in part because the "record demonstrate[d] . . . that his predicament [was] due in no small part to his own failure to pursue his claims in a proper and prompt fashion." *Forte v. Commonwealth*, 424 Mass. 1012, 1013 (1997). The petitioners have not only failed to pursue their

[21] The petitioners assert that the justice system has "stumble[d]," but are silent on how they would have taken any of the steps differently -- from the commissioning of the Meier report, to the IG's investigation, to the approval of the special sessions in *Charles,* 466 Mass. 63 and *Milette*, 466 Mass. 63, to the creation of the *Scott* presumption. As stated *supra* § II(A), those steps have been highly effective at ensuring that Dookhan defendants receive efficient and fair appellate relief.

claims in a proper and prompt fashion, they have failed to pursue them at all, and therefore their claim of undue delay is without merit.

With regard to the second group, the petitioners claim that "undue delays have stymied those defendants [like Cuevas] who, despite the risks and uncertainty, are willing to proceed in court" (P. Br. 4). There is an utter lack of factual support for this statement in the petition, and it is contradicted by the affidavits from the various District Attorney's offices (DA.A. 1-16). The continuances in Cuevas' case are not born from the inability or unwillingness of the court or Commonwealth to litigate his motion, but rather are from his own choice to delay the proceedings (R.A. 92). There is no cognizable "delay" in his case, and certainly not an inordinate or prejudicial one.

With regard to the third, fourth, and fifth subgroups, no special analysis is necessary: a defendant, like those in this subgroup, who has filed a postconviction motion, obtained a hearing, and had his motion adjudicated is ***not*** suffering undue appellate delay. Such defendants have already

received the "postconviction relief" the petition requests. *See Kartell* v. *Commonwealth*, 437 Mass. 1027, 1027 (2002) (affirming single justice's denial of c. 211, s. 3 petition based on undue appellate delay where "[t]he specific relief [the defendant] requested in his petition is no longer necessary"), and cases cited.

The petitioners list five alleged "causes" of "inordinate, ongoing delay," (P. Br. 40): (1) the thirteen months that elapsed between the discovery of Dookhan's misconduct and when it was made public, (P. Br. 40); (2) the eleven months that elapsed between the commissioning of Attorney Meier's report and its release, (P. Br. 40); (3) the Inspector General's March 2014 report on the misconduct, (P. Br. 40); (4) the September 2014 provision to CPCS by the respondent District Attorneys of "information needed to identify docket numbers for Dookhan defendants," (P. Br. 41); and (5) the fact that "[l]awyers have not yet been appointed for roughly 30,000 Dookhan defendants." (P. Br. 41). The District Attorneys address each alleged cause in the order they are listed in the Petitioners' Brief.

The first two alleged causes are periods of time long since elapsed, and are therefore mischaracterized as causes of "ongoing" delay (P. Br. 40). Moreover, the periods in question, during which various public and private entities were investigating the misconduct,[22] had already elapsed months before the Court issued its decision in *Scott*, and were thus implicitly considered when the Court "account[ed] for the due process rights of [Dookhan] defendants." *Scott*, 467 Mass. at 352. Further, the petitioners cite no specific reason why these periods of time caused them any prejudice, and no authority exists to support an assertion that the total of approximately two years between DPH's discovery of the misconduct to the release of the Meier Report constitutes *per se* prejudicial appellate delay. *See, e.g., Commonwealth v. Weichel,* 403 Mass. 103, 108 (1988) (no inherent prejudice from ten-year appellate delay); *Commonwealth v. Libby*, 411 Mass.177, 180 (1991)(no inherent prejudice from sixteen-year appellate delay).

[22] *See Scott*, 467 Mass. at 338-44.

The third alleged "cause" of delay is simply the IG's report itself (P. Br. 40). The petitioners make no attempt to explain why a factual report released in March 2014 constitutes "inordinate, ongoing delay," to their efforts, or lack thereof, to seek postconviction relief (P. Br. 40). The report is relevant only to the existence of the misconduct, and the Court by its decision in *Scott* has already afforded a conclusive presumption of egregious misconduct.

The fourth alleged cause is the respondent District Attorneys' September 2014 provisions to CPCS of "information needed to identify docket numbers for Dookhan defendants" listed in the Meier Report (P. Br. 41; R.A. 1008-15). However, the petitioners do not identify how the September 2014 provisions have caused delay to their own postconviction proceedings, or to those of any other Dookhan defendants. The District Attorneys voluntarily expended time and resources in order to identify and provide additional identifying information of potentially affected defendants to supplement and augment the data in the Meier Report. Following the provisions from the Suffolk and Essex District Attorneys, the Single

Justice orchestrated the furnishing of further identifying information from the Administrative Office of the Trial Court (R.A. 1008-15). Notably, CPCS has never provided an affidavit that the information included in these provisions did not exist within their own databases and case tracking systems.

The fifth and final alleged cause is the fact that "[l]awyers have not yet been appointed for roughly 30,000 Dookhan defendants" (P. Br. 41). The 30,000 figure is unsupported by any record citation or explanation. Moreover, neither the petitioners nor CPCS offer a single example of a defendant ***who wishes to seek postconviction relief, but is unable to do so due to lack of counsel or any other reason***. They offer no evidence of an unseen mass of such defendants, and ignore those hundreds if not thousands of defendants who have already obtained counsel or sought and obtained relief (DA.A. 1-16).

Further, the petitioners' situation, and that of all Dookhan defendants who have not sought postconviction relief, is highly distinguishable from the circumstances of the petitioners in *Lavallee* v. *Justices In Hampden Superior Court*, 442 Mass. 228

(2004), a case on which the petitioners heavily rely. In *Lavallee*, eighteen indigent criminal defendants were held without bail before trial due to a lack of available counsel. *Id*. at 230. In that case, incarcerated defendants were being held indefinitely due to a critical shortage of trial counsel -– here, by contrast, many defendants have sought and received relief, and many have elected not to do so. Finally, in the inevitable case that a defendant at some point in the future may wish to seek postconviction relief on Dookhan grounds, they may easily do so due to the open-ended time standards of Rule 30.

E. The Actual Source Of The Petitioners' Self-Imposed Delay In Receiving Postconviction Relief Is Their Desire To Be Afforded Additional Special Rights And Presumptions Beyond Those They Have Already Received.

In addition to their request for global dismissal based on a claim of undue delay, discussed *infra* § III, the petitioners and CPCS ask the Court to create several special rules to benefit Dookhan defendants not available to other criminal defendants seeking relief under Rule 30. These are a rule related to the "exposure question," *supra* § I; a rule that would suspend the advocate-witness rule for

Dookhan defendants at hearings on their postconviction motions, see (P. Br. 49-50, I. Br. 34-41, *infra* § IV(B)); a rule altering the permissible scope of cross-examination at hearings on Dookhan motions, and a rule changing the rules of evidence at trials that follow such hearings, see (P. Br. 49-50; I. Br. 41-50; *infra* § IV(C)).

Ironically, CPCS argues that this "spate of entirely new legal issues . . . will themselves (sic) require time and money to resolve" (I. Br. 19). Any such expenditures will be due solely to the petitioners' desire to litigate additional and unique presumptions and procedures, outside the long-established procedures governing Rule 30 motions. The petitioners' decision to await the hypothetical future resolution of their claims does not constitute undue delay.

III. THE REMEDY REQUESTED BY THE PETITIONERS AND CPCS, NAMELY, THE MASS VACATUR OF THOUSANDS OF CONVICTIONS OF DEFENDANTS IN VERY DIFFERENT FACTUAL AND PROCEDURAL CIRCUMSTANCES, IS ENTIRELY CONTRARY TO THIS COURT'S HOLDING IN *SCOTT*, WOULD BE IMPOSSIBLE TO IMPLEMENT, AND IS NOT NEEDED IN LIGHT OF THE MODIFED RULE 30 PROCEDURE.

The petitioners ask the Court to "vacate all . . . tainted convictions and set deadlines that give prosecutors reasonable, but limited, opportunities to re-prosecute select defendants" (P. Br. 5). The most obvious reason why this broad and unprecedented remedy should not be granted is that it is entirely inconsistent with the carefully crafted case-by-case approach outlined in *Scott.* Such a remedy would qualify as "an abrupt retreat from the fundamentals of our criminal justice system" that *Scott* disfavored. *Scott*, 467 Mass. at 354, n. 11. Moreover, since the *Scott* decision was issued, our criminal justice system has shown that it can provide fast and expedient resolution of these postconviction claims.

The petitioners argue that the Court employed a similar remedy in *Lavallee*, 442 Mass. at 230, and that *Lavallee* is analogous to the present petition (P. 46-7). It is not. First, the petition in that case was brought by eighteen indigent criminal defendants being held before trial in lieu of bail and without counsel. *Id*. They were limited in number, identified by name in the lawsuit, and were

procedurally similarly situated. A "one-size-fits-all" approach was therefore possible. By contrast, the present petition purports to represent thousands of unnamed defendants in wildly different factual circumstances and at different stages of postconviction proceedings. Furthermore, the petitioners understandably ignore all the practical considerations that would be involved in effecting the dismissal of all these cases.[23]

Moreover, the remedy employed in *Lavallee* was proportional to the harm suffered by the petitioners, whom the Court held could not "be required to wait on their right to counsel while the State solves its administrative problems." *Id*. at 240. Here, though, the petitioners and the Dookhan defendants they

[23] For example, assuming that the relief is being sought on behalf of the 40,323 defendants named in the Meier Report, the petitioners ignore the fact that the so-called "Meier list" includes individuals who were not convicted based on the drug analyses and cannot therefore reasonably be described as "Dookhan defendants." In addition, the Meier list includes individuals for whom the narcotics were a minor part of a larger case, *e.g. Commonwealth v. Kimani Washington*, SUCR2011-10024 (convicted of robbery, home invasion, carjacking, and possession with intent to distribute, narcotics recovered as part of investigation tested by Annie Dookhan).

purport to represent are not being "required to wait" for anything: either they have chosen not to seek postconviction relief, are in the process of receiving it, or have already had their claims adjudicated. *See supra* § II(C).

IV. CPCS' MOTION TO INTERVENE SHOULD BE DENIED, BECAUSE ANY INTEREST REFLECTED IN THE REMEDY SOUGHT IS ADEQUATELY REPRESENTED BY THE PETITIONERS; CPCS HAS NOT SHOWN THAT IT HAS OTHER INTERESTS THAT WOULD BE IMPAIRED BY THE DISPOSITION OF THE PETITION; AND CPCS SEEKS MERITLESS REMEDIES THE PETITIONERS DO NOT SEEK WHICH FAR EXCEED THE SCOPE OF THE PETITION.

A. Any Interest Reflected In The Remedies The Petitioners Seek Is Adequately Represented By The Petitioners.

CPCS moved to intervene "pursuant to Mass. R. Civ. P. 24(a)" (R.A. 822). That subsection defines the standard for intervention of right:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Mass R. Civ. P. 24(a) (emphasis added).[24]

"A judge should allow intervention as of right when (1) the applicant claims an interest in the subject of the action, and (2) he is situated so that his ability to protect this interest may be impaired as a practical matter by the disposition of the action, and (3) his interest is not adequately represented by the existing parties." *Massachusetts Federation of Teachers, AFT, AFL-CIO v. School Committee of Chelsea*, 409 Mass. 203, 205-06 (1991), *citing* Mass. R. Civ. P. 24(a)(2).

As such, when an "applicant for intervention and an existing party have the same interests or ultimate objectives in the litigation, the application should be denied unless a showing of inadequate representation is made." *Id*., (quotation omitted) (emphasis added). Importantly, "[t]he burden of showing the inadequacy of the representation is on the

[24] CPCS did not identify the subsection of Mass. R. Civ. P. 24(a) on which it relies, and in fact, has never briefed a legal basis by which it proposes intervention, but since there is no unconditional statutory right to intervene, the District Attorneys infer that CPCS is relying on Mass. R. Civ. P. 24(a)(2).

applicant." *Id., quoting Attorney Gen. v. Brockton Agricultural Soc'y*, 390 Mass. 431, 434 (1983).

CPCS's motion to intervene did not bear any relation to this framework, but was structured simply as a list of remedies sought.[25] Significantly, CPCS has not (1) defined its interests in the petition;[26] (2) clarified whether its "interests or ultimate objectives" are "the same" as the petitioners; or (3) established that its interests are inadequately represented by the petitioners. *Massachusetts Federation of Teachers,* 409 Mass. at 205-06. Far from alleging inadequacy, CPCS stated that it "agrees with and supports the position of the petitioners in this case as set forth in their petition for relief" (R.A. 822-23). In fact, of forty pages of substantive argument in its brief, CPCS dedicates twenty-one pages in support of the petitioners claims (I. Br. 13-34).

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[25] The original motion to intervene did not mention the intervention standard at all beyond the initial cite to Mass. R. Civ. P. 24(a), and two case citations in the motion's concluding section (R.A. 822). CPCS' brief fails to remedy this defect (I. Br. 10-3).

[26] *Contrast Lavallee*, 442 Mass. at 230 (CPCS filed G.L. c. 211, § 3 petition on behalf of nineteen indigent criminal defendants being held in lieu of bail set without counsel).

This naturally follows, because the interest reflected in the remedy's sought by the petitioners is more than adequately represented by the petitioners.

1. The interests reflected in the other remedies CPCS seeks would not be impaired by the disposition of the petitioners' cases.

The interests reflected in the remaining remedies CPCS seeks will not be "impaired as a practical matter by the disposition of the action" if CPCS is not permitted to intervene. *Massachusetts Federation of Teachers*, 409 Mass. at 205-06. The particular remedies are: the suspension of the advocate-witness rule to allow advocates to testify for defendants at plea withdrawal hearings (I. Br. 34-41); and the creation of a new rule limiting cross-examination at such hearings, and suppressing such testimony at future proceedings (I. Br. 41-50).

Aside from a general connection to the Hinton Lab misconduct, these requests are entirely separate from the two claims the petitioners raise, and would not be affected in any way by its disposition. CPCS has not shown, or even attempted to show, that the wide-ranging issues they raise in the remedies sought

would be impaired by the disposition of the petition. There is good reason for this; it cannot be done: whether a defendant's exposure is "capped" has no impact on the evidentiary rules applied at *Scott* hearings; and if the Court imposes a "global remedy" it could only obviate a *Scott* hearing, not affect its dynamics.

In short, CPCS fails to meet the mandatory intervention standard. Mass. R. Civ. P. 24(a); *Id.* As such, its motion to intervene should be denied.

2. CPCS seeks remedies that exceed the scope of the petition and are not sought by the petitioners.

Notably, the new rules and declaratory judgments requested by CPCS are unrelated to the relief sought by the petitioners. Thus, it is evident that CPCS, "the applicant[] for intervention," "want[s] to enter the present proceeding in order to put [new considerations] before the court." *Care and Protection of Zelda*, 26 Mass. App. Ct. 869, 872 (1989). This objective is contrary to the guiding principle of intervention: "[t]he courts have always striven to maintain the integrity of the issues raised by the original pleadings . . . The injection of an

independent controversy by intervention is improper." *Rothberg v. Schmiedeskamp,* 334 Mass. 172, 178 (1956); *see also Id.* ("The possible consequences of permitting irrelevant issues to be injected in an action at law require no discussion."). Here, "[t]he interest[s] of the [proposed intervener] [are] only vicarious and attenuated." *Coggins v. New England Patriots Football Club, Inc.*, 397 Mass. 525, 539 (1986).

3. CPCS lacks express statutory authority to intervene on behalf of a broad class of unnamed individuals whom it may or may not represent.

Even assuming CPCS has satisfied the requirements for intervention, the motion should be denied because CPCS lacks express authority to intervene on behalf of a broad class of unnamed individuals whom it may or may not represent. Apart from failing to identify its own interest in the petition, CPCS does not identify, define, or limit the class of individuals whom it purports to represent.

CPCS is authorized by statute to, *inter alia*, "establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding." G. L. c. 211D, § 1. Chapter 211D

contains no provision authorizing CPCS to intervene for the purpose of asserting remedies for a broad class of unnamed individual defendants, including those not represented by CPCS in their underlying criminal case. *See* G. L. c. 211D §§ 1-16.

In all the reported cases in which CPCS has intervened, it has either represented a criminal defendant intervening in a related civil case, see, e.g., *In re Globe*, 461 Mass. 113, 114, n.1 (2011) (in action by a newspaper for inquest report and transcript, intervening on behalf of a first-degree murder defendant who was represented by CPCS), or intervened in a case where an existing party's claim involved an issue fundamental to the powers and duties of CPCS, such as a party's right to appointed counsel, see e.g., *In re Adoption of Meaghan*, 461 Mass. 1006 (2012), or the compensation of experts for indigent defendants. *See, e.g., In re Edwards*, 464 Mass. 454, 455 (2013). There is certainly no reported decision in which CPCS has successfully intervened on behalf of a broad, unnamed class of individuals whom the Committee may or may not otherwise represent.

Moreover, to the extent that CPCS should rightfully be heard on criminal issues of importance, including the Hinton Lab misconduct, the amicus process defined in Massachusetts Rule of Appellate Procedure 17 affords it a platform to do so. *See, e.g., Scott*, 467 Mass. 336 (Hinton Lab cases in which CPCS filed an amicus brief); *Charles*, 466 Mass. at 77; *Commonwealth v. Milette*, 466 Mass. 63, 77 (2013); Mass. R. App. Proc. 17. In its published decisions, this Court regularly acknowledges amicus briefs filed by CPCS, and has cited them favorably in support of its holdings. *See Commonwealth v. Vasquez*, 456 Mass. 350, 366 (2010); *see also Commonwealth v. Greineder*, 464 Mass. 580, 600, n. 2 (2013), and *Commonwealth v. Brown*, 431 Mass. 772, 775 (2000). Such amicus curiae briefs are an appropriate method by which to voice broad policy concerns, to the extent that those concerns can be resolved in a judicial setting.

The amicus process notwithstanding, CPCS is not authorized by statute to intervene in an action between third parties on behalf of a broad, unnamed class of individuals whom the Committee may or may not otherwise represent. This is particularly the case

where the one defendant they point to, Hipolito Cruz (I. Br. 48), has filed a notice of appeal and may find himself precluded from making claims relative to the scope of cross-examination in his case before he even has an opportunity to brief the issue. The motion to intervene should be denied solely on this ground.

