

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPREME JUDICIAL COURT  
No. SJC-13114

COMMONWEALTH

v.

RICKY SIMMONS, ISRAEL CEDENO MARTINEZ & OTHERS

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**COMMONWEALTH'S MEMORANDUM OF LAW PURSUANT TO  
MASSACHUSETTS SUPREME JUDICIAL COURT RULE 2:21,  
IN SUPPORT OF ITS APPEAL FROM THE  
SINGLE JUSTICE'S DENIAL OF ITS PETITION UNDER G.L. c. 211 § 3**

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STATEMENT OF THE ISSUE

Whether the Commonwealth's appeal of the single justice's denial of its G. L. c. 211, § 3 petition, seeking review of the reliability of an investigation by the Office of the Inspector General into the Hinton laboratory, should be allowed to proceed where no adequate alternative method of obtaining review is available to the Commonwealth or to the defendants as a group?

STATEMENT OF THE CASE

On March 26, 2021, the Commonwealth filed a petition in the Massachusetts Supreme Judicial Court for Suffolk County, pursuant to G. L. c. 211, § 3, No. SJ-2021-0117. (R.A. 3). On April 26, 2021, Lowy, J., acting as the single justice for the County Court, denied the Commonwealth's petition. (R.A. 245). On May 3, 2021 the Commonwealth filed a notice of appeal, and on May 5, 2021, the appeal was docketed in

the Massachusetts Supreme Judicial Court, No. SJC-13114. The case is before the Court pursuant to G. L. c. 211, § 3, and S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001).<sup>1</sup>

### ARGUMENT

**No adequate alternative method exists apart from the SJC’s exercise of its superintendence powers because the ongoing piecemeal litigation involving the Hinton laboratory could impact thousands of defendants, and justice demands a consistent, global approach to determine the adequacy of the OIG’s investigation and the Commonwealth’s ability to rely on the report’s findings and conclusions.**

This case presents an issue of importance across the Commonwealth and should be resolved by this Court. The District Attorney has raised a question about the integrity of convictions that are based on drug testing arising out of the Hinton lab. The potential gravity and expanse of this question demands that it should not be addressed by piecemeal litigation, but rather by a global, comprehensive approach dictated by this Court. Indeed, this Court has exercised its superintendence powers on previous occasions to provide guidance and utilize its superintendence powers when it pertains to the well-documented drug lab scandals in the Commonwealth. Notably, Bridgeman v. District Attorney for the Suffolk Dist., 471 Mass. 265 (2015), was initiated by petition under G. L. c. 211, § 3, by the defendants for review of questions presented in light of the unprecedented crisis at the William A Hinton State Laboratory Institute. This petition was ultimately reported to the full Court. Id. at 468.

Consistent with this Court’s approach in Bridgeman, the single justice’s concern in this case that “many of the interested parties in other potentially implicated cases

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<sup>1</sup> The Commonwealth brings this appeal under Supreme Judicial Court Rule 2:21, “Appeal from single justice denial of relief on interlocutory ruling” because it is an appeal from a single justice denial. However, the appeal is not based on an interlocutory ruling. If this Court concludes that Rule 2:21 is not an appropriate avenue for relief, the Commonwealth is prepared to proceed by submitting a brief in accordance with the Mass. Rules of Appellate Procedure.

statewide are not parties to this petition” should not be a barrier for relief. April 26, 2021 Order, Lowy, J, p. 6. Indeed, this Court granted relief for all Dookhan defendants, regardless of whether they were parties to the petition, and allowed CPCS’s motion to intervene. Id. at 468, FN7 (“CPCS does not represent any of the petitioners. It seeks intervention to assert and protect the interests of numerous other Dookhan defendants for whom it inevitably will be called on to provide (or already is providing) representation.”)

Likewise, the defendants in Comm. for Pub. Counsel Servs. v. Attorney Gen., 480 Mass. 700, 702 (2018), initiated a petition under G. L. c. 211, § 3, to address Sonja Farak’s misconduct at the Amherst lab. This Court observed that the investigation into Farak’s misconduct was insufficient and remanded the case to the Superior Court, where “the Chief Justice of the Superior Court appointed Superior Court Judge Richard J. Carey to hear all cases arising from Farak's misconduct.” Id. In December 2016, Justice Carey conducted an evidentiary hearing over six days to investigate Farak’s misconduct and devise a global remedy.

A similar approach is necessary here. This case presents an issue of statewide importance requiring the SJC’s superintendence powers and no adequate alternative exists for resolution. If the defendants’ cases proceed in the trial court, un-joined, identical claims would be litigated potentially thousands of times with no precedential value. Additionally, allowing various trial judges within the same county and throughout the Commonwealth to make individualized decisions regarding the adequacy of a state-run investigation poses a risk of inconsistent, contradictory decisions and relief being provided to some while denied to others based on the same factual record.

Moreover, the separation of powers concerns raised by the Single Justice are misplaced. See April 26, 2021 Order, Lowy, J., p.6 (“Next, to the extent the district attorney appears to be asking for the court to provide guidance on whether she should follow the various rulings in the (now-completed) Sutton case, this court does not superintend the district attorney, and thus giving this type of direction to another branch at this procedural posture may raise separation of powers concerns.”) The Commonwealth is not asking what position to take on individual post-conviction motions for relief, or whether to follow a prior Superior Court judicial decision. Rather, the Commonwealth is seeking review of OIG’s investigation into the Hinton lab by appointment of a special master or any other means only available to the SJC using the Court’s superintendence powers. A request for a global resolution is the only means that the Commonwealth has to prevent a potential miscarriage of justice in each and every case in which it has relied on a potentially inadequate investigation. Finally, insofar as the single justice here refers to a “limited record,” April 26, 2021 Order, Lowy, J., p. 6, there is an extensive record related to this case. To the extent that the record needs to be supplemented, this Court is the appropriate entity to direct the creation of the record, whether through appointment of a special master similar to that of Justice Carey in CPCS v. A.G., or another avenue deemed appropriate by this Court.

This is a statewide, systemic problem meriting attention from the full Court and one in which “subsequent proceedings in the trial court will be substantially facilitated” by appellate review. See Crim. Proc., Rule 34 Reporter’s Notes, Commonwealth v. Gopaul, 86 Mass. App. Ct. 685, 686 (2014). Piecemeal litigation will only result in unfair delay in providing relief to potentially thousands of defendants. The Commonwealth therefore

requests that this Court allow it to proceed with an appeal of the single justice's denial of its G. L. c. 211, § 3 petition seeking review of the reliability of the OIG investigation into the Hinton laboratory because there is no adequate alternative method of obtaining such review.

Respectfully submitted  
For the Commonwealth,

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DISTRICT ATTORNEY

/s/ Marian T. Ryan

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Dated: May 18, 2021

CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that I have made service via electronic filing on the defendants' attorneys of record:

Gregory Batten– Attorney for Ricky Simmons

Christopher Post – Attorney for Israel Cedeno-Martinez

James McKenna – Attorney for Reginald Remy

/s/ Marian T. Ryan  
Marian T. Ryan  
District Attorney

Dated: May 18, 2021