

COMMITTEE FOR PUBLIC COUNSEL
SERVICES, et al.,

V.

Respondents.

No. SJ-2017-0347

On December 8, 2017, this Court ordered the parties to (1) propose questions to be submitted to the full Court as part of the reservation and report; and (2) confer and submit a joint list of proposed names for a *Bridgeman*-type working group. See 12/8/17 Order, Dkt. No. 56. In response to part 1 of the Order, the Attorney General's Office (AGO) hereby proposes that the Single Justice reserve and report the following questions to the full Court:¹

1. What is a “Farak defendant” – *i.e.*, what categories of defendants are potentially entitled to relief based on the misconduct at issue in this case?
2. The District Attorneys have already indicated that they will agree to the dismissal with prejudice of over 8,000 tainted convictions. What remedy, if any, is appropriate as to any Farak defendants whose cases are not dismissed with prejudice by stipulation of the parties, and what other relief, if any, should this Court order?

Three points are particularly relevant in considering the AGO's proposed questions:

¹ In response to part 2 of the Order, the parties are filing today a joint submission listing proposed members of a working group, including a representative from the AGO.

First, in affidavits recently submitted to the Single Justice, the District Attorneys (DAOs) have made clear that they are prepared to dismiss the vast majority (and, for most District Attorneys, all) of the convictions of relevant Farak defendants handled by their respective offices. *See* Dkt. No. 43, AGO Response to Petition, at n.1 (defining “relevant Farak defendants”). These dismissals should not be delayed, and the full Court should not be required to rule on convictions that all parties have already agreed would be dismissed with prejudice. To the extent the broadly worded questions proposed by petitioners suggest that relief should be withheld until the full Court has issued a judgment concerning the entire universe of Farak defendants, the AGO strongly disagrees. *See* Dkt. No. 58, Petitioners’ Request for Reservation and Report and for Further Single Justice Proceedings (“Request”) at 4 (proposing that the full Court decide “Which convictions arising from Sonja Farak’s work at the Amherst Lab, if any, should the Court vacate and dismiss with prejudice?”).²

Instead, in proceedings before the Single Justice, the parties should quickly execute a *Bridgeman*-based protocol for dismissing as many cases as possible, in a manner that provides all necessary due process protections. Immediate entry of those dismissals will provide prompt relief to thousands of defendants and will substantially narrow the issues remaining for consideration by the full Court. This approach is consistent with the Single Justice’s interim order, which appears to anticipate that a working group would move forward on “the agreed upon dismissal of cases tainted by Sonia Farak’s misconduct” while only those questions “that remain unanswered” would be reserved and reported to the full Court.

² The petitioners have repeatedly discussed the need to promptly address unjust criminal convictions. Requiring defendants as to whom all parties agree dismissal with prejudice is appropriate to await relief until there is a determination as to all defendants would be inconsistent with that goal.

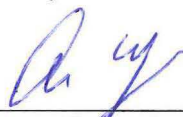
Second, petitioners are not correct in their assertion that “Respondents oppose ‘*Bridgeman* plus’ relief” or that “Respondents have not yet agreed ... to any other remedy sought by Petitioners.” See Request at 1. The DAOs have already agreed to dismissal with prejudice—which is clearly “a remedy sought by Petitioners”—of nearly all of the convictions of relevant Farak defendants. Moreover, contrary to petitioners’ assertions, the AGO is open to a broader remedy in this case than the one that resulted from *Bridgeman*. The AGO simply believes that, once the precise nature and number of cases not dismissed by agreement becomes clear, the contours of any “*Bridgeman* plus” remedy should be determined by the Court, with input from the parties, since no such remedy has ever been entered in Massachusetts. In its response to the petition in this case, the AGO referred to *Bridgeman* merely as a “starting framework” for expeditious dismissal of cases—not an endpoint. And as petitioners acknowledge, the AGO fully supports reporting the question of any further remedy for remaining Farak defendants to the full Court. Request at 4. But any decision about the structure and scope of such a remedy should be considered by the full Court, with input from the DAOs who handled the relevant cases, based on a record that has been narrowed by the DAOs’ dismissal of the overwhelming majority of the convictions of relevant Farak defendants.

Third, petitioners’ assertion that “the AGO has not stipulated to any dismissals,” Request at 3, is misleading and fails to acknowledge the fact that the AGO never brought criminal charges against any of the Farak defendants. The AGO brought charges against only Sonja Farak herself. As the AGO stated in its initial memorandum, it fully supports the immediate dismissal with prejudice of Farak convictions by the DAOs, who are uniquely familiar with these cases. The DAOs do not need AGO approval or stipulations to dismiss their own cases, as the *Bridgeman* litigation made plain.

The AGO has been working diligently with the DAOs for many months now to identify convictions that were tainted by Farak's misconduct. And the AGO accepted all of the factual findings in Judge Carey's 127-page opinion in order to facilitate this litigation and bring expeditious relief to thousands of affected defendants. The AGO, in short, is committed to comprehensive and timely relief for defendants affected by the misconduct at issue in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 18, 2017, a true copy of the foregoing was served by first-class mail, postage prepaid, upon:

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