B. This Court Should Reject CPCS' Invitation To Abandon The Advocate-Witness Rule Where There Simply Is No Problem Which Requires Such A Drastic Solution And Abandoning The Rule Will Not Eliminate The Clear Conflict Of Interest Dual-Representation Creates.

CPCS first claims that its "practical ability to assign counsel for Dookhan defendants has been put in question by the position taken by some prosecutors that an attorney who represented a Dookhan defendant at the plea stage may not thereafter represent the defendant at a *Scott* hearing without violating the 'advocate-witness' rule" (I. Br. 34). CPCS' argument severely overstates the problem by suggesting there is some shortage of attorneys, impugns the character of Suffolk County prosecutors by suggesting that their concern with respect to the clear conflict of interest is "strategic" (I. Br. 40), and takes a generally dim view of the bar's willingness to represent indigent

defendants either on a *pro bono* basis or through court appointment.

CPCS states that the re-assignment of plea counsel was done "of necessity" (I. Br. 36). The record citation they provide however fails to provide any explanation for this necessity (R.A. 835-36). Rather, the citation repeats the bald assertion that the appointments were made "by necessity" (R.A. 836). This is because, of course, the "necessity" of appointing plea counsel is a self-evident fallacy. If each attorney figuratively "stepped-to-the-left", the "necessity" of dual-role representation is obviated. Accordingly, the "problem" posed by dual-role representation is one entirely of CPCS' own making.[27]

Far from being "strategic" –- a word choice highly suggestive of an individualized choice intended to disqualify or hamper particular counsel –- Suffolk County, from the very inception of litigation arising from the closure of the Hinton Laboratory, has always

[27] CPCS also offers nothing to show that this "problem" is extant. They offer no citation to the record that indicates how many defendants are represented by plea-counsel in their postconviction proceedings. By way of example, only six defendants are represented by plea-counsel in Suffolk County (R.A. 34-41).

insisted that affidavits are pleadings and not evidence. *See e.g. Commonwealth v. Scott*, *Petition for Direct Appellate Review* (DAR-21363), filed April 30, 2013. The District Attorneys' concerns are the same as those articulated by this Court. "The policy against trial counsel's simultaneously serving as a witness normally precludes an attorney even from testifying on *behalf* of his client, due to the incompatible roles of witness and advocate." *Commonwealth v. Shraiar*, 397 Mass. 16, 21 (1986); *see also Commonwealth v. Rondeau*, 378 Mass. 408, 415-16 (1979) (counsel arguing his own credibility unseemly); "The ethical problems raised by trial counsel acting as counsel and as a witness are most serious where, as here, counsel is an independent witness . . . and the outcome of the case may well turn on his credibility." *Black v. Black*, 376 Mass. 929 (1978).

The purpose of Mass. R. Prof. C. 3.7(a) is to prevent jury confusion stemming from the combination of attorney and witness roles and mitigates the "potential negative perception by the public that the attorney colored his or her testimony to further the

client's case". *Smaland Beach Ass'n v. Genova*, 461 Mass. 214, 220 (2012), citing *Culebras Enters. Corp. v. Rivera-Rios*, 846 F. 2d 94, 99-100 (1st Cir. 1988). CPCS asserts that postconviction hearings do "not present any risk of 'jury confusion' or the 'appearance of impropriety'" (I. Br. 39). There is no jury, but the hearing is public and the appearance of impropriety is still of concern. Further, even where credibility is not challenged, it is always a live issue for the finder of fact. In the instant case, this requires appellate counsel to argue plea counsel's credibility, meaning plea counsel will be arguing in favor of his own credibility.

Moreover, dual-representation presents a conflict of interest. If the testimony introduced through opposing counsel is "prejudicial or directed against the client, the case for judicial intervention is more powerful." *Smaland Beach*, 461 Mass. at 221 (citations and quotations omitted). The likelihood that the Commonwealth would adduce information harmful to the defendant from his attorney is high. Even a simple admission that the evidence against the defendant beyond the certificate of analysis was strong will

harm the defendant's claim, thereby creating a conflict.

This issue does not require a complex solution or special exceptions to our rules. The Court should enforce the advocate-witness rule, and CPCS should provide conflict-free counsel, which it can do simply by re-assigning cases to qualified attorneys under its authority, from its public or private counsel divisions or from among bar advocates.

C. Announcing A Bright-Line Rule Precluding The Commonwealth From Inquiring As To The Defendant's Substantive Understanding Of His Case Dramatically Curtails The Fact Finders Discretion And Any Ruling Relative To The Hypothetical Admissibility Of A Hypothetical Defendant's Testimony In Hypothetical Future Proceedings Is Speculative In The Extreme.

CPCS lastly asks this Court to rule that a prosecutor may not inquire as to "the details of the defendant's factual guilt" when cross-examining the defendant and that a defendant's testimony at his motion to vacate is inadmissible for substantive purposes at any subsequent trial (I. Br. 41). Both requests should be denied.

This Court has "consistently recognized that the decision whether the probative value of relevant

evidence is outweighed by its prejudicial effect is largely within the discretion of the trial judge. That decision 'will be accepted on review except for palpable error.'" *Commonwealth v. Harvey*, 397 Mass. 351, 358-59 (1986), *quoting Commonwealth v. Young*, 382 Mass. 448, 462-63 (1981). "[A] defendant's decision to tender a guilty plea is a unique, individualized decision, and the relevant factors and their relative weight will differ from one case to the next." *Scott*, 467 Mass. at 356. The bright line rule CPCS advocates would divorce the analysis from the facts of any particular case and significantly curtail the motion judge's ability to explore and weigh these differing factors.

CPCS' assertion that a Dookhan defendant's choice to plea is "by definition" made independent of actual guilt or innocence (I. Br. 49) presumes that the only evidence relevant to the assessment is that which the defendant elects to adduce. However, by way of example, the existence or absence of affirmative defenses necessarily goes to the "reasonable probability that [a defendant] would not have pleaded guilty had he known of Dookhan's misconduct", *Scott*,

467 Mass. at 352, and should the Commonwealth seek to adduce evidence relative to the absence of available affirmative defenses it will necessarily touch on the defendant's guilt or innocence.

The second ruling sought by CPCS, precluding use at trial of a defendant's testimony at the *Scott* hearing, must be rejected because, if for no other reason, it is not ripe. It is not even ripe in the case of Hipolito Cruz -– his motion to vacate was denied and, as it stands, there will be no trial (R.A. 1106). The same rational that applies to this Court's reluctance to decide the constitutionality of a statute in the abstract should apply here. To paraphrase the Court: "In many cases it would be difficult or even impossible to say abstractly and unconditionally that [the statement] is or is not [admissible]. In part [the statement] may be [admissible], yet the remainder [inadmissible]." *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 245-46 (1946).

In short, there is no need for this Court to fashion remedies for harms that have yet to occur or solutions to problems that do not exist. Nor is there

a need for this Court to limit the discretion available to the motion judge in his role as fact-finder, or to limit highly probative evidence at a subsequent trial, namely, the testimony of a defendant who testifies during the *Scott* hearing.

In the aftermath of the closing of the Hinton Laboratory, the trial court, Commonwealth and bar cooperated to fairly and efficiently address the liberty interests of incarcerated defendants. This Court went on to create a conclusive evidentiary presumption that affords relief to any defendant who can show that he would not have pled guilty knowing what he knows today. Since then, the trial court has addressed nearly every case in which a defendant has filed a motion for new trial. In short, the courts and the Commonwealth responded with timely and carefully tailored remedies to address the consequences of Dookhan's misconduct at the Hinton Laboratory. The way these cases are playing out in our courts each day evidences that those solutions are working.

CONCLUSION

For the foregoing reasons, the District Attorneys respectfully request that this Honorable Court deny the relief requested by the petitioners, deny CPCS' motion to intervene, or in the alternative deny the relief requested by CPCS.

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ADDENDUM

Statutes

G.L. c. 211D, § 1. Committee for public counsel services; establishment

There shall be a committee for public counsel services, hereinafter referred to as the committee, to plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by salaried public counsel, bar advocate and other assigned counsel programs and private attorneys serving on a per case basis. The committee shall consist of 15 persons: 2 of whom shall be appointed by the governor; 2 of whom shall be appointed by the president of the senate; 2 of whom shall be appointed by the speaker of the house of representatives; and 9 of whom shall be appointed by the justices of the supreme judicial court, 1 of whom shall have experience as a public defender, 1 of whom shall have experience as a private bar advocate, 1 of whom shall have criminal appellate experience, 1 shall have a background in public administration and public finance, and 1 of whom shall be a current or former dean or faculty member of a law school. The court shall request and give appropriate consideration to nominees for the 9 positions from the Massachusetts Bar Association, county bar associations, the Boston Bar Association and other appropriate bar groups including, but not limited to, the Massachusetts Black Lawyers' Association, Inc., Women's Bar Association of Massachusetts, Inc., and the Massachusetts Association of Women Lawyers, Inc.

All members of the committee shall have a strong commitment to quality representation in indigent defense matters or have significant experience with issues related to indigent defense. The committee shall not include presently serving judges, elected state, county or local officials, district attorneys, state or local law enforcement officials or public defenders employed by the commonwealth. The term of office of each member of the committee shall be 4 years. Members of the committee may be removed for cause by the justices of the supreme judicial court. Vacancies shall be filled by the appointing authority

that made the initial appointment to the unexpired term of the appointee within 60 days of the occurrence of the vacancy. An appointee shall continue in office beyond the expiration date of the appointee's term until a successor in office has been appointed and qualified. While serving on the committee, no member shall be assigned or appointed to represent indigent defendants before any court of the commonwealth. No member shall receive any compensation for service on the committee, but each member shall be reimbursed for actual expenses incurred in attending the committee meetings.

Chapter 268A shall apply to all members, officers and employees of the committee, except that the committee may provide representation or enter into a contract pursuant to section 3 or section 6, although a member of the committee may have an interest or involvement in any such matter if such interest and involvement is disclosed in advance to the other members of the committee and recorded in the minutes of the committee; provided, however, that no member having an interest or involvement in any contract under section 3 may participate in any particular matter, as defined in section 1 of chapter 268A, relating to such contract.

G.L. c. 211, § 3. Superintendence of inferior courts; power to issue writs and process

The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C;

and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

G.L. c. 265, § 13D. Assault and battery upon public employees; penalty

Whoever commits an assault and battery upon any public employee when such person is engaged in the performance of his duties at the time of such assault and battery, shall be punished by imprisonment for not less than ninety days nor more than two and one-half years in a house of correction or by a fine of not less than five hundred nor more than five thousand dollars.

G.L. c. 266, § 120. Entry upon private property after being forbidden as trespass; prima facie evidence; penalties; arrest; tenants or occupants excepted

Whoever, without right enters or remains in or upon the dwelling house, buildings, boats or improved or enclosed land, wharf, or pier of another, or enters or remains in a school bus, as defined in section 1 of chapter 90, after having been forbidden so to do by the person who has lawful control of said premises, whether directly or by notice posted thereon, or in violation of a court order pursuant to section thirty-four B of chapter two hundred and eight or section three or four of chapter two hundred and nine A, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty

days or both such fine and imprisonment. Proof that a court has given notice of such a court order to the alleged offender shall be prima facie evidence that the notice requirement of this section has been met. A person who is found committing such trespass may be arrested by a sheriff, deputy sheriff, constable or police officer and kept in custody in a convenient place, not more than twenty-four hours, Sunday excepted, until a complaint can be made against him for the offence, and he be taken upon a warrant issued upon such complaint.

This section shall not apply to tenants or occupants of residential premises who, having rightfully entered said premises at the commencement of the tenancy or occupancy, remain therein after such tenancy or occupancy has been or is alleged to have been terminated. The owner or landlord of said premises may recover possession thereof only through appropriate civil proceedings.

G.L. c. 266, § 30. Larceny; general provisions and penalties

(1) Whoever steals, or with intent to defraud obtains by a false pretence, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another as defined in this section, whether such property is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall, if the property stolen is a firearm, as defined in section one hundred and twenty-one of chapter one hundred and forty, or, if the value of the property stolen exceeds two hundred and fifty dollars, be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and imprisonment in jail for not more than two years; or, if the value of the property stolen, other than a firearm as so defined, does not exceed two hundred and fifty dollars, shall be punished by imprisonment in jail for not more than one year or by a fine of not more than three hundred dollars; or, if the property was stolen from the conveyance of a common carrier or of a person

carrying on an express business, shall be punished for the first offence by imprisonment for not less than six months nor more than two and one half years, or by a fine of not less than fifty nor more than six hundred dollars, or both, and for a subsequent offence, by imprisonment for not less than eighteen months nor more than two and one half years, or by a fine of not less than one hundred and fifty nor more than six hundred dollars, or both.

(2) The term “property”, as used in the section, shall include money, personal chattels, a bank note, bond, promissory note, bill of exchange or other bill, order or certificate, a book of accounts for or concerning money or goods due or to become due or to be delivered, a deed or writing containing a conveyance of land, any valuable contract in force, a receipt, release or defeasance, a writ, process, certificate of title or duplicate certificate issued under chapter one hundred and eighty-five, a public record, anything which is of the realty or is annexed thereto, a security deposit received pursuant to section fifteen B of chapter one hundred and eighty-six, electronically processed or stored data, either tangible or intangible, data while in transit, telecommunications services, and any domesticated animal, including dogs, or a beast or bird which is ordinarily kept in confinement.

(3) The stealing of real property may be a larceny from one or more tenants, sole, joint or in common, in fee, for life or years, at will or sufferance, mortgagors or mortgagees, in possession of the same, or who may have an action of tort against the offender for trespass upon the property, but not from one having only the use or custody thereof. The larceny may be from a wife in possession, if she is authorized by law to hold such property as if sole, otherwise her occupation may be the possession of the husband. If such property which was of a person deceased is stolen, it may be a larceny from any one or more heirs, devisees, reversioners, remaindermen or others, who have a right upon such deceased to take possession, but not having entered, as it would be after entry. The larceny may be from a person whose

name is unknown, if it would be such if the property stolen were personal, and may be committed by those who have only the use or custody of the property, but not by a person against whom no action of tort could be maintained for acts like those constituting the larceny.

(4) Whoever steals, or with intent to defraud obtains by a false pretense, or whoever unlawfully, and with intent to steal or embezzle, converts, secretes, unlawfully takes, carries away, conceals or copies with intent to convert any trade secret of another, regardless of value, whether such trade secret is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and imprisonment in jail for not more than two years. The term “trade secret” as used in this paragraph means and includes anything tangible or intangible or electronically kept or stored, which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information, design, process, procedure, formula, invention or improvement.

(5) Whoever steals or with intent to defraud obtains by a false pretense, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another, sixty years of age or older, or of a person with a disability as defined in section thirteen K of chapter two hundred and sixty-five, whether such property is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall, if the value of the property exceeds two hundred and fifty dollars, be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years, or by a fine of not more than fifty thousand dollars or by both such fine and imprisonment; or if the value of the property does not exceed two hundred and fifty dollars, shall be punished by imprisonment in the house of correction

for not more than two and one-half years or by a fine of not more than one thousand dollars or by both such fine and imprisonment. The court may order, regardless of the value of the property, restitution to be paid to the victim commensurate with the value of the property.

G.L. c. 268, § 32B. Resisting Arrest

(a) A person commits the crime of resisting arrest if he knowingly prevents or attempts to prevent a police officer, acting under color of his official authority, from effecting an arrest of the actor or another, by:

(1) using or threatening to use physical force or violence against the police officer or another; or

(2) using any other means which creates a substantial risk of causing bodily injury to such police officer or another.

(b) It shall not be a defense to a prosecution under this section that the police officer was attempting to make an arrest which was unlawful, if he was acting under color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A police officer acts under the color of his official authority when, in the regular course of assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

(c) The term “police officer” as used in this section shall mean a police officer in uniform or, if out of uniform, one who has identified himself by exhibiting his credentials as such police officer while attempting such arrest.

(d) Whoever violates this section shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or a fine of not more than five hundred dollars, or both.

G.L. c. 94C, § 32A. Class B controlled substances; unlawful manufacture, distribution, dispensing or possession with intent to manufacture, etc.; eligibility for parole

(a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years, or in a jail or house of correction for not more than two and one-half years, or by a fine of not less than one thousand nor more than ten thousand dollars, or both such fine and imprisonment.

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section thirty-one of this chapter under this or any other prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than 2 nor more than ten years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(c) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of section thirty-one shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than ten years or by imprisonment in a jail or house of correction for not less than one nor more than two and one-half years. No sentence imposed under the

provisions of this section shall be for less than a mandatory minimum term of imprisonment of one year and a fine of not less than one thousand nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum one year term of imprisonment, as established herein.

(d) Any person convicted of violating the provisions of subsection (c) after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled substance, as defined in section thirty-one or of any offense of any other jurisdiction, either federal, state or territorial, which is the same as or necessarily includes, the elements of said offense, shall be punished by a term of imprisonment in the state prison for not less than 31/2 nor more than fifteen years and a fine of not less than two thousand five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(e) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, provided that said person shall not be eligible for parole upon a finding of any one of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

G.L. c. 94C, § 32J. Controlled substances violations in, on, or near school property; eligibility for parole

Any person who violates the provisions of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I while in or on, or within 300 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school if the violation occurs between 5:00 a.m. and midnight, whether or not in session, or within one hundred feet of a public park or playground shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than two nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of two years. A fine of not less than one thousand nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum two year term of imprisonment as established herein. In accordance with the provisions of section eight A of chapter two hundred and seventy-nine such sentence shall begin from and after the expiration of the sentence for violation of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I.

Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section.

Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to a house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C.

(iii) the offense was committed during the commission or attempted commission of the a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

G.L. c. 94C, § 34. Unlawful possession of particular controlled substances, including heroin and marihuana

No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as provided in Section 32L of this Chapter or as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such

fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of more than one ounce of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

If any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or of a felony under the laws of any state or of the United States relating to such drugs, has had his case continued without a finding to a certain date, or has been convicted and placed on probation, and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may dismiss the proceedings against him, and may order sealed all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that

departmental records which are not public records, maintained by police and other law enforcement agencies, shall not be sealed; and provided further, that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record sealed pursuant to the provisions of this section. Any conviction, the record of which has been sealed under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other related court proceeding, in response to any inquiry made of him for any purpose.

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana or a controlled substance in Class E and who has not previously been convicted of any offense pursuant to the provisions of this chapter, or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto, or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be sealed.

It shall be a prima facie defense to a charge of possession of marihuana under this section that the defendant is a patient certified to participate in a therapeutic research program described in chapter ninety-four D, and possessed the marihuana for personal use pursuant to such program.

G.L. c. 94C, § 32. Class A controlled substances; unlawful manufacture, distribution, dispensing or possession with intent to manufacture, etc.; eligibility for parole

(a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class A of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars, or by both such fine and imprisonment.

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled substance as defined by section thirty-one of this chapter under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than 31/2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 31/2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum 31/2 year term of imprisonment, as established herein.

(c) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or

a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

Rules

Mass. R. Civ. P. 24(a). Intervention
(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the Commonwealth confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a

federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Intervention by the Attorney General. When the constitutionality of an act of the legislature or the constitutionality or validity of an ordinance of any city or the by-law of any town is drawn in question in any action to which the Commonwealth or an officer, agency, or employee thereof is not a party, the party asserting the unconstitutionality of the act or the unconstitutionality or invalidity of the ordinance or by-law shall notify the attorney general within sufficient time to afford him an opportunity to intervene.

Mass. R. Crim. P. 30. Postconviction relief

(a) Unlawful Restraint. Any person who is imprisoned or whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge to release him or her or to correct the sentence then being served upon the ground that the confinement or restraint was imposed in violation of the Constitution or laws of the United States or of the Commonwealth of Massachusetts.

(b) New Trial. The trial judge upon motion in writing may grant a new trial at any time if it appears that justice may not have been done. Upon the motion the trial judge shall make such findings of fact as are

necessary to resolve the defendant's allegations of error of law.

(c) Post Conviction Procedure.

(1) Service and Notice. The moving party shall serve the office of the prosecutor who represented the Commonwealth in the trial court with a copy of any motion filed under this rule.

(2) Waiver. All grounds for relief claimed by a defendant under subdivisions (a) and (b) of this rule shall be raised by the defendant in the original or amended motion. Any grounds not so raised are waived unless the judge in the exercise of discretion permits them to be raised in a subsequent motion, or unless such grounds could not reasonably have been raised in the original or amended motion.

(3) Affidavits. Moving parties shall file and serve and parties opposing a motion may file and serve affidavits where appropriate in support of their respective positions. The judge may on rule on the issue or issues presented by such motion on the basis of the facts alleged in the affidavits without further hearing if no substantial issue is raised by the motion or affidavits.

(4) Discovery. Where affidavits filed by the moving party under subdivision (c)(3) establish a prima facie case for relief, the judge on motion of any party, after notice to the opposing party and an opportunity to be heard, may authorize such discovery as is deemed appropriate, subject to appropriate protective order.

(5) Counsel. The judge in the exercise of discretion may assign or appoint counsel in accordance with the provisions of these rules to represent a defendant in the preparation and presentation of motions filed under subdivisions (a) and (b) of this rule. The court, after notice to the Commonwealth and an opportunity to be heard, may also exercise discretion to allow the defendant costs associated with the preparation and presentation of a motion under this rule.

(6) Presence of Moving Party. A judge may entertain and determine a motion under subdivisions (a) and (b) of this rule without requiring the presence of the moving party at the hearing.

(7) Place and Time of Hearing. All motions under subdivisions (a) and (b) of this rule may be heard by the trial judge wherever the judge is then sitting. The parties shall have at least 30 days notice of any hearing unless the judge determines that good cause exists to order the hearing held sooner.

(8) Appeal. An appeal from a final order under this rule may be taken to the Appeals Court, or to the Supreme Judicial Court in an appropriate case, by either party.

(A) If an appeal is taken, the defendant shall not be discharged from custody pending final decision upon the appeal; provided, however, that the defendant may, in the discretion of the judge, be admitted to bail pending decision of the appeal.

(B) If an appeal or application therefor is taken by the Commonwealth, upon written motion supported by affidavit, the Appeals Court or the Supreme Judicial Court may determine and approve payment to the defendant of the costs of appeal together with reasonable attorney's fees, if any, to be paid on the order of the trial court after entry of the rescript or the denial of the application. If the final order grants relief other than a discharge from custody, the trial court or the court in which the appeal is pending may, upon application by the Commonwealth, in its discretion, and upon such conditions as it deems just, stay the execution of the order pending final determination of the matter.

(9) Appeal Under G. L. c. 278, § 33E . If an appeal or application for leave to appeal is taken by the Commonwealth under the provisions of Chapter 278, Section 33E , upon written notice supported by affidavit, the Supreme Judicial Court may determine and approve payment to the defendant of the costs of

appeal together with reasonable attorney's fees to be paid on order of the trial court after entry of the rescript or the denial of the application.

Mass. R. Crim. P. 31. Stay of execution; Relief pending review automatic expiration of stay

(a) Imprisonment. If a sentence of imprisonment is imposed upon conviction of a crime, the entry of an appeal shall not stay the execution of the sentence unless the judge imposing it or, pursuant to Mass. R. App. P. 6, a single justice of the court that will hear the appeal, determines in the exercise of discretion that execution of said sentence shall be stayed pending the determination of the appeal. If execution of a sentence of imprisonment is stayed, the judge or justice may at that time make an order relative to the custody of the defendant or for admitting the defendant to bail.

(b) If the application for a stay of execution of sentence is allowed, the order allowing the stay may state the grounds upon which the stay may be revoked and, in any event, shall state that upon release by the appellate court of the rescript affirming the conviction, stay of execution automatically expires unless extended by the appellate court. Any defendant so released shall provide prompt written notice to the clerk of the trial court regarding the defendant’s current address and promptly notify the clerk in writing of any change thereof. The clerk shall notify the appellate court that will hear the appeal that a stay of execution of sentence has been allowed. At any time after the stay expires, the Commonwealth may move in the trial court to execute the sentence. The court shall schedule a prompt hearing and issue notice thereof to the defendant unless the prosecutor requests, for good cause shown, that a warrant shall issue.

(c) Fine. If a reservation, filing, or entry of an appeal is made following a sentence to pay a fine or fine and costs, the sentence shall be stayed by the judge imposing it or by a single justice of the court

that will hear the appeal if there is a diligent perfection of appeal.

(d) Probation or Suspended Sentence. An order placing a defendant on probation or suspending a sentence may be stayed if an appeal is taken.

Mass. R. Crim. P. 47. Special magistrates
The justices of the Superior Court may appoint special magistrates to preside over criminal proceedings in the Superior Court. Such special magistrates shall have the powers to preside at arraignments, to set bail, to assign counsel, to supervise pretrial conferences, to mark up pretrial motions for hearing, to make findings and report those findings and other issues to the presiding justice or Administrative Justice, and to perform such other duties as may be authorized by order of the Superior Court. The doings of special magistrates shall be endorsed upon the record of the case. Special magistrates shall be compensated in the same manner as is provided by the General Laws for the compensation of masters in civil cases.

Mass. R. Prof. C. 3.7. Lawyer as witness
(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

Mass. R.A.P. 17. Brief of an Amicus Curiae
A brief of an amicus curiae may be filed only (1) by leave of the appellate court or a single justice granted on motion or (2) at the request of the appellate court, except that consent or leave shall not be required when the brief is presented by the

Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the appellate court or a single justice for cause shown shall grant leave for later filing, and shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons. The same number of copies of the brief of an amicus curiae shall be filed with the clerk and served on counsel for each party separately represented as required by Rule 19(b).

DISTRICT ATTORNEYS' SUPPLEMENTAL APPENDIX

DISTRICT ATTORNEYS' SUPPLEMENTAL APPENDIX

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO. SUCR2005-10537
(Bridgeman)
NO. SUCR2007-10959
(Bridgeman)

BOSTON MUNICIPAL COURT
NO. 0501 CR 0142
(Creach)

ESSEX SUPERIOR COURT
NO. ESCR2007-1535
(Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

AFFIDAVIT OF BRISTOL COUNTY ASSISTANT DISTRICT ATTORNEY, RELATING TO THE PROGRESS OF MOTIONS FOR NEW TRIAL FILED BY DOOKHAN DEFENDANTS IN THE BRISTOL COUNTY SPECIAL SESSION

I, Robert Kidd, depose and state:

1. I am a Bristol County Assistant District Attorney assigned to handle motions brought by Dookhan defendants in the Bristol County special drug lab session ("Hinton Lab special session").

2. I am filing this affidavit pursuant to a request by the respondents in the above-captioned case to provide factual data relating to the progress of Dookhan motions filed in Bristol County.

3. In creating the information for this affidavit, I relied on statistics maintained and updated regularly by our office. Some of the information is approximate because several motions were never acted upon.

4. According to our district court records, approximately thirty motions for new trial were filed by Dookhan defendants challenging a district court conviction.

5. There have been approximately one hundred and five motions for new trial filed in the Hinton Lab special session by Dookhan defendants challenging a superior court conviction. Some of these motions were withdrawn or waived before a hearing at the request of the defendant for various reasons, including, among other reasons, discovery that the contraband in question was tested at a lab other than the Hinton Lab.

6. Currently one superior court case involving a post-conviction attack related to issues at the Hinton Laboratory is pending. This case has been referred to the trial judge.

7. Since the issuance of the Scott decision[1] there have been two superior court full evidentiary hearings and one district court full evidentiary hearing.

8. The Court's decision in Scott resolved all cases that were pending in the Hinton Lab special sessions.

[1] Commonwealth v. Scott, 467 Mass. 336 (2014), decision issued March 5, 2014.

9. In the district court there is currently one active post-conviction case in the Hinton Laboratory special session.

10. Since Scott was decided, one new motion was filed in the district court.

11. In the last few months, only one new motion has been initiated in the Superior Court Hinton Lab Special Session. This case does not have a scheduled date because the defendant is facing criminal charges in Rhode Island.

12. To date, we have not retried any defendants whose motion for new trial was allowed.

13. We currently do not have any cases scheduled in the superior court session scheduled for the 2015 year.

Signed under penalties of perjury December 18, 2014.

ROBERT KIDD
Assistant District Attorney
For the Bristol District

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO. SUCR2005-10537 (Bridgeman)
NO. SUCR2007-10959 (Bridgeman)

BOSTON MUNICIPAL COURT
NO. 0501 CR 0142 (Creach)

ESSEX SUPERIOR COURT
NO. ESCR2007-1535 (Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

AFFIDAVIT OF ESSEX COUNTY ASSISTANT DISTRICT ATTORNEY SUSAN DOLHUN RELATING TO THE PROGRESS OF MOTIONS FOR NEW TRIAL RELATED TO THE HINTON LAB MISCONDUCT FILED IN THE ESSEX COUNTY SPECIAL SESSION

I, Susan Dolhun, depose and state:

1. I am an Essex County Assistant District Attorney assigned to handle motions for new trial brought by Dookhan defendants in the Essex County special drug lab session ("Essex special session").

2. I am filing this affidavit to provide factual data relating to the progress of Dookhan motions filed in Essex County.

3. There have been approximately 100 (one hundred) motions for new trial filed in the Essex special session by Dookhan defendants challenging a Superior Court conviction. Some of these motions were withdrawn before

a hearing at the request of the defendant for various reasons, including, *inter alia*, a discovery that the contraband in question was tested at a lab other than the Hinton Lab.

4. There have been approximately 68 (sixty-eight) motions for new trial filed in the Essex special session by Dookhan defendants challenging a District Court conviction. This does not include anything prior to January 2013. A handful of these motions (approximately 2-5) were withdrawn at the request of the defendant before a hearing was held. A few (approximately 2-5) defendants filed motions, but never picked a hearing date and failed to pursue the motion further.

5. Approximately 45 (forty-five) total cases were active in the Essex special session around the time of the issuance of the Scott decision.[1] Approximately every week since the Scott decision was issued, the Essex special session has been holding evidentiary motion hearings that have usually proceeded on stipulated exhibits of the parties. Several hearings have required the testimony of a chemist. There have been approximately 1-2 motions going forward each week in the session since Scott was decided, with proposed findings being issued several weeks thereafter.

6. The caseload in the Essex special session has reduced since the March 2014 issuance of both the Court's decision in Scott and the IG's report, apparently because defendants have moved forward on motions for new trial they had previously filed, but for which they had requested continuances anticipating the issuance of the decision and the report.

7. There are currently 10 (ten) Superior Court cases currently active in the Essex special session, including cases in which the motion for new trial has been argued and not decided, and cases which are awaiting a change of plea hearing following the allowance of the motion for new trial.

8. In the last three months, only one (1) new Superior Court case has been initiated in the Essex Special Session. This case is scheduled for a motion hearing on 1/29/14 at the request of the defense attorney.

9. There is currently 1 (one) District Court case currently active in the Essex special session. The general pattern in the District Court is that every month a few (approximately one or two) cases are filed.

[1] Commonwealth v. Scott, 467 Mass. 336 (2014), decision issued March 5, 2014.

11. There have been approximately 5 (five) total District Court cases active in the Essex special session since Scott was decided.

12. Our office has prioritized the handling of Superior Court cases related to the Dookhan misconduct, and has taken measures to expedite the hearings of such defendants, including transporting federal detainees into Superior Court to facilitate a speedy motion hearing.

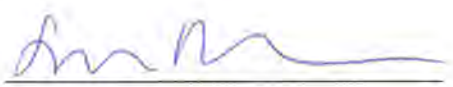
13. The Commonwealth has not been requesting continuances on any of the Superior Court cases. All continuances have been at the request of the defendants and their attorneys. Incarcerated defendants who cited a conflict of interest with their appointed Dookhan attorney have requested new counsel to be appointed, which has also resulted in continuances.

14. To date, we have retried only 1 (one) Superior Court defendant who has had a motion for new trial allowed. This was the only time we revived the original indictment. There are only 3 (three) Superior Court cases actively restored to the trial list after motion for new trial has been allowed, one of which is scheduled for a change of plea on 12/19.

15. In the District Court, following the allowance of a motion for new trial by a Dookhan defendant, there were approximately 12 (twelve) cases which proceeded to a change of plea, 11 (eleven) dismissals, 6 (six) nolle prosequis, and 8 (eight) open cases restored to the trial list. The remainder of the motions were either denied or withdrawn by the defendant.

17. In the Superior Court session, we only have 3 (three) drug lab sessions scheduled for the 2015 year, one date each in the months of January, February and April, due to the reduced number of motions filed.

Signed under penalties of perjury December 22, 2014



Susan Dolhun
Assistant District Attorney
For the Eastern District
BBO No. 665345

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS & ESSEX, SS. SUPREME JUDICIAL COURT
DOCKET NO. SJC-11764

KEVIN BRIDGEMAN, YASIR CREACH, AND MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT
&
DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

AFFIDAVIT OF MIDDLESEX COUNTY ASSISTANT DISTRICT ATTORNEY SARA CONCANNON DESIMONE REGARDING THE PROGRESS OF MOTIONS RELATED TO FORMER CHEMIST ANNIE DOOKHAN FILED IN THE MIDDLESEX COUNTY SPECIAL SESSIONS

I, Sara DeSimone, hereby depose and state as follows:

1. I am an Assistant District Attorney in the Middlesex District Attorney's Office (MDAO) who is assigned to handle post-conviction motions for a new trial or to withdraw guilty pleas in the Middlesex Superior Court Special Session established to address cases relating to the William A. Hinton Laboratory ("Hinton Lab") and former chemist Annie Dookhan ("Dookhan").

2. On November 26, 2012, Superior Court Chief Justice Barbara J. Rouse ordered the assignment of the Honorable Paul A. Chernoff (retired) as a Special Magistrate of the Superior Court to preside over criminal proceedings in Hinton Lab cases in the Middlesex Superior Court Special Session (hereinafter "Special Session").

3. The Honorable Judge Roanne Sragow, sitting in the Cambridge District Court, was assigned to preside over criminal proceedings in Hinton Lab cases in arising out of all Middlesex County District Courts (hereinafter "District Court Special Session").

4. Law enforcement agencies in Middlesex County discontinued submitting drug samples to the Hinton Lab in or around 2009. From approximately that time to the present, Middlesex County drug samples were submitted to the Massachusetts State Police Crime Laboratory.

5. When the Special Session first began in 2012, the MDAO, on behalf of the

Commonwealth[1], routinely filed a Nolle Prosequi by agreement in all known cases that involved Dookhan as a primary or confirmatory chemist, without necessitating an evidentiary hearing.

6. This office has worked proactively since September 2012 to identify and address cases where Dookhan was a testing chemist. We have routinely responded to requests for certificates of analyses and other documentation, and have provided discovery materials directly to defense counsel in response to well over 170 requests for information. We have also proactively identified closed cases involving Dookhan, as either the primary or confirmatory chemist, and sent lists of those cases to the Committee for Public Counsel Services ("CPCS") on the respective dates of May 1, 2013 and June 18, 2013. We have worked closely with CPCS in providing notices in Dookhan cases and sharing the statistical data that has been compiled by Assistant District Attorneys and two paralegals.

7. On December 16, 2014, we received an email communication from the respondents in the above-captioned action requesting an overview of the progress of motions for a new trial in Middlesex County, specific to Dookhan. This Affidavit is provided in response to that request and is intended for submission to the Supreme Judicial Court.

8. Since the assignment of Judge Chernoff in November 2012, there have been approximately 100 post-conviction motions filed in the Special Session. Approximately 65 of those motions involved Dookhan as either the primary or confirmatory chemist; the other motions involved other chemists or general allegations against the Hinton Lab.

9. Since November 2012, there have been approximately 130 post-conviction motions filed in the District Court Special Session. Approximately 97 of those motions involved Dookhan as either the primary or confirmatory chemist; the other motions involved other chemists or general allegations against the Hinton Lab.

10. From the beginning, the MDAO has considered cases in which the defendants were incarcerated a priority, particularly when Dookhan was a testing chemist. The Commonwealth proactively worked to identify these cases and to have them addressed in court by sending notices to CPCS.

11. All cases have been heard and resolved expeditiously in both Special Sessions. I am not aware of any undue delay after the release of the Report from the Office of the Inspector General ("OIG Report") on March 4, 2014 and the decision of Commonwealth v. Scott[2] issued on March 5, 2014. Any delay prior to the release of the OIG report was due to strategic decisions made by defendants who were

[1] Any reference to the "Commonwealth" in this document relates solely to the actions and representations of the MDAO.
[2] CW v. Scott, 467 Mass. 336 (2014).

awaiting its release. The Court's decision in Scott reduced the caseload in the Special Session, and provided guidance for the parties to either proceed to an evidentiary hearing or withdraw their motion based upon the facts and circumstances.

12. After Scott, most cases quickly proceeded either to an evidentiary hearing or were resolved through an agreed disposition. As early as the following day, on March 6, 2014, the MDAO participated in an evidentiary hearing. Some of the motions were withdrawn on the basis that Dookhan was not a testing chemist. Since the release of Scott, the Special Session has been actively addressing cases either through an evidentiary hearing or agreed resolution. Some hearings have involved testimony from chemists or police officers. However, many of the hearings have proceeded on the basis of stipulations from the parties resulting in speedier resolutions for defendants.

13. On or about March 5, 2014, when the Scott decision was released, the MDAO was handling approximately 38 cases in the Special Session. Approximately 18 of those cases involved Dookhan as a primary or confirmatory chemist, and the remainder involved other chemists or general claims against the Hinton Lab.

14. Since the Scott decision, the MDAO has handled approximately 18 cases in the District Court Special Session. Approximately 7 of those cases involved Dookhan as a primary or confirmatory chemist, and the remainder involved other chemists or general claims against the Hinton Lab. Most of the motions involving Dookhan as a testing chemist in the District Court Special Session were routinely allowed by Judge Sragow in favor of the defendants even before the release of the Scott decision.

15. We are currently handling about 25 cases in the Special Session. Approximately 12 of those cases involve Dookhan as a primary or confirmatory chemist, and the remainder involve other chemists or general claims against the Hinton Lab.

16. We are currently handling one (1) case involving Dookhan as a testing chemist in the District Court Special Session.

17. The MDAO has not retried any Superior Court cases where a defendant was successful in withdrawing a guilty plea or requesting a new trial. The Commonwealth has either filed a Nolle Prosequi or there has been a negotiated resolution. There is one (1) such case pending for retrial in District Court.

18. Approximately 65 cases in the Special Session have been resolved through an agreed-upon resolution prior to an evidentiary hearing. Usually the Commonwealth has prepared an agreed resolution document signed by the parties, and we have jointly presented the intended request to Judge Chernoff for approval prior to a hearing. Whenever possible we have worked together collaboratively with defense counsel to resolve cases by agreement.

19. We have also responded to numerous requests for certificates of analyses for samples analyzed at laboratories other than the Hinton Lab. We received approximately 10 motions for Superior Court cases where samples were tested at the Massachusetts State Police Laboratory. At least one of those cases resulted in an evidentiary hearing.

20. The Commonwealth has not been requesting continuances. Most continuances are attributable to the appointed counsel needing further time to review the case or a new attorney embarking on a case.

21. Since the Scott decision there have been three (3) new cases initiated in the Superior Court Special Session. In all of those cases Dookhan was a testing chemist.

Signed under the pains and penalties of perjury this 17th day of December, 2014

Respectfully submitted
For the Commonwealth,

MARIAN T. RYAN
DISTRICT ATTORNEY

Sara C DeSimone

Sara Concannon DeSimone
Assistant District Attorney
Middlesex District Attorney's Office
15 Commonwealth Ave.
Woburn, MA 01801
T. 781-897-8327
BBO No. 636991

Dated: December, 17, 2014

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO. SUCR2005-10537
(Bridgeman)
NO. SUCR2007-10959
(Bridgeman)

BOSTON MUNICIPAL COURT
NO. 0501 CR 0142
(Creach)

ESSEX SUPERIOR COURT
NO. ESCR2007-1535
(Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

AFFIDAVIT OF SUSANNE M. O'NEIL

I, Susanne M. O'Neil, depose and state:

1. I am a Norfolk County Assistant District Attorney assigned to handle motions for new trial brought by defendants in the Norfolk County special drug lab sessions ("special session").

2. I am filing this affidavit pursuant to a request by the respondents in the above-captioned case to provide factual data relating to the progress of these motions filed in Norfolk County.

3. In compiling the information below, I relied on: case file entries by assistant district

attorneys; AOTC (Mass Trial Court Information Center); Norfolk District Attorney's Office internal case management system; and information from District Court special session[1] Clerk Danielle Tierney and Norfolk Superior Court special session Clerk George Berube.

4. Since September 2012, this Office has tracked approximately 147 motions for new trial filed by defendants in district court cases seeking to vacate a plea because of former chemist Annie Dookhan. From September 2012 to March 2013, 101 motions were filed. From March 2013 until March 2014, approximately 40 motions were filed. From March 2014 to the present, 7 motions were filed. All but the last 4 motions filed have been disposed. The remaining 4 are scheduled for hearing in January 2015. Fewer than 10 district court cases were returned to the trial list.

5. Since September 2012, this Office has tracked approximately 82 motions for new trial filed in the Norfolk Superior Court special session by defendants seeking to vacate a Superior Court conviction. From September 2012 to March 2013, 72 motions were filed. From March 2013 to March

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[1] The District Court special session for Norfolk County was held initially at Dedham District Court. Mary Hogan-Sullivan, First Justice, Dedham District Court, and Mark Coven, First Justice, Quincy District Court presided over the hearings. During the past year Judge Coven has heard the motions in Quincy District Court.

In District and Superior Court, initially both post-conviction and pending cases were sent to the special sessions. The Norfolk District Attorney's Office numbers for Dookhan-based motions do not match the trial court lists case-for-case because of different criteria; thus, there will be some differences in the number of cases tracked by this Office and those tracked by the trial courts.

2014, 7 motions were filed. Only 2 cases remained open by March 2014. From March 2014 to the present, 3 motions have been filed, only one of which remains open.

6. Scheduling priority in both Courts was given to defendants in custody.

7. Of the cases returned to the trial list (fewer than 15 total cases for Superior and District Court), the defendants entered new pleas to the same or lesser offenses or the charges were dismissed. One case remains pending in the District Court. To date, no defendants have been tried or convicted of an offense greater than that to which the defendant originally pled.

Signed under the penalties of perjury, December 18, 2014.

Susanne M. O'Neil

Susanne M. O'Neil, BBO# 567769
Assistant District Attorney
Office of the Norfolk District Attorney

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, & ESSEX, ss.

SUPREME JUDICIAL COURT
DOCKET NO. SJC-11764

KEVIN BRIDGEMAN, YASIR CREACH, & MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

&

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

AFFIDAVIT OF SUFFOLK COUNTY ASSISTANT DISTRICT ATTORNEY VINCENT J. DEMORE REGARDING THE PROGRESS OF MOTIONS RELATED TO FORMER CHEMIST ANNIE DOOKHAN FILED IN THE SUFFOLK COUNTY COURTS

I, Vincent J. DeMore, depose and state the following:

1. I am a Suffolk County Assistant District Attorney assigned to supervise the litigation of motions for new trial brought by defendants in Suffolk County.

2. I participate personally in the litigation of motions for new trial in Superior Court and supervise point prosecutors who have been assigned in our District and Municipal Court Divisions.

3. According to our District and Municipal Court records, there have been approximately 196 motions for a new trial adjudicated on District and Municipal Court cases. The vast majority of those cases were resolved by agreement. A handful of those motions were withdrawn before a hearing at the request of the defendant.

4. According to our Superior Court estimates, there have been approximately 228 or more motions for new trial filed by defendants on Superior Court cases.

5. The volume of cases active in the Superior Court session currently is 22 cases across 17 defendants, which include cases where the parties anticipate executing an agreed upon resolution on the next date.

6. The volume of cases active in the Superior Court session when *Scott* was decided was around 104 cases. Since the *Scott* decision, the parties have proceeded on evidentiary

hearings. *Scott* has cut the caseload in Suffolk County by approximately 80% and propelled defendants to move forward on motions for new trial that they long ago filed but had waited to argue pending the Court's decision in *Scott* and the issuance of the Inspector General's report.

7. The volume of cases currently active in the Municipal and District Court session is 10 cases spread out across our nine Municipal and District Court Divisions.

8. In the Municipal and District Court sessions cases are scheduled for the first date available to counsel and typically resolved that same day.

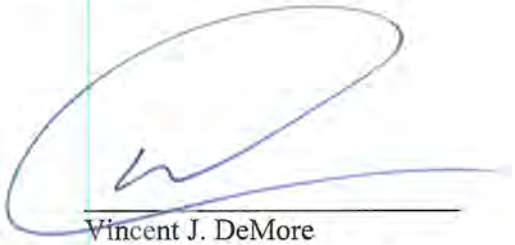
9. Our office prioritized the handling of cases where the defendant was incarcerated, the majority of which were Superior Court Dookhan related cases, assenting to stays of execution of sentence in virtually every case and ensuring that the liberty interests of defendants were protected until a legal framework to adjudicate the defendant's claims could be decided upon.

10. Since *Scott* was decided, the Commonwealth has not been requesting continuances on any of the Superior Court cases. Continuances have been at the request of the defendants and the defense attorneys. Some defendants have had an irreparable breakdown in their relationship with counsel and have requested new counsel to be appointed, which has also resulted in multiple continuances from the new counsel.

11. To date, we have not retried a Superior Court defendant who has had a motion for new trial allowed.

12. In the Superior Court session, through the end of May we only have seven drug lab sessions scheduled, two in January and one date each month February, March, April, and May due to the lack of new cases and a dwindling case load.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 23RD DAY OF DECEMBER, 2014



Vincent J. DeMore
Assistant District Attorney

COMMONWEALTH OF MASSACHUSETTS

In the matter of

Bridgeman v. the Suffolk and Essex DAs, SJC-11764

AFFIDAVIT

In the above referenced matter, the Middle District Attorney's Office handled matters concerning former Hinton Laboratory Chemist Annie Dookhan's cases as follows:

1. We had one motion for a new trial filed in the matter of Commonwealth v. Matti Thomasian, WOCR2008-01515.
2. We currently have no active cases, with the exception of Thomasian's co-defendant, Edgar Espinoza, WOCR2008-01514, who is currently in default.
3. Thomasian's case was addressed immediately by both the Middle District Attorney's Office, and by the Worcester Superior Court, as he was the sole defendant incarcerated as a result of Dookhan's involvement in the testing of the suspected marijuana in his case.
4. We did not retry any case in which Dookhan had any involvement.
5. We agreed to the motion for a new trial on Thomasian's case, and agreed to a new sentence. There were no other plea agreements reached.

Signed under the Pains and Penalties of Perjury.

JOSEPH D. EARLY, JR.
DISTRICT ATTORNEY
MIDDLE DISTRICT

Timothy M. Farrell
Assistant District Attorney
225 Main Street, Room G301
Worcester, MA 01608
(508) 755-8601

Commonwealth of Massachusetts

Essex, ss.

Lawrence Superior Court
Docket No. ESCR2007-875

Commonwealth

v.

Angel Rodriguez

Affidavit of Amanda Barker, Esq.

I, Amanda Barker, being duly sworn do hereby depose and say:

1. I am an attorney for the Committee for Public Counsel Services (CPCS) in the Lawrence, Massachusetts office.
2. On November 9, 2012, I was appointed by the court to represent Angel Rodriguez on drug charges.
3. In October of 2014, I was contacted by Attorney Jeffrey Harris about this case.
4. In 2012, I assisted Mr. Rodriguez in filing a Rule 30 motion on the grounds that the evidence in his case had been tainted by the conduct of Annie Dookhan at the Hinton drug lab. The record showed that Annie Dookhan had tested the drug in Mr. Rodriguez's case. The Court ultimately allowed the motion and vacated Mr. Rodriguez's conviction.
5. Prior to the hearing on the Rule 30 Motion, ADA Ashlee Logan offered Mr. Rodriguez "time served" for the crime. Mr. Rodriguez nevertheless decided to move forward with the Rule 30 Motion hearing.

A Barker
10/20/14

6. After having his Rule 30 Motion allowed, Mr. Rodriguez decided to take his case to trial rather than accept any offers from the Commonwealth.

7. I knew that part of the original indictment alleging a crime greater than trafficking in 28 grams had been nolle prossed by the former ADA. I have attached a copy of the partially nolle prossed indictment hereto.

8. The ADA and I moved forward under the original indictment (2007-875-001), not the partially nolle prossed indictment. Although I did consider challenging the original indictment on the basis of Ms. Dookhan's misconduct, I did not consider the fact that the indictment was defective because it had been previously nolle prossed.

9. Specifically, I did not consider that because "so much of the indictment as alleged an offense of trafficking over 28 grams" had been nolle prossed in January of 2008, the Commonwealth should have re-indicted Mr. Rodriguez if they wanted to move forward on the greater charge of trafficking in greater than 100 grams. This issue did not come up at all prior to trial.

10. Around August of 2013, Attorney Victoria Ranieri took the case over from me. She handled the trial in November of 2013.

Signed under the pains and penalties of perjury.

A Barker

Amanda Barker, Esq.

Dated: 10/20/14

Commonwealth of Massachusetts

Essex, ss.

Lawrence Superior Court
Docket No. ESCR2007-875

Commonwealth

v.

Angel Rodriguez

Affidavit of Victoria Ranieri, Esq.

I, Victoria Ranieri, being duly sworn do hereby depose and say:

1. I am an attorney for the Committee for Public Counsel Services (CPCS) in the Lawrence, Massachusetts office.
2. In August of 2013, I entered an appearance on the above-numbered case. At that time it was clear that the case would go to trial and I did end up representing Mr. Rodriguez at his trial.
3. The attorney who handled the case just prior to me was my supervisor, Amanda Barker.
4. Although I did consider moving to dismiss the indictment on other grounds, I did not consider that because "so much of the indictment as alleged an offense of trafficking over 28 grams" had been *nolle prossed* pursuant to a plea agreement in January of 2008, the Commonwealth should have sought a new indictment for a charge of trafficking in greater than 100 grams of cocaine, the crime for which Mr. Rodriguez was eventually convicted.

Signed under the pains and penalties of perjury.

Victoria M Ranieri

Victoria Ranieri, Esq.

Dated: 10/30/14

Commonwealth of Massachusetts

Essex, ss.

Lawrence Superior Court
Docket No. ESCR2007-875

Commonwealth

v.

Angel Rodriguez

Affidavit of Appellate Counsel, Jeffrey G. Harris

I, Jeffrey G. Harris, being duly sworn do hereby depose and say:

1. I am an attorney with the Boston firm of Good Schneider Cormier.
2. In September of 2014, I was appointed to this case by the private counsel division of the Committee for Public Counsel Services (CPCS).
3. Mr. Rodriguez is currently incarcerated at Bay State Correctional Center in Norfolk Massachusetts.
4. Having reviewed the transcript in the case and met with Mr. Rodriguez, it has become clear to me that Mr. Rodriguez has significant and meritorious grounds for appeal and for a new trial.
5. During September and October of 2014, I corresponded with trial counsel Amanda Barker and Victoria Ranieri of the

Lawrence office of the Committee for Public Counsel Services (CPCS). Both provided me with affidavits recounting their experiences in this case with respect to the issues raised in Mr. Rodriguez's new trial motion and motion to stay execution of his sentence pending appeal. I believe both motions to be meritorious.

6. On October 27, 2014, I spoke with Clerk Judith Brennan of the Lawrence Superior Court. Clerk Brennan, who was in the courtroom at the time the verdict was read and listened to the audio of November 12, 2013, confirms that there is no audio nor transcript available of the verdict being read.
7. The request to stay execution of sentence pending appeal in this case is particularly time sensitive because Mr. Rodriguez is now serving out the part of the sentence that is at issue in these motions. He is currently due to be released from Bay State around April of 2015.
8. Without a prompt hearing on his motion to stay his sentence pending appeal or his motion for new trial, Mr. Rodriguez may never get the benefit of his meritorious claims.

Signed under the pains and penalties of perjury.

Jeffrey G. Harris, Esq.

Dated: 10/31/14

CJISWeb Printout Generated On: 12/12/2014 14:22:48
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

MA Criminal History (BOP)

Results For - Name: CREACH, YASIR

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*                    ******* WARNING ******** WARNING ********                *
*                                                                             *
*      THIS INFORMATION IS CORI.  IT IS NOT SUPPORTED BY FINGERPRINTS.        *
*PLEASE CHECK THAT THE NAME REFERENCED BELOW MATCHES THE NAME AND DATE OF BIRTH*
*OF THE PERSON REQUESTED.                                                     *
*                                                                             *
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           **********    COMMONWEALTH OF MASSACHUSETTS    **********
              DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

                          *** PERSONS COURT SUMMARY ***

NAM: CREACH, YASIR S                FORMAL-NAM: YASIR          PCF: [redacted]
DOB: [redacted]   SEX: M  RAC: W      POB: MA                  SSN: [redacted]
MOM:[redacted]      POP:[redacted]          HGT: 510 WGT: 235 HAI: BRO EYE: BRO
ADDRESS: [redacted]

ALIAS:
     NAM: SANTIAGO, CREACH YASIR
     FORMAL-NAM: CREACH
     DOB: [redacted]  SEX: M  RAC:
     ADDRESS: [redacted]

COMMENTS:


***** ***** ***** ***** ADULT APPEARANCES ***** ***** ***** *****

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        1/21/15

ARRAIGNMENT: (0003)
  ARG-DATE: 10/04/13 PD: HOY COURT: HOLYOKE DISTRICT        DKT#:  1317CR003601C
  OFF:  POSS CLASS A CONT SUB          HEROIN              CSA POSS A
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DISP: 5/8/14 DW 9/18/14 DR 11/18/14 NP STATUS: C WPD:

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ARG-DATE: 12/31/12 PD: BOS COURT: BOSTON DISTRICT DKT#: 1201CR006805A
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ARRAIGNMENT: (0005)
ARG-DATE: 12/31/12 PD: BOS COURT: BOSTON DISTRICT DKT#: 1201CR006806A
OFF: DISORDERLY CONDUCT DIS COND
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ARRAIGNMENT: (0006)
ARG-DATE: 12/31/12 PD: BOS COURT: BOSTON DISTRICT DKT#: 1201CR006806B
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ARG-DATE: 12/31/12 PD: BOS COURT: BOSTON DISTRICT DKT#: 1201CR006806C
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ARRAIGNMENT: (0008)
ARG-DATE: 05/30/12 PD: BOS COURT: BOSTON DISTRICT DKT#: 1201CR1849A
OFF: UNARMED ROBBERY ROB UNARM
DISP: WAR 12/24/12 WAR/WD C 2/28/13 NP STATUS: C WPD:

ARRAIGNMENT: (0009)
ARG-DATE: 08/05/09 PD: SPR COURT: SPRINGFIELD DISTRICT DKT#: 0923CR006922A
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VN C 2/19/10 DF WAR 3/9/10 D/R VNC 4/6/10 VOP TERM

ARRAIGNMENT: (0010)
ARG-DATE: 08/05/09 PD: SPR COURT: SPRINGFIELD DISTRICT DKT#: 0923CR006922B
OFF: MAL DESTRUCTION OF PROPERTY OVER PROP MAL DES
DISP: %C 9/10/09 G 18MO CMTD STAY 10/14/09 R/R G 18MO SS STATUS: C WPD:
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ARRAIGNMENT: (0011)
ARG-DATE: 09/08/06 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0610817001
OFF: DISTRIBUTE/DISPENSE CLASS B SUBSEQ OFF CSA DIST B
DISP: %C 3/8/07 G 1YR-2.5YR MCICJ CMTD VWF (SUBSEQ OFF STATUS: C WPD:
DISM)

ARRAIGNMENT: (0012)
ARG-DATE: 09/08/06 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0610817002
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: %C 3/8/07 DISM STATUS: C WPD:

ARRAIGNMENT: (0013)
ARG-DATE: 07/10/06 PD: BOS COURT: BOSTON DISTRICT DKT#: 0601CR4366A
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B

```
  DISP: % C 9/14/06 DISM INDICT                                  STATUS: C   WPD:


ARRAIGNMENT: (0014)
  ARG-DATE: 07/10/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR4366B
  OFF:  CONTROL SUBSTANCE SCHOOL                                 CSA SCHOOL
  DISP: C 9/14/06 DISM INDICT                                    STATUS: C   WPD:


ARRAIGNMENT: (0015)
  ARG-DATE: 07/10/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR4366C
  OFF:  DISTRIBUTE/DISPENSE CLASS B    SUBSQ OFF                 CSA DIST B
  DISP: C 9/14/06 DISM INDICT                                    STATUS: C   WPD:


ARRAIGNMENT: (0016)
  ARG-DATE: 07/10/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR4366D
  OFF:  CONSPIRACY TO VIO CONT SUB ACT                           CSA CONSP
  DISP: C 9/14/06 DISM INDICT                                    STATUS: C   WPD:


ARRAIGNMENT: (0017)
  ARG-DATE: 07/10/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR4366E
  OFF:  DISTRIBUTE/DISPENSE CLASS B    SUBSQ OFF                 CSA DIST B
  DISP: C 9/14/06 DISM INDICT                                    STATUS: C   WPD:


ARRAIGNMENT: (0018)
  ARG-DATE: 06/16/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR3781A
  OFF:  AFFRAY                         COMMON LAW                AFFRAY
  DISP: % C 9/14/06 G FILE                                       STATUS: C   WPD:


ARRAIGNMENT: (0019)
  ARG-DATE: 06/16/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR3781B
  OFF:  RESISTING ARREST                                         RESIST ARST
  DISP: % C 9/14/06 60DA CMTD                                    STATUS: C   WPD:


ARRAIGNMENT: (0020)
  ARG-DATE: 03/23/06 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0601CR1904A
  OFF:  POSS CLASS B CONT SUB                                    CSA POSS B
  DISP: %4/20/06 7MO SPS 1MO CMTD SS 10/17/07 VWF VN 9/14/       STATUS: C   WPD:
        06 VOP 6MO CMTD

ARRAIGNMENT: (0021)
  ARG-DATE: 02/06/06 PD: 664 COURT: ROXBURY DISTRICT              DKT#:  0602CR000626A
  OFF:  POSS CLASS B CONT SUB                                    CSA POSS B
  DISP: C 03/21/6 DF 4/20/06 D/R C 6/5/06 DFW 6/6/06 DR C        STATUS: O   WPD:
        8/18/06 DFW 12/27/6 DR G 83DA CMTD DEEM SERV

ARRAIGNMENT: (0022)
  ARG-DATE: 12/29/05 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0501CR7234A
  OFF:  UNARMED ROBBERY                LAR PERS                  ROB UNARM
  DISP: % C 4/20/06 DISM                                         STATUS: C   WPD:


ARRAIGNMENT: (0023)
  ARG-DATE: 01/10/05 PD: BOS COURT: BOSTON DISTRICT               DKT#:    0501CR0142A
  OFF:  TRESPASSING                                              TRES
```

DISP: C 2/9/05 WAR(2) 4/20/05 WAR/WD G 30DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0024)
ARG-DATE: 01/10/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR0142B
OFF: POSS CLASS B CONT SUB CSA POSS B
DISP: C 2/9/05 DF(2) 4/20/05 D/R G 30DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0025)
ARG-DATE: 02/24/03 PD: LYN COURT: LYNN DISTRICT DKT#: 0313CR1233A
OFF: KNOWINGLY REC STOLEN PROP MV RSG
DISP: C 3/25/03 G 9MO HC CMTD STATUS: C WPD:

ARRAIGNMENT: (0026)
ARG-DATE: 06/07/02 PD: BHA COURT: ROXBURY DISTRICT DKT#: 0202CR002894A
OFF: POSS CLASS B CONT SUB CSA POSS B
DISP: C 7/9/02 G 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0027)
ARG-DATE: 06/07/02 PD: BHA COURT: ROXBURY DISTRICT DKT#: 0202CR002894B
OFF: POSS CLASS D CONT SUB CSA POSS D
DISP: C 7/9/02 G 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0028)
ARG-DATE: 06/07/02 PD: BHA COURT: ROXBURY DISTRICT DKT#: 0202CR002894C
OFF: TRESPASSING TRES
DISP: C 7/9/02 G 30 DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0029)
ARG-DATE: 05/31/02 PD: PVT COURT: BOSTON DISTRICT DKT#: 0201CR2586A
OFF: LARCENY MORE LAR MORE
DISP: C 7/1/02 2YR SPS 1YR CMTD 6/30/05 VOP WAR WAR/WD VN (2) 4/13/05 WAR 4/20/05 W/D G 1YR CMTD TERM STATUS: C WPD:

ARRAIGNMENT: (0030)
ARG-DATE: 01/04/02 PD: BOS COURT: BOSTON DISTRICT DKT#: 0101CR6184A
OFF: LARCENY MORE LAR MORE
DISP: G 1YR SS 12/31/03 PROG VN 7/1/02 1 YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0031)
ARG-DATE: 10/16/01 PD: MTA COURT: BOSTON DISTRICT DKT#: 0101CR5996A
OFF: LARCENY MORE LAR MORE
DISP: C 1/4/02 G 1YR SS 12/31/03 VN 7/1/02 1 YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0032)
ARG-DATE: 08/27/01 PD: PVT COURT: BOSTON DISTRICT DKT#: 0101CR4487A
OFF: SHOPLIFTIN SHOPLIFT
DISP: C 1/4/02 G 1YR SS 12/31/03 VN 7/1/02 1 YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0033)
ARG-DATE: 11/09/00 PD: BOS COURT: ROXBURY DISTRICT DKT#: 0002CR005781A
OFF: ASSAULT DANGEROUS WEAPON GUN ASLT DW

DISP: C 3/19/01 G 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0034)
ARG-DATE: 11/09/00 PD: BOS COURT: ROXBURY DISTRICT DKT#: 0002CR005781B
OFF: POSS CLASS D CONT SUB CSA POSS D
DISP: C 3/19/01 G 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0035)
ARG-DATE: 06/28/00 PD: BOS COURT: EAST BOSTON DISTRICT DKT#: 0005CR1141
OFF: POSS CLASS D CONT SUB MARIJUANA CSA POSS D
DISP: C 8/14/00 G PROB 8/13/01 VWF VN 12/5/00 VOP WAR STATUS: C WPD:
WAR WD 1/16/01 3/29/01FND IN VIOL 6MOS HC CONC ROX

ARRAIGNMENT: (0036)
ARG-DATE: 03/23/00 PD: LYN COURT: LYNN DISTRICT DKT#: 0013CR1329A
OFF: INDECENT ASSLT BATTERY PERSON A B IND PERS
DISP: C 4/26/00 NP STATUS: C WPD:

ARRAIGNMENT: (0037)
ARG-DATE: 03/23/00 PD: LYN COURT: LYNN DISTRICT DKT#: 0013CR1329B
OFF: MAL DESTRUCTION OF PROPERTY PROP MAL DES
DISP: C 4/26/00 DISM STATUS: C WPD:

ARRAIGNMENT: (0038)
ARG-DATE: 03/23/00 PD: LYN COURT: LYNN DISTRICT DKT#: 0013CR1329C
OFF: DESTRUCTION OF PROPERTY WANT PROP DES
DISP: C 4/26/00 G PROB 12/14/01 VN DF 11/14/00 D/R STATUS: C WPD:
12/7/00 VOP TERM

ARRAIGNMENT: (0039)
ARG-DATE: 03/23/00 PD: LYN COURT: LYNN DISTRICT DKT#: 0013CR1329D
OFF: INDECENT ASSLT BATTERY PERSON A B IND PERS
DISP: C 4/26/00 NP STATUS: C WPD:

ARRAIGNMENT: (0040)
ARG-DATE: 08/11/99 PD: LYN COURT: LYNN DISTRICT DKT#: 9913CR4677A
OFF: ASSAULT DANGEROUS WEAPON HANDGUN ASLT DW
DISP: 1YR SPS 42DA CMTD BAL SS 12/15/00 VN 4/26/00 VOP C STATUS: C WPD:
12/14/01 VN DF 11/14/00 D/R 12/7/00 VOP TERM

ARRAIGNMENT: (0041)
ARG-DATE: 08/11/99 PD: LYN COURT: LYNN DISTRICT DKT#: 9913CR4677B
OFF: ASSAULT DANGEROUS WEAPON HANDGUN ASLT DW
DISP: 1YR SPS 42DA CMTD BAL SS 12/15/00 VN 4/26/00 VOP C STATUS: C WPD:
12/14/01 VN DF 11/14/00 D/R 12/7/00 VOP TERM

ARRAIGNMENT: (0042)
ARG-DATE: 08/11/99 PD: LYN COURT: LYNN DISTRICT DKT#: 9913CR4677C
OFF: ASSAULT DANGEROUS WEAPON HANDGUN ASLT DW
DISP: G 1YR SPS 42DA CMTD BAL SS 12/15/00 VN 4/26/00 VOP STATUS: C WPD:
C 12/14/01 VN DF 11/14/00 D/R 12/7/00 VOP TERM

ARRAIGNMENT: (0043)
ARG-DATE: 07/28/99 PD: BOS COURT: EAST BOSTON DISTRICT DKT#: 9905CR1610A
OFF: POSS CLASS D CONT SUB MARIJUANA CSA POSS D

DISP: C 10/15/99DF10/22/99 WD CWOF 10/21/00 VWF CS HRS STATUS: C WPD:
8/14/00 PROB 8/13/01 VN 12/5/00 3/29/01 6MOS CMTD

ARRAIGNMENT: (0044)
ARG-DATE: 07/28/99 PD: BOS COURT: EAST BOSTON DISTRICT DKT#: 9905CR1610B
OFF: CRIME OF (SPECIFY IN FULL) DRUG VIOL NR SCH/PK CRIME OF
DISP: C 10/15/99DF 10/22/99 WD DISM STATUS: C WPD:

ARRAIGNMENT: (0045)
ARG-DATE: 07/06/99 PD: BOS COURT: EAST BOSTON DISTRICT DKT#: 9905CR1431A
OFF: POSS CLASS D CONT SUB MARIJUANA CSA POSS D
DISP: C 8/25/99 CC 10/25/99 DF DR 10/25/99 C 11/30/99DF STATUS: C WPD:
DR 12/14/99 C 8/14/00 DISM

ARRAIGNMENT: (0046)
ARG-DATE: 05/13/99 PD: BOS COURT: EAST BOSTON DISTRICT DKT#: 9905CR0971A
OFF: MINOR POSS ALCOHOLIC BEV (UNL) MNR POSS ALC
DISP: CC C 10/15/99 DF DR 10/25/99 C 11/30/99 DF DR STATUS: C WPD:
12/14/99 C 8/14/00 DISM

ARRAIGNMENT: (0047)
ARG-DATE: 05/13/99 PD: BOS COURT: EAST BOSTON DISTRICT DKT#: 9905CR0971B
OFF: TRESPASSING TRES
DISP: CC C 10/15/99 DF DR 10/25/99 C 11/30/99 DF DR STATUS: C WPD:
12/14/99 C 8/14/00 DISM

***** ***** ***** **** END OF ADULT APPEARANCES ***** ***** ***** *****

[redacted]

CJISWeb Printout Generated On: 12/12/2014 14:22:48
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

CJISWeb Printout Generated On: 12/12/2014 14:45:07
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

Criminal History NCIC/III (QH)

Results For - Name: **CREACH, YASIR;** Date of Birth: **02/13/1981;** Race: **U;** Sex: **M**

Response from: NCIC

[redacted]

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR INQUIRY ON NAM/CREACH,YASIR SEX/M RAC/U DOB/[redacted] PUR/C

NAME	FBI NO.	INQUIRY DATE
CREACH,YASIR SANTIAGO	[redacted]	2014/12/12

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	W	[redacted]	506	130	HAZ	BRO	Y

BIRTH PLACE
MASSACHUSETTS

FINGERPRINT CLASS PATTERN CLASS
[redacted]

ALIAS NAMES
CREACH,YASIR CREACH,YASIR S

OTHER BIRTH DATES	SCARS-MARKS-TATTOOS	SOCIAL SECURITY
[redacted]	SC ABDOM	[redacted]
	SC CHEST	
	TAT ABDOM	
	TAT CHEST	

MISC COMMENTS-VIOLENT, HEALTH RISK

IDENTIFICATION DATA UPDATED 2014/09/17

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE FOLLOWING:

MAINE	- STATE ID/[redacted]
CONNECTICUT	- STATE ID/[redacted]
NEW YORK	- STATE ID/[redacted]
FBI	- FBI/[redacted]

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

CJISWeb Printout Generated On: 12/12/2014 14:45:07
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

CJISWeb Printout Generated On: 12/12/2014 14:45:48
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

Criminal History NCIC/III (QR)

Results For - FBI No.: [redacted]

Response from: NCIC

```
FL01141841351687
MA013055A
THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/[redacted]. INDIVIDUAL'S RECORD WILL BE
COMPLETE WHEN ALL RESPONSES ARE RECEIVED FROM THE FOLLOWING SOURCES:
 FBI            - FBI/[redacted]
 MAINE          - STATE ID/[redacted]
 CONNECTICUT    - STATE ID/[redacted]
 NEW YORK       - STATE ID/[redacted]
END


CR.CTIII0000
12:45 12/12/2014 06091
12:45 12/12/2014 12937 MA[redacted]

TXT

HDR/2L01004X,CP06101200.PUR/C.ATN/BUKURAS-BRIAN------@(000FH_)**.
SPBI-SID#: CT[redacted]          Date of Report: 12/12/2014          Page:   1
FBI#: [redacted]       III Status/Date: M 08/18/2014
Sex: M    Race: W    Height: 5' 9"    Weight: 240    Hair: BLK    Eyes: BRO
Henry FPC:
   1-Arrest Date: 08/05/2014  Agency: HARTFORD         Case#:     14-25922
     Disp   Date: PENDING
     Dkt: H14C-CR14-0125507-S UAR:07138413
     Name: CREACH,YASIR                                    DOB: [redacted]
     Addr: 19 BLISS ST,SPRINGFIELD,MA 00000                SS#: [redacted]
     Chrg   1-LARCENY 6      (53a-125b     ) (MISD-C)          1 CT(S)
              Offense Occurrence Date: 08/05/2014
            2-INTRFERE/RESIST(53a-167a     ) (MISD-A)          1 CT(S)
              Offense Occurrence Date: 08/05/2014
            3-LARCENY 6      (53a-125b     ) (MISD-C)          1 CT(S)
              Offense Occurrence Date: 08/05/2014
================================ END OF RECORD  ================================

CR.WVFBINF00
12:45 12/12/2014 43361
12:45 12/12/2014 12938 MA[redacted]

TXT
HDR/2L01004X,CP06101200
ATN/BUKURAS-BRIAN------@(000FH_)**
**********************  CRIMINAL HISTORY RECORD  ***********************

****************************  Introduction  ****************************

This rap sheet was produced in response to the following request:

Purpose Code            C
Attention               BUKURAS-BRIAN------@(000FH_)**

The information in this rap sheet is subject to the following caveats:

 (US)
 (US)
 (US)
```

********** IDENTIFICATION **********

Subject Name(s)

CREACH, YASIR SANTIAGO
CREACH, YASIR (AKA)
CREACH, YASIR S (AKA)

Subject Description

FBI Number	State Id Number	
[redacted]	ME[redacted]	CT[redacted]
	NY[redacted]	

Sex	Race	
Male	White	

Height	Weight	Date of Birth
5'06"	130	[redacted]

Hair Color	Eye Color
Brown	Hazel

Scars, Marks, and Tattoos

Code	Description, Comments, and Images
SC ABDOM	, SCAR ON ABDOMEN
TAT ABDOM	, TATTOO ON ABDOMEN
SC CHEST	, SCAR ON CHEST
TAT CHEST	, TATTOO ON CHEST

Place of Birth	Citizenship
Massachusetts	United States

********** CRIMINAL HISTORY **********

[redacted]

Earliest Event Date 1999-05-12

Arrest Date 1999-05-12
Arrest Case Number 990243925
Arresting Agency MA0130100 IDENTIFICATION UNIT
Subject's Name CREACH,YASIR
Charge Literal LIQUOR, UNDERAGE POSSESSION
Severity Unknown

========== Cycle 003 ==========

Earliest Event Date 2000-06-27

Arrest Date 2000-06-27
Arrest Case Number 1999003685
Arresting Agency MA0130100 IDENTIFICATION UNIT
Subject's Name CREACH,YASIR
Charge Literal POSSESSION OF CLASS D
Severity Unknown

========== Cycle 004 ==========

Earliest Event Date 2000-06-27

Arrest Date 2000-06-27
Arrest Case Number 1999003685
Arresting Agency MA0130100 IDENTIFICATION UNIT
Subject's Name CREACH,YASIR
Charge Literal POSSESSION OF CLASS D
Severity Unknown

```
============================== Cycle 005 ==============================
Earliest Event Date     2000-08-01
-----------------------------------------------------------------------
Arrest Date             2000-08-01
Arrest Case Number      W89415
Arresting Agency        MA009135C CLASSIFICATION
Subject's Name          CREACH,YASIR
        Charge Literal  CLASS B SUBSTNC, DISTRIB/MANUFAC
              Severity  Unknown

-----------------------------------------------------------------------
Court Disposition       (Cycle 005)
Court Case Number
Final Disposition Date  2007-03-08
Court Agency
        Charge Literal  POSS OF CLASS B SUB
    Charge Description  Charge Severity:Unknown
           Disposition  ( 2007-03-08;  NOT MORE THAN TWO AND A HAL
                        YEARS OR LESS THAN ONE YEAR)
============================== Cycle 006 ==============================
Earliest Event Date     2000-11-08
-----------------------------------------------------------------------
Arrest Date             2000-11-08
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  ASSAULT BY MEANS OF A DANGEROUS WEAPON GUN
              Severity  Unknown
        Charge Literal  PERSON, DISORDERLY
              Severity  Unknown
============================== Cycle 007 ==============================
Earliest Event Date     2001-08-24
-----------------------------------------------------------------------
Arrest Date             2001-08-24
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  SHOPLIFTING-$200&OVER
              Severity  Unknown
============================== Cycle 008 ==============================
Earliest Event Date     2001-10-10
-----------------------------------------------------------------------
Arrest Date             2001-10-10
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  LARCENY OVER $250
              Severity  Unknown
============================== Cycle 009 ==============================
Earliest Event Date     2001-10-15
-----------------------------------------------------------------------
Arrest Date             2001-10-15
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  SHOPLIFTING - $200&OVER
              Severity  Unknown
============================== Cycle 010 ==============================
Earliest Event Date     2002-05-30
-----------------------------------------------------------------------
Arrest Date             2002-05-30
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  LARCENY OVER $250
              Severity  Unknown
============================== Cycle 011 ==============================
Earliest Event Date     2002-06-06
-----------------------------------------------------------------------
Arrest Date             2002-06-06
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS B
              Severity  Unknown
```

```
        Charge Literal  POSSESSION OF CLASS D
              Severity  Unknown
        Charge Literal  TRESPASSING
              Severity  Unknown
================================ Cycle 012 ================================
Earliest Event Date     2003-02-22
---------------------------------------------------------------------------
Arrest Date             2003-02-22
Arrest Case Number
Arresting Agency        MA0051400 POLICE DEPARTMENT
Subject's Name          CREACH,YASIR
        Charge Literal  RECEIVE STOLEN MV
              Severity  Unknown
================================ Cycle 013 ================================
Earliest Event Date     2005-01-07
---------------------------------------------------------------------------
Arrest Date             2005-01-07
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS B, DRUGS
              Severity  Unknown
        Charge Literal  TRESPASSING
              Severity  Unknown
================================ Cycle 014 ================================
Earliest Event Date     2005-02-13
---------------------------------------------------------------------------
Arrest Date             2005-02-13
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS B, DRUGS
              Severity  Unknown
        Charge Literal  TRESPASSING
              Severity  Unknown
================================ Cycle 015 ================================
Earliest Event Date     2005-04-19
---------------------------------------------------------------------------
Arrest Date             2005-04-19
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS B, DRUGS
              Severity  Unknown
        Charge Literal  TRESPASSING
              Severity  Unknown
================================ Cycle 016 ================================
Earliest Event Date     2005-12-29
---------------------------------------------------------------------------
Arrest Date             2005-12-29
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  UNARMED ROBBERY
              Severity  Unknown
================================ Cycle 017 ================================
Earliest Event Date     2006-02-03
---------------------------------------------------------------------------
Arrest Date             2006-02-03
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS B, DRUGS
              Severity  Unknown
================================ Cycle 018 ================================
Earliest Event Date     2006-03-22
---------------------------------------------------------------------------
Arrest Date             2006-03-22
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS B, DRUGS
              Severity  Unknown
================================ Cycle 019 ================================
Earliest Event Date     2006-06-16
```

```
--------------------------------------------------------------------------------
Arrest Date             2006-06-16
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  AFFRAY
              Severity  Unknown
        Charge Literal  PERSON, DISORDERLY
              Severity  Unknown
        Charge Literal  RESISTING ARREST
              Severity  Unknown
================================ Cycle 020 ================================
Earliest Event Date     2006-07-08
--------------------------------------------------------------------------------
Arrest Date             2006-07-08
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  DISTRIBUTION OF CLASS B, DRUGS WITHIN 1000
                        SCHOOL ZONE
              Severity  Unknown
        Charge Literal  DISTRIBUTION OF CLASS B, DRUGS
              Severity  Unknown
================================ Cycle 021 ================================
Earliest Event Date     2009-08-04
--------------------------------------------------------------------------------
Arrest Date             2009-08-04
Arrest Case Number
Arresting Agency        MA0071800 POLICE DEPARTMENT
Subject's Name          CREACH,YASIR
        Charge Literal  LARCENY OVER $250 C266 S30 - THEFT/BUILDING
              Severity  Unknown
================================ Cycle 022 ================================
Earliest Event Date     2010-03-07
--------------------------------------------------------------------------------
Arrest Date             2010-03-07
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  DESTRUCTION OR INJURY OF PERSONAL PROPERTY
              Severity  Unknown
================================ Cycle 023 ================================
Earliest Event Date     2011-02-17
--------------------------------------------------------------------------------
Arrest Date             2011-02-17
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  DESTRUCTION OR INJURY OF PERSONAL PROPERTY
              Severity  Unknown
================================ Cycle 024 ================================
Earliest Event Date     2012-12-21
--------------------------------------------------------------------------------
Arrest Date             2012-12-21
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  UNARMED ROBBERY
              Severity  Unknown
================================ Cycle 025 ================================
Earliest Event Date     2012-12-30
--------------------------------------------------------------------------------
Arrest Date             2012-12-30
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  PERSON, DISORDERLY
              Severity  Unknown
        Charge Literal  ASSAULT AND BATTERY INJURIES
              Severity  Unknown
        Charge Literal  TRESPASSING
              Severity  Unknown
================================ Cycle 026 ================================
Earliest Event Date     2013-08-15
--------------------------------------------------------------------------------
```

```
Arrest Date             2013-08-15
Arrest Case Number      130077344
Arresting Agency        MA0146000 BUREAU OF CRIM IDENT
Subject's Name          CREACH,YASIR S
        Charge Literal  POSSESSION OF OPEN CONTAINER OF ALCOHOL
              Severity  Unknown
============================== Cycle 027 ==============================
Earliest Event Date     2013-10-03
-----------------------------------------------------------------------
Arrest Date             2013-10-03
Arrest Case Number
Arresting Agency        MA0071000 POLICE DEPARTMENT
Subject's Name          CREACH,YASIR
        Charge Literal  B&E FOR MISDEMEANOR C266 S16A
              Severity  Unknown
        Charge Literal  TRESPASS C266 S120
              Severity  Unknown
        Charge Literal  DRUG,POSSESS CLASS A C94C S34
              Severity  Unknown
============================== Cycle 028 ==============================
Earliest Event Date     2014-09-17
-----------------------------------------------------------------------
Arrest Date             2014-09-17
Arrest Case Number      1999003685
Arresting Agency        MA0130100 IDENTIFICATION UNIT
Subject's Name          CREACH,YASIR
        Charge Literal  POSSESSION OF CLASS A, DRUGS
              Severity  Unknown
************************  INDEX OF AGENCIES  ************************

Agency                  POLICE DEPARTMENT; MA0051300;

-----------------------------------------------------------------------
Agency                  IDENTIFICATION UNIT; MA0130100;

-----------------------------------------------------------------------
Agency                  CLASSIFICATION; MA009135C;

-----------------------------------------------------------------------
Agency                  POLICE DEPARTMENT; MA0051400;

-----------------------------------------------------------------------
Agency                  POLICE DEPARTMENT; MA0071800;

-----------------------------------------------------------------------
Agency                  BUREAU OF CRIM IDENT; MA0146000;

-----------------------------------------------------------------------
Agency                  POLICE DEPARTMENT; MA0071000;


                              * * * END OF RECORD * * *

CR.NYIII0000
12:45 12/12/2014 18277
12:45 12/12/2014 12940 MA[redacted]

TXT
HDR/2L01004X,CP06101200
ATN/BUKURAS-BRIAN------@{000FH_}**
**********************  CRIMINAL HISTORY RECORD  **********************

***************************  Introduction  ***************************

This rap sheet was produced in response to the following request:

FBI Number              [redacted]
State Id Number         [redacted] ()
Request Id
Purpose Code            C
Attention               BUKURAS-BRIAN------@{000FH_}**

The information in this rap sheet is subject to the following caveats:

Multi-Source - Subject has information maintained by other states or in
```

multiple NYS files maintained by the FBI available through the Interstate Identification Index. Refer to FBI Number: 176065VA7 (New York State Department Of Criminal Justices; 2014-12-12)
Sentencing - Where an individual is sentenced June 1, 1981 or later on more than one charge within a docket, the sentence may be considered to be concurrent unless identified as consecutive. (New York State Department Of Criminal Justices; 2014-12-12)

********** IDENTIFICATION **********

Subject Name(s)

CREACH, YASIR

Subject Description

FBI Number	State Id Number	
[redacted]	[redacted]	
Sex	**Race**	**Skin Tone**
Male	White	Dark
Height	**Weight**	**Date of Birth**
5'11"	220	[redacted]
Hair Color	**Eye Color**	
Brown	Hazel	
Place of Birth		**Ethnicity**
USA		Hispanic Or Latino

Residence
Residence as of [redacted]

Caution Information

Notice Open Bench Warrant(s) on File

********** CRIMINAL HISTORY **********

========== Cycle 001 ==========

Tracking Number	66774879Y
Earliest Event Date	2014-08-25 Incident Date 2014-08-25

Arrest Date	2014-08-25
Arresting Agency	NY0303028 NYCPD PCT 028
Subject's Name	CREACH, YASIR
Comment(s)	Court of Arraignment : NY030033J NEW YORK COUNTY CRIMINAL COURT
Charge Tracking Number	66774879Y
Statute	Criminal Possession Of Marihuana-5th Degree:In A Public Place (221.10 SUB 01)
NCIC Offense Code	3562
State Offense Code	PL 221.10 SUB 01
Counts	1
Severity	Misdemeanor
Inchoate Charge	Completed
Charge Tracking Number	66774879Y
Statute	Unlawful Possession Of Marihuana (221.05)
NCIC Offense Code	3562
State Offense Code	PL 221.05
Counts	1
Severity	Violation
Inchoate Charge	Completed

Booking Case Number	
Booking Agency	NY0303028 NYCPD PCT 028

********** INDEX OF AGENCIES **********

Agency NYCPD PCT 028; NY0303028;

* * * END OF RECORD * * *

CR.MESIR0000
12:45 12/12/2014 04444
12:45 12/12/2014 12944 MA013055A

TXT

TXT
HDR/2L01004X,CP06101200.PUR/C.ATN/BUKURAS-BRIAN------@(000FH_)**.SID/ME0233471.DPT/.BLD/.ADR/.CIS/.ZIP/
********** CRIMINAL HISTORY RECORD **********
********** INTRODUCTION **********
This rap sheet was produced in response to the following request:
Subject Name(s) CREACH,YASIR SANTIAGO
FBI Number [redacted]
State Id Number ME[redacted] (ME)
Social Security Number
Driver's License Number
Miscellaneous Number
Request Id
Purpose Code C
Attention BUKURAS-BRIAN------@(000FH_)**
The information in this rap sheet is subject to the following caveats:
**THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2014-12-12
(CRSA;)
1. This record, effective September 1, 2000, contains information relating solely to persons either arrested as a fugitive from justice [15 M.R.S.A. 201.4 or arrested or charged with a State of Maine criminal offense. It does not include Class D or E crimes in Title 12 or Title 29-A,formerly Title 29, unless the crime is alcohol-related or drug-related [25 M.R.S.A. 1541.4-A.A], and certain former crimes no longer classified as criminal. 2. For information regarding excluded Marine Resources crimes in Title 12, contact the Department of Marine Resources. 3. For information regarding excluded Inland Fisheries and Wildlife crimes in Title 12, contact the Department of Inland Fisheries and Wildlife. 4. For information relating to excluded crimes in Title 29-A, formerly Title 29, contact the Secretary of State, Motor Vehicle Division. 5. A list of former crimes is available from this Bureau.

(CRSA; 2013-10-23)
********** IDENTIFICATION **********
Subject Name(s)
CREACH, YASIR SANTIAGO
Subject Description

FBI Number	State Id Number	DOC Number
	ME[redacted] (ME)	[redacted]
Social Security Number	Driver's License Number	
Miscellaneous Numbers		
Sex	Race	Skin Tone
MALE	White	
Height	Weight	Date of Birth
511	200 Pounds	[redacted]
Hair Color	Eye Color	Fingerprint Pattern
Brown	Brown	
Scars, Marks, and Tattoos		
Blood Type	Medical Condition	
Place of Birth	Citizenship	Ethnicity
Marital Status	Religion	
Employment		
Residence		
Residence as of	2012-04-25	
Address	[redacted]	
Telephone	--	
Fingerprint Images		
Palmprint Images		
Photo Images		
DNA Data		
Caution Information		
Firearms Disqualified	D	

********** CRIMINAL HISTORY **********
========== Cycle 001 ==========
Tracking Number 936414A

```
Earliest Event Date     2012-01-04
-------------------------------------------------------------------------
Arrest Date             2012-01-17
Arrest Case Number
Arresting Agency        ME0160100
Subject&apos;s Name          CREACH, YASIR
-------------------------------------------------------------------------
    Offender Id Number
           Arrest Type  Adult
            Comment(s)
-------------------------------------------------------------------------
Charge
         Charge Number  936414A 001
Charge Tracking Number  936414A
    Charge Case Number  AFFIDAVIT
                Agency  ME0160100
          Offense Date  2012-01-04
    Charge Description  THEFT BY UNAUTHORIZED TAKING OR TRANSFER, priors
               Statute  17-A MRSA SUBSECTION 353(1)(B)(6)
     NCIC Offense Code
    State Offense Code  8429
                Counts  01
              Severity  Felony
       Inchoate Charge
      Enhancing Factor
       Reducing Factor
           Disposition
               Comment
=========================================================================
Prosecutor Disposition  (Cycle 001)
Prosecutor Case Number  D1_12-434
Prosecutor Agency       ME016013A
Subject&apos;s Name----------------------------------------------------------------------------
Charge
         Charge Number  936414A 001
Charge Tracking Number  936414A
    Charge Case Number  D1_12-434
                Agency  ME016013A
          Offense Date  2012-01-04
    Charge Description  THEFT BY UNAUTHORIZED TAKING OR TRANSFER, priors
               Statute  17-A MRSA SUBSECTION 353(1)(B)(6)
     NCIC Offense Code
    State Offense Code  8429
                Counts  01
              Severity  Felony
       Inchoate Charge
      Enhancing Factor
       Reducing Factor
           Disposition  ADDED (; Other)
               Comment
=========================================================================
Court Disposition       (Cycle 001)
Court Case Number
Court Agency            ME016015J
Subject&apos;s Name----------------------------------------------------------------------------
Charge
         Charge Number  936414A 001
Charge Tracking Number  936414A
    Charge Case Number  ALFSCCR201200121
                Agency  ME016015J
          Offense Date  2012-01-04
    Charge Description  THEFT BY UNAUTHORIZED TAKING OR TRANSFER, priors
               Statute  17-A MRSA SUBSECTION 353(1)(B)(6)
     NCIC Offense Code
    State Offense Code  8429
                Counts  01
              Severity  Felony
       Inchoate Charge
      Enhancing Factor
       Reducing Factor
           Disposition  GUILTY (2012-04-19; ME)
                        GUILTY (2013-04-05; ME)
               Comment
=========================================================================
Sentencing              (Cycle 001)
```

```
Sentencing Agency       ME016015J
-------------------------------------------------------------------------
     Court Case Number  ALFSCCR201200121
         Charge Number  936414A 001
Charge Tracking Number  936414A
       Charge Sequence
              Sentence  2012-04-19: INCARCERATED 18 months ALL BUT 0
                        years 10 months 0 days 0 hours suspended
                        (2012-04-19)
              Sentence  2012-04-19: PROBATION 2 years (2012-04-19)
              Sentence  2012-04-19: RESTITUTION $537.00 (2012-04-19)
              Sentence  2013-04-05: INCARCERATED 4 months 15 days ALL
                        BUT 0 years 0 months 0 days 0 hours suspended
                        (2013-04-05)
              Sentence  2013-04-05: PROBATION PARTIALLY REVOKED 2 years
                        (2013-04-05)
=========================================================================
Corrections             (Cycle 001)
Corrections Agency      ME003015C
Subject&apos;s Name-----------------------------------------------------------------------------
Correctional Id Number  120748
      Court Case Number
     Correction Action  Intake
    Correction Comment
============================ End of Cycle 001 ============================
************************  INDEX OF AGENCIES  ************************
Agency                  MAINE CORRECTIONAL, WINDHAM; ME003015C;

Agency Telephone        207-893-7111
Agency Email Address
Address                 PO BOX 260
                        SOUTH WINDHAM, ME 04082
-------------------------------------------------------------------------
Agency                  BIDDEFORD PD; ME0160100;

Agency Telephone        207-282-5127
Agency Email Address
Address                 39 ALFRED ST
                        BIDDEFORD, ME 04005
-------------------------------------------------------------------------
Agency                  DISTRICT ATTORNEY&apos;S OFFICE ALFRED; ME016013A;

Agency Telephone        207-324-8001
Agency Email Address
Address                 PO BOX 399
                        ALFRED, ME 04002
-------------------------------------------------------------------------
Agency                  SUPERIOR COURT ALFRED; ME016015J;

Agency Telephone        207-324-5122
Agency Email Address
Address                 PO BOX 160
                        ALFRED, ME 04002
```

CJISWeb Printout Generated On: 12/12/2014 14:45:48
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

CJISWeb Printout Generated On: 12/12/2014 14:27:15
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

MA Criminal History (BOP)

Results For - Name: CUEVAS, MIGUEL

```
*******************************************************************************
*                                                                             *
*                    ******* WARNING ******** WARNING ********                *
*                                                                             *
*      THIS INFORMATION IS CORI.  IT IS NOT SUPPORTED BY FINGERPRINTS.        *
*PLEASE CHECK THAT THE NAME REFERENCED BELOW MATCHES THE NAME AND DATE OF BIRTH*
*OF THE PERSON REQUESTED.                                                     *
*                                                                             *
*******************************************************************************


           **********    COMMONWEALTH OF MASSACHUSETTS    **********
              DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

                          *** PERSONS COURT SUMMARY ***

NAM: CUEVAS, MIGUEL                  FORMAL-NAM: MICHAEL          PCF: [redacted]
DOB: [redacted]   SEX: M  RAC: W       POB: MA                    SSN: [redacted]
MOM:[redacted]                 POP:[redacted]          HGT: 511 WGT: 200 HAI: BLK EYE: BRO
ADDRESS: [redacted]

COMMENTS:

***** ***** ***** ***** ADULT APPEARANCES ***** ***** ***** *****

ARRAIGNMENT: (0001)
  ARG-DATE: 11/28/07 PD: SAL COURT: ESSEX SUPERIOR          DKT#:  2007001535001
  OFF:  DISTRIBUTE/DISPENSE CLASS B    COCAINE             CSA DIST B
  DISP: C 1/30/09 G 4 1/2-5 YRS CMTD 1/29/15               STATUS: O   WPD:


ARRAIGNMENT: (0002)
  ARG-DATE: 11/28/07 PD: SAL COURT: ESSEX SUPERIOR          DKT#:  2007001535002
  OFF:  DISTRIBUTE/DISPENSE CLASS B    COCAINE             CSA DIST B
  DISP: C 1/30/09 G 4 1/2-5 YRS CMTD CONC 1/29/15          STATUS: O   WPD:


ARRAIGNMENT: (0003)
  ARG-DATE: 11/28/07 PD: SAL COURT: ESSEX SUPERIOR          DKT#:  2007001535003
  OFF:  DISTRIBUTE/DISPENSE CLASS B    COCAINE             CSA DIST B
  DISP: C1/30/09 G 4 1/2-5 YRS CMTD CONC 1/29/15           STATUS: O   WPD:


ARRAIGNMENT: (0004)
  ARG-DATE: 11/28/07 PD: SAL COURT: ESSEX SUPERIOR          DKT#:  2007001535004
```

OFF: DISTRIBUTE/DISPENSE CLASS B HEROIN CSA DIST B
DISP: 1/30/09 G 4 1/2-5 YRS CMTD CONC 1/29/15 STATUS: O WPD:

ARRAIGNMENT: (0005)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716A
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0006)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716B
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0007)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716C
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0008)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716D
OFF: DISTRIBUTE/DISPENSE CLASS A CSA DIST A
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0009)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716E
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0010)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716F
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0011)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716G
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0012)
ARG-DATE: 06/11/07 PD: SAL COURT: SALEM DISTRICT DKT#: 0736CR001716H
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: WAR 6/11/07 WAR/WD C 11/29/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0013)
ARG-DATE: 03/07/06 PD: BEV COURT: SALEM DISTRICT DKT#: 0636CR0797A
OFF: OPERATING AFTER SUSPEND LIC 114B-SUS
DISP: CC 6/24/06 PD DISM STATUS: C WPD:

ARRAIGNMENT: (0014)
ARG-DATE: 10/17/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3625A

OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: WAR 11/7/03 WAR/WD C 3/31/04 G 2YRS CMTD F/A STATUS: C WPD:

ARRAIGNMENT: (0015)
ARG-DATE: 10/17/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3625B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: WAR 11/7/03 WAR/WD C 3/31/04 G 2YRS CMTD F/A STATUS: C WPD:

ARRAIGNMENT: (0016)
ARG-DATE: 10/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3522A
OFF: POSS TO DISTRIBUTE CLASS B CSA POSS DIST B
DISP: C 3/31/04 G 1DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0017)
ARG-DATE: 10/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3522B
OFF: POSS TO DISTRIBUTE CLASS D CSA POSS DIST D
DISP: C 3/31/04 G 1DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0018)
ARG-DATE: 10/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3522C
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 3/31/04 G 2YRS CMTD F/A STATUS: C WPD:

ARRAIGNMENT: (0019)
ARG-DATE: 10/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3522D
OFF: POSS CLASS D CONT SUB CSA POSS D
DISP: C 3/31/04 G 1DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0020)
ARG-DATE: 10/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3522E
OFF: POSS CLASS B CONT SUB CSA POSS B
DISP: C 3/31/04 G 1DA CMTD STATUS: C WPD:

ARRAIGNMENT: (0021)
ARG-DATE: 09/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3070A
OFF: POSS TO DISTRIBUTE CLASS B CSA POSS DIST B
DISP: C 3/31/04 DISM STATUS: C WPD:

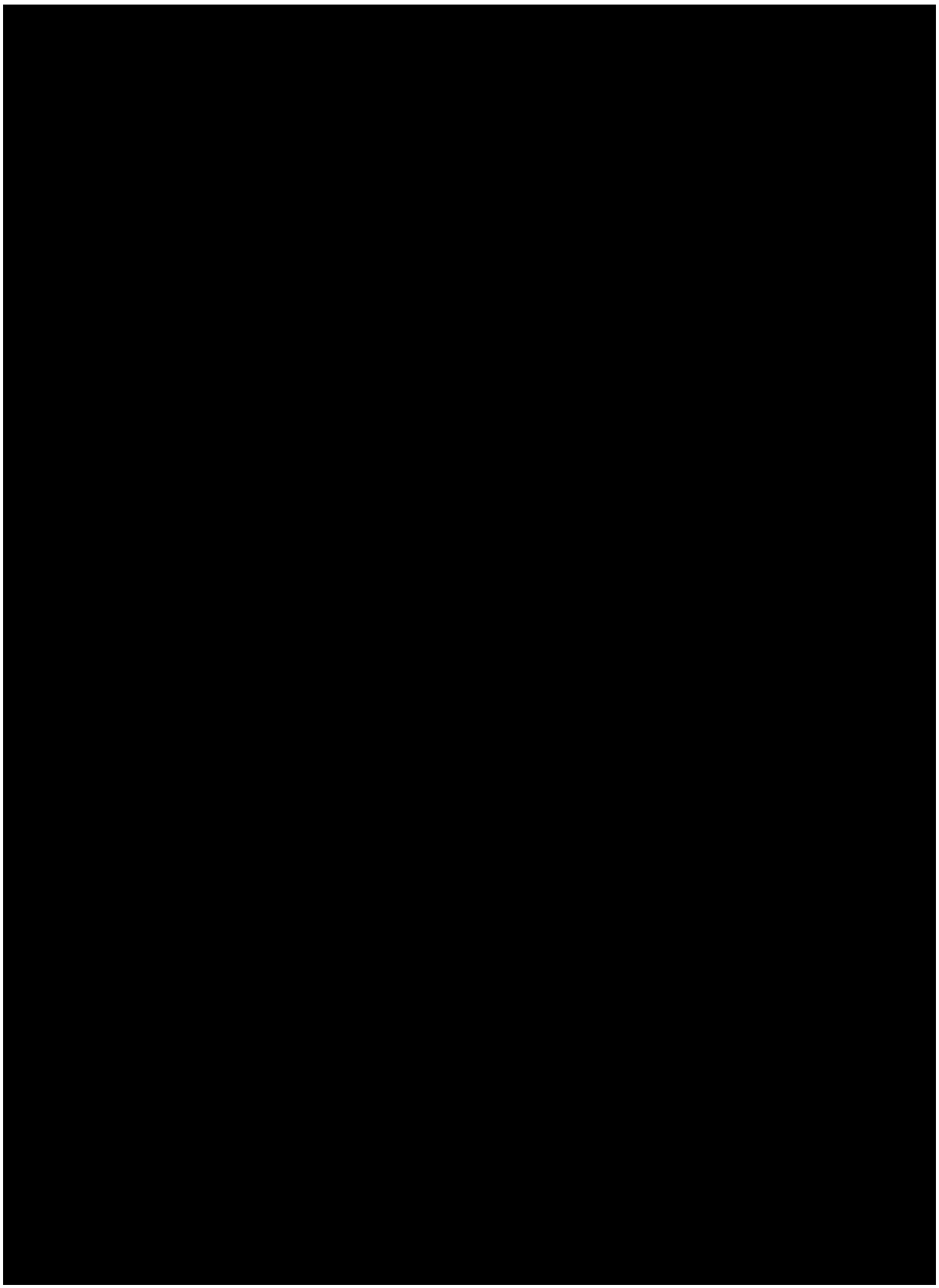
ARRAIGNMENT: (0022)
ARG-DATE: 09/08/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR3070B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 3/31/04 DISM STATUS: C WPD:

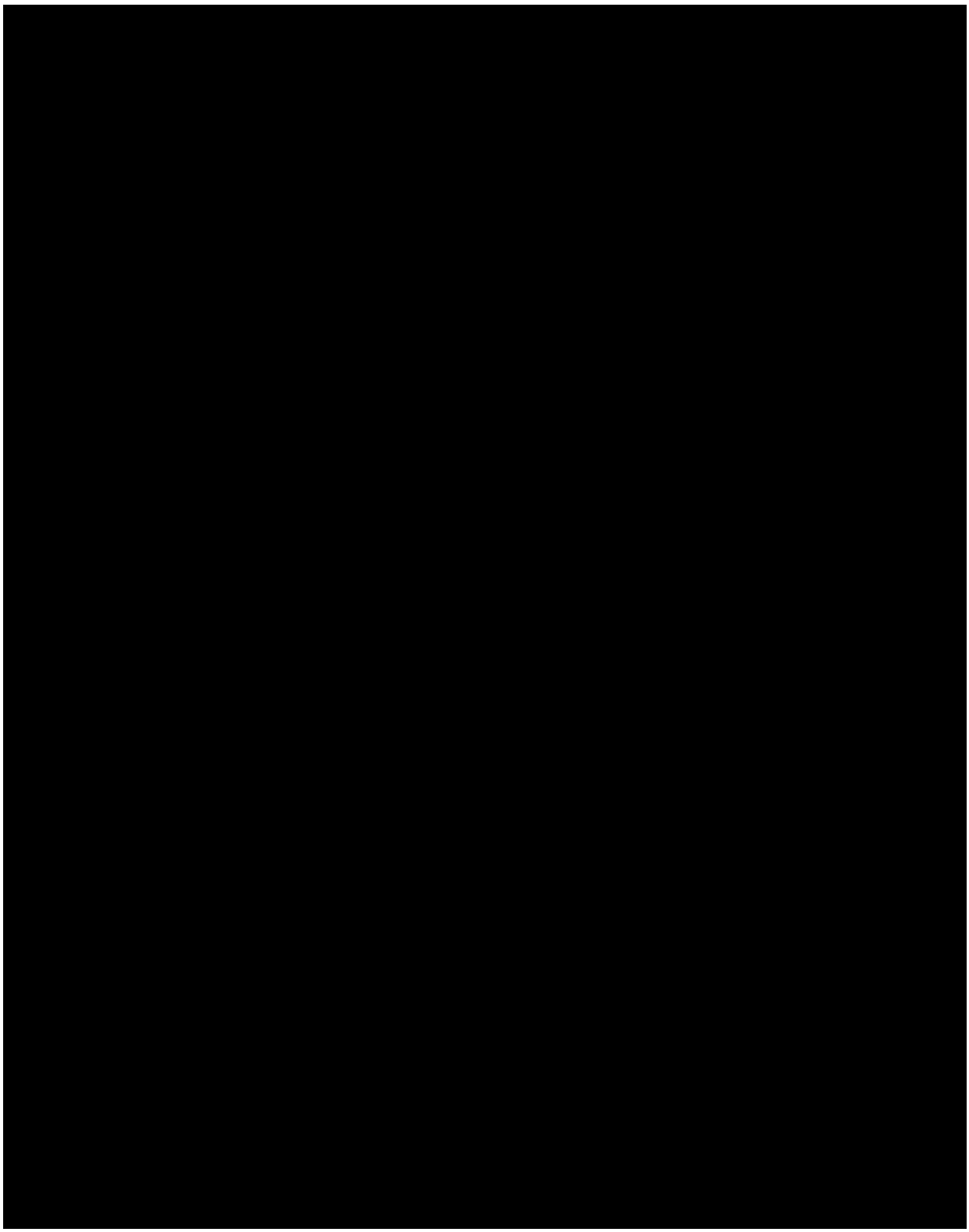
ARRAIGNMENT: (0023)
ARG-DATE: 08/19/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR2831B
OFF: OPER NEGLIGENTLY MV OP NEG
DISP: C 3/31/04 CC REMIT DISM STATUS: C WPD:

ARRAIGNMENT: (0024)
ARG-DATE: 05/20/03 PD: SAL COURT: SALEM DISTRICT DKT#: 0336CR1563A

```
  OFF:  POSS CLASS B CONT SUB                                  CSA POSS B
  DISP: C 9/9/03 6 6MO SS 9/9/04 VWF REMIT VN 3/31/04 VOP      STATUS: C   WPD:
        G 107DA CMTD

ARRAIGNMENT: (0025)
  ARG-DATE: 05/20/03 PD: SAL COURT: SALEM DISTRICT              DKT#:    0336CR1563B
  OFF:  DISORDERLY CONDUCT                                     DIS COND
  DISP: C 9/9/03 G FILE                                        STATUS: C   WPD:


ARRAIGNMENT: (0026)
  ARG-DATE: 05/20/03 PD: SAL COURT: SALEM DISTRICT              DKT#:    0336CR1563C
  OFF:  TRESPASSING                                            TRES
  DISP: C 9/9/03 G FILE                                        STATUS: C   WPD:


ARRAIGNMENT: (0027)
  ARG-DATE: 05/20/03 PD: SAL COURT: SALEM DISTRICT              DKT#:    0336CR1563D
  OFF:  RESISTING ARREST                                       RESIST ARST
  DISP: C 9/9/03 G 6MO SS 9/9/04 CONC VN 3/31/04 VOP G         STATUS: C   WPD:
        107DA CMTD

***** ***** ***** **** END OF ADULT APPEARANCES ***** ***** ***** *****
```

[redacted]





REQUESTED BY: BUKURAS-BRIAN WT346Y4U3T
COMPLETED BY: BUKURAS-BRIAN
AGENCY: SUFFOLK DISTRICT ATTORNEYS OFFICE

CJISWeb Printout Generated On: 12/12/2014 14:27:15
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

CJISWeb Printout Generated On: 12/12/2014 14:22:17
By User/Agency: BUKURAS-BRIAN/SUFFOLK DISTRICT ATTORNEYS OFFICE

MA Criminal History (BOP)

Results For - Name: BRIDGEMAN, KEVIN

```
*******************************************************************************
*                                                                             *
*                    ******* WARNING ******** WARNING ********                *
*                                                                             *
*      THIS INFORMATION IS CORI.  IT IS NOT SUPPORTED BY FINGERPRINTS.        *
*PLEASE CHECK THAT THE NAME REFERENCED BELOW MATCHES THE NAME AND DATE OF BIRTH*
*OF THE PERSON REQUESTED.                                                     *
*                                                                             *
*******************************************************************************

           **********    COMMONWEALTH OF MASSACHUSETTS    **********
              DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

                          *** PERSONS COURT SUMMARY ***

NAM: BRIDGEMAN, KEVIN              FORMAL-NAM: KEVIN          PCF: [redacted]
DOB: [redacted]   SEX: M  RAC: B     POB:                    SSN: [redacted]
MOM:[redacted]            POP:[redacted]        HGT: 602 WGT: 190 HAI: BRO EYE: BRO
ADDRESS: [redacted]

ALIAS:
     NAM: STEWART, KEVIN T
     FORMAL-NAM: KEVIN
     DOB: [redacted]  SEX: M  RAC:
ALIAS:
     NAM: STEWART, KEVIN
     FORMAL-NAM: KEVIN
     DOB: [redacted]  SEX: M  RAC:
ALIAS:
     NAM: HALCOMBE, KEVIN
     FORMAL-NAM: KEVIN
     DOB: [redacted]  SEX: M  RAC:

COMMENTS:


***** ***** ***** ***** ADULT APPEARANCES ***** ***** ***** *****

ARRAIGNMENT: (0001)
  ARG-DATE: 02/25/14 PD: CAM COURT: CAMBRIDGE DISTRICT      DKT#:  1452CR000116A
  OFF:  SHOPLIFTIN                    3RD OFF             SHOPLIFT
  DISP: % 5/12/14 9/23/14 G 90 DA SS 9/23/15              STATUS: O   WPD:


ARRAIGNMENT: (0002)
  ARG-DATE: 12/06/07 PD: BOS COURT: SUFFOLK SUPERIOR        DKT#:     0710959001
```

OFF: DISTRIBUTE/DISPENSE CLASS B SUBSQ CSA DIST B
DISP: %C 4/17/08 G 3-5YR MCICJ CONC W/SENT NOW SRV NPT STATUS: C WPD:
7/26/07

ARRAIGNMENT: (0003)
ARG-DATE: 12/06/07 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0710959002
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 4/17/08 DISM STATUS: C WPD:

ARRAIGNMENT: (0004)
ARG-DATE: 12/06/07 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0710959003
OFF: DISTRIBUTE/DISPENSE CLASS B SUBSQ CSA DIST B
DISP: C 4/17/08 G 3-5YR MCICJ CONC W/001 STATUS: C WPD:

ARRAIGNMENT: (0005)
ARG-DATE: 07/27/07 PD: BOS COURT: BOSTON DISTRICT DKT#: 0701CR4590A
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: C 9/28/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0006)
ARG-DATE: 07/27/07 PD: BOS COURT: BOSTON DISTRICT DKT#: 0701CR4590B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 9/28/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0007)
ARG-DATE: 07/27/07 PD: BOS COURT: BOSTON DISTRICT DKT#: 0701CR4590C
OFF: POSS TO DISTRIBUTE CLASS B CSA POSS DIST B
DISP: C 9/28/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0008)
ARG-DATE: 07/27/07 PD: BOS COURT: BOSTON DISTRICT DKT#: 0701CR4590D
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 9/28/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0009)
ARG-DATE: 07/27/07 PD: BOS COURT: BOSTON DISTRICT DKT#: 0701CR4590E
OFF: POSS TO DISTRIBUTE CLASS B SUBSQ OFF CSA POSS DIST B
DISP: C 9/28/07 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0010)
ARG-DATE: 06/07/05 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0510357001
OFF: POSS TO DISTRIBUTE CLASS B (2ND SUBSQ) CSA POSS DIST B
DISP: C 10/4/05 G 3YR-3YR 1DA MCICJ CMTD (2ND OFF DISM) STATUS: C WPD:
VWF

ARRAIGNMENT: (0011)
ARG-DATE: 06/07/05 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0510357002
OFF: POSS TO DISTRIBUTE CLASS B SCHOOL ZONE CSA POSS DIST B
DISP: C 10/4/05 DISM STATUS: C WPD:

ARRAIGNMENT: (0012)
ARG-DATE: 06/07/05 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0510357003

OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: C 10/4/05 G PROB 3YR F A(@81)VN 10/26/07 VOP 2YR- STATUS: C WPD:
2 YR 1 DA CMTD

ARRAIGNMENT: (0013)
ARG-DATE: 06/07/05 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0510357004
OFF: DISTRIBUTE/DISPENSE CLASS B SCHOOL ZONE CSA DIST B
DISP: C 10/4/05 DISM STATUS: C WPD:

ARRAIGNMENT: (0014)
ARG-DATE: 06/07/05 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0510357005
OFF: ASSAULT AND BATTERY PO A B
DISP: C 10/4/05 G PROB 3YR CONC(@81)VN 10/26/07 VOP VN STATUS: C WPD:
11/19/07 VOP PROB TERM

ARRAIGNMENT: (0015)
ARG-DATE: 06/07/05 PD: BOS COURT: SUFFOLK SUPERIOR DKT#: 0510357006
OFF: RESISTING ARREST RESIST ARST
DISP: C 10/4/05 G PROB 3YR CONC(@81)VN 10/26/07 VOP VN STATUS: C WPD:
11/19/07 VOP PROB TERM

ARRAIGNMENT: (0016)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589A
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0017)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0018)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589C
OFF: POSS TO DISTRIBUTE CLASS B CSA POSS DIST B
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0019)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589D
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0020)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589E
OFF: ASSAULT AND BATTERY PUB EMPY A B
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0021)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589F
OFF: RESISTING ARREST RESIST ARST
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0022)
ARG-DATE: 04/08/05 PD: BOS COURT: BOSTON DISTRICT DKT#: 0501CR1589G

OFF: DISTRIBUTE/DISPENSE CLASS B SUBSQ OFF CSA DIST B
DISP: C 6/7/05 DISM INDICT STATUS: C WPD:

ARRAIGNMENT: (0023)
ARG-DATE: 07/26/04 PD: BOS COURT: DORCHESTER DISTRICT DKT#: 0407CR4315A
OFF: BREAKING AND ENTERING B E
DISP: 9/23/04 DF 9/24/04 D/R C 11/8/04 G PROB 11/7/05 STATUS: C WPD:
VWF 04/21/05 WAR 11/9/05 D/R TERM

ARRAIGNMENT: (0024)
ARG-DATE: 07/26/04 PD: BOS COURT: DORCHESTER DISTRICT DKT#: 0407CR4315B
OFF: POSS BURGLARIOUS TOOLS PBT
DISP: C 9/23/04 DF 9/24/04 D/R C 11/8/04 DISM STATUS: C WPD:

ARRAIGNMENT: (0025)
ARG-DATE: 07/26/04 PD: BOS COURT: DORCHESTER DISTRICT DKT#: 0407CR4315C
OFF: MAL DESTRUCTION OF PROPERTY PROP MAL DES
DISP: C 9/23/04 DF 9/24/04 D/R C 11/8/04 DISM STATUS: C WPD:

ARRAIGNMENT: (0026)
ARG-DATE: 10/05/00 PD: BOS COURT: BOSTON DISTRICT DKT#: 0001CR5045A
OFF: DISTRIBUTE/DISPENSE CLASS B CRACK COCAINE CSA DIST B
DISP: C 12/6/00 2 1/2YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0027)
ARG-DATE: 10/05/00 PD: BOS COURT: BOSTON DISTRICT DKT#: 0001CR5045B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 12/6/00 DISM STATUS: C WPD:

ARRAIGNMENT: (0028)
ARG-DATE: 10/05/00 PD: BOS COURT: BOSTON DISTRICT DKT#: 0001CR5059A
OFF: A B DANGEROUS WEAPON KNIFE A B DW
DISP: C 12/6/00 18MO SS F/A 3/10/04 PROB TERM STATUS: C WPD:

ARRAIGNMENT: (0029)
ARG-DATE: 10/05/00 PD: BOS COURT: BOSTON DISTRICT DKT#: 0001CR5059B
OFF: ARMED ROBBERY KNIFE ROB ARM
DISP: C 11/22/00 DISM STATUS: C WPD:

ARRAIGNMENT: (0030)
ARG-DATE: 10/12/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR5088A
OFF: DISTRIBUTE/DISPENSE CLASS B CSA DIST B
DISP: C 12/8/99 DISM STATUS: C WPD:

ARRAIGNMENT: (0031)
ARG-DATE: 10/12/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR5088B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 12/8/99 DISM STATUS: C WPD:

ARRAIGNMENT: (0032)
ARG-DATE: 10/12/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR5088C

OFF: POSS TO DISTRIBUTE CLASS B CSA POSS DIST B
DISP: C 12/8/99 2YR SS 1YR CMTD 12/5/01 VN 12/6/00 1YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0033)
ARG-DATE: 10/12/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR5088D
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 12/8/99 DISM STATUS: C WPD:

ARRAIGNMENT: (0034)
ARG-DATE: 08/06/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR3803A
OFF: SHOPLIFTIN SHOPLIFT
DISP: C 10/27/99 90DA CMTD CONC STATUS: C WPD:

ARRAIGNMENT: (0035)
ARG-DATE: 08/06/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR3803B
OFF: KNOWINGLY REC STOLEN PROP RSG
DISP: C 10/27/99 90 CMTD CONC STATUS: C WPD:

ARRAIGNMENT: (0036)
ARG-DATE: 07/07/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR3163A
OFF: SHOPLIFTIN SHOPLIFT
DISP: DF 7/29/99 D/R C 10/27/99 90DA CMTD CONC STATUS: C WPD:

ARRAIGNMENT: (0037)
ARG-DATE: 07/07/99 PD: BOS COURT: BOSTON DISTRICT DKT#: 9901CR3164A
OFF: KNOWINGLY REC STOLEN PROP RSG
DISP: DF 7/29/99 D/R C 10/27/99 90DA CMTD CONC STATUS: C WPD:

ARRAIGNMENT: (0038)
ARG-DATE: 11/18/98 PD: BOS COURT: BOSTON DISTRICT DKT#: 9801CR5612A
OFF: SHOPLIFTIN SHOPLIFT
DISP: C 1/7/99 G FILE STATUS: C WPD:

ARRAIGNMENT: (0039)
ARG-DATE: 11/17/98 PD: MTA COURT: BOSTON DISTRICT DKT#: 9801CR6504A
OFF: POSS TO DISTRIBUTE CLASS B CSA POSS DIST B
DISP: C 1/7/99 DISM STATUS: C WPD:

ARRAIGNMENT: (0040)
ARG-DATE: 08/27/98 PD: BOS COURT: BOSTON DISTRICT DKT#: 9801CR4758A
OFF: SHOPLIFTIN SHOPLIFT
DISP: C 11/17/98 G FILE STATUS: C WPD:

ARRAIGNMENT: (0041)
ARG-DATE: 08/27/98 PD: BOS COURT: BOSTON DISTRICT DKT#: 9801CR4758B
OFF: KNOWINGLY REC STOLEN PROP RSG
DISP: C 11/17/98 DISM STATUS: C WPD:

ARRAIGNMENT: (0042)
ARG-DATE: 08/11/98 PD: BOS COURT: BOSTON DISTRICT DKT#: 9801CR4477A

OFF: B E NIGHT W/I FEL B E NT
DISP: C 8/24/98 DF 8/27/98 D/R C 11/17/98 18MO SS 6MO CMTD 1/15/2000 10/27/99 VOP 1YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0043)
ARG-DATE: 07/18/97 PD: MTA COURT: BOSTON DISTRICT DKT#: 9701CR4240A
OFF: LARCENY MORE LAR MORE
DISP: C 10/22/97 4MO CMTD STAY 10/27/97 CMTD STATUS: C WPD:

ARRAIGNMENT: (0044)
ARG-DATE: 01/29/97 PD: BOS COURT: BOSTON DISTRICT DKT#: 9701CR588A
OFF: DISTRIBUTE/DISPENSE CLASS B COCAINE CSA DIST B
DISP: C 3/4/97 DISM STATUS: C WPD:

ARRAIGNMENT: (0045)
ARG-DATE: 01/29/97 PD: BOS COURT: BOSTON DISTRICT DKT#: 9701CR588B
OFF: CONTROL SUBSTANCE SCHOOL CSA SCHOOL
DISP: C 3/4/97 DISM STATUS: C WPD:

ARRAIGNMENT: (0046)
ARG-DATE: 04/19/96 PD: BOS COURT: BOSTON DISTRICT DKT#: 9601CR2536A
OFF: A B DANGEROUS WEAPON BOTTLE A B DW
DISP: 1YR SPS 6MO CMTD BAL SS 8697 VN 41797 5197 PROB 8697 VN 102297 VOP6MO CMTD STAY1027 DF D/R CMTD STATUS: C WPD:

ARRAIGNMENT: (0047)
ARG-DATE: 04/19/96 PD: BOS COURT: BOSTON DISTRICT DKT#: 9601CR2536B
OFF: A B DANGEROUS WEAPON BRICK A B DW
DISP: C 8/2/96 DF 8/6/96 D/R 1YR SPS 6MO CMTD BAL SS 8/6/97 VN 2/14/97 VOP 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0048)
ARG-DATE: 04/19/96 PD: BOS COURT: BOSTON DISTRICT DKT#: 9601CR2536C
OFF: DISORDERLY CONDUCT DIS COND
DISP: C 8/2/96 DF 8/6/96 D/R G FILE STATUS: C WPD:

ARRAIGNMENT: (0049)
ARG-DATE: 03/21/96 PD: SOE COURT: SOMERVILLE DISTRICT DKT#: 9610CR0743A
OFF: SHOPLIFTIN SHOPLIFT
DISP: G $100 FINE VWF C 4/10/96 DF 9/23/96 DR REMIT STATUS: C WPD:

ARRAIGNMENT: (0050)
ARG-DATE: 11/15/95 PD: BOS COURT: BOSTON DISTRICT DKT#: 9501CR8586A
OFF: A B DANGEROUS WEAPON COBBLESTONES A B DW
DISP: 1YR SPS 6MO CMTD BAL SS 8697 VN 41797 5197 PROB 8697 VN102297 VOP6MOCMTD STAY1027 DF D/R CMTD STATUS: C WPD:

ARRAIGNMENT: (0051)
ARG-DATE: 09/07/95 PD: BOS COURT: BOSTON DISTRICT DKT#: 9501CR6911A
OFF: COMMON NIGHT WALKER CNW
DISP: C 10/26/95 6 MOS SS 10/22/97 1/25/96 SURR C 8/2/96 DF 8/6/96 D/R 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0052)
ARG-DATE: 06/27/95 PD: BOS COURT: BOSTON DISTRICT DKT#: 9501CR4858A

OFF: DISORDERLY PERSON DIS PERS
DISP: C 8/2/95 CWOF 7/31/96 1/25/96 B/F C 8/2/96 DF 8/6/96 D/R 6MO CMTD STATUS: C WPD:

ARRAIGNMENT: (0053)
ARG-DATE: 01/04/95 PD: BOS COURT: BOSTON DISTRICT DKT#: 9501CR71A
OFF: PROSTITUTION PAYMENT FOR SEX PROST
DISP: C 3/21/95 DISM STATUS: C WPD:

ARRAIGNMENT: (0054)
ARG-DATE: 03/25/94 PD: COURT: BOSTON DISTRICT DKT#: 9401CR1729A
OFF: POSS CLASS B CONT SUB CRACK CSA POSS B
DISP: C 4/19/94 1YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0055)
ARG-DATE: 11/23/93 PD: COURT: BOSTON DISTRICT DKT#: 9301CR9219A
OFF: POSS CLASS B CONT SUB CRACK COCAINE CSA POSS B
DISP: WAR 3/25/94 WAR/WD C 4/19/94 1YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0056)
ARG-DATE: 11/12/93 PD: COURT: BOSTON DISTRICT DKT#: 9301CR8954A
OFF: PROSTITUTION PAYMENT FOR SEX PROST
DISP: WAR WAR/WD WAR 3/25/94 WAR/WD C 4/19/94 FILE STATUS: C WPD:

ARRAIGNMENT: (0057)
ARG-DATE: 05/24/93 PD: COURT: BOSTON DISTRICT DKT#: 9301CR3913A
OFF: MFG CLASS B CONT SUB CRACK CSA MFG B
DISP: C 6/11/93 FILE STATUS: C WPD:

ARRAIGNMENT: (0058)
ARG-DATE: 05/24/93 PD: COURT: BOSTON DISTRICT DKT#: 9301CR3913B
OFF: POSS TO DISTRIBUTE CLASS B COCAINE CSA POSS DIST B
DISP: C 6/11/93 1YR SS 12/7/94 VWF 8/3/93 VOP WAR WAR/WD WAR 3/25/94 WAR/WD C 4/19/94 PR/REV 1YR CMTD STATUS: C WPD:

ARRAIGNMENT: (0059)
ARG-DATE: 07/08/92 PD: COURT: BOSTON DISTRICT DKT#: 9201CR6325A
OFF: LARCENY PROP LAR
DISP: WAR 11/24/92 WAR/WD FILE STATUS: C WPD:

ARRAIGNMENT: (0060)
ARG-DATE: 05/28/92 PD: COURT: MIDDLESEX SUPERIOR DKT#: 92706001
OFF: LARCENY FROM PERSON LAR
DISP: DF DR C 8/11/92 18 MO CMTD VWF STATUS: C WPD:

ARRAIGNMENT: (0061)
ARG-DATE: 04/24/92 PD: COURT: CAMBRIDGE DISTRICT DKT#: 9252CR1744A
OFF: LARCENY FROM A PERSON LAR PERS
DISP: NP STATUS: C WPD:

ARRAIGNMENT: (0062)
ARG-DATE: 04/07/92 PD: COURT: BOSTON DISTRICT DKT#: 9201CR3311A

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  OFF:  AFFRAY                          COMMON LAW          AFFRAY
  DISP: WAR WAR/WD DF 11/24/92 D/R FILE                     STATUS: C   WPD:


ARRAIGNMENT: (0063)
  ARG-DATE: 04/07/92 PD:     COURT: BOSTON DISTRICT          DKT#:    9201CR3311B
  OFF:  DISORDERLY PERSON                                   DIS PERS
  DISP: DF D/R DF 11/24/92 D/R FILE                         STATUS: C   WPD:


ARRAIGNMENT: (0064)
  ARG-DATE: 09/03/91 PD:     COURT: CAMBRIDGE DISTRICT       DKT#:    9152CR3574A
  OFF:  ROBBERY                          UNARM              ROB
  DISP: DF D/R DF D/R C 5/28/92 DF 7/8/92 D/R C 7/9/92 NP   STATUS: C   WPD:


ARRAIGNMENT: (0065)
  ARG-DATE: 11/16/89 PD:     COURT: ROXBURY DISTRICT         DKT#:   8902CR10295A
  OFF:  ASSAULT AND BATTERY                                 A B
  DISP: DF D/R DF 11/20/92 D/R DISM                         STATUS: C   WPD:


ARRAIGNMENT: (0066)
  ARG-DATE: 11/15/89 PD:     COURT: ROXBURY DISTRICT         DKT#:   8902CR10697A
  OFF:  AFFRAY                                              AFFRAY
  DISP: CC VWF DF D/R C 11/10/92 DISM                       STATUS: C   WPD:


ARRAIGNMENT: (0067)
  ARG-DATE: 11/15/89 PD:     COURT: ROXBURY DISTRICT         DKT#:   8902CR10697B
  OFF:  DISORDERLY PERSON                                   DIS PERS
  DISP: CC DF D/R C 11/10/92 DISM                           STATUS: C   WPD:


ARRAIGNMENT: (0068)
  ARG-DATE: 04/06/89 PD:     COURT: LYNN DISTRICT            DKT#:    8913CR2674A
  OFF:  EXTORTION                                           EXTORT
  DISP: C 4/20/89 NP                                        STATUS: C   WPD:


ARRAIGNMENT: (0069)
  ARG-DATE: 02/20/85 PD:     COURT: DORCHESTER DISTRICT      DKT#:          54008
  OFF:  ASSAULT                                             ASLT
  DISP: C 3/19/85 DISM                                      STATUS: C   WPD:


ARRAIGNMENT: (0070)
  ARG-DATE: 02/20/85 PD:     COURT: DORCHESTER DISTRICT      DKT#:          54009
  OFF:  SHOPLIFTIN                                          SHOPLIFT
  DISP: C 6/7/85 CC VWF PD DISM                             STATUS: C   WPD:


ARRAIGNMENT: (0071)
  ARG-DATE: 02/20/85 PD:     COURT: DORCHESTER DISTRICT      DKT#:          54010
  OFF:  ASSAULT                                             ASLT
  DISP: C 3/19/85 DISM                                      STATUS: C   WPD:

***** ***** ***** **** END OF ADULT APPEARANCES ***** ***** ***** *****
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REQUESTED BY: BUKURAS-BRIAN WT346Y4SZ3
COMPLETED BY: BUKURAS-BRIAN
AGENCY: SUFFOLK DISTRICT ATTORNEYS OFFICE

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No. SJC-11764

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

KEVIN BRIDGEMAN, YASIR CREACH & MIGUEL CUEVAS,
Petitioners,

V.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,

AND

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT,
Defendant-Respondent.

BRIEF AND APPENDIX FOR THE DISTRICT ATTORNEYS ON RESERVATION AND REPORT FROM THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

ESSEX & SUFFOLK COUNTY