

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2013-983

COMMONWEALTH OF MASSACHUSETTS

v.

BRISTOL, SS SUPERIOR COURT
FILED

AARON HERNANDEZ

JUN 17 2014

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

**DEFENDANT'S MOTION FOR ISSUANCE OF
PRETRIAL SUBPOENA *DUCES TECUM*
TO THE NEW ENGLAND PATRIOTS**

Aaron Hernandez ["Hernandez"], the defendant in the above-captioned criminal case, hereby moves this Court, pursuant to Mass. R. Crim. P. 17(a)(2), the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article XII of the Massachusetts Declaration of Rights, to authorize the issuance of a subpoena *duces tecum* to the New England Patriots for the production of the following documents to the Clerk within 30 days:

Any and all records pertaining to Mr. Hernandez' employment by the New England Patriots between 2010 and 2013, inclusive, including, but not limited to, psychological testing, medication records, X-rays, MRIs, CT scans, drug or alcohol abuse-related records, other medical records, physical therapy records, scouting reports, and investigative reports.

As grounds therefore, the defendant avers as follows:

1. Hernandez is charged with first degree murder. Prior to his arrest in this case on June 26, 2013, Hernandez was employed by the New England Patriots, a professional

football club.

2. On information and belief, the Patriots maintained extensive records about Mr. Hernandez during the course of his employment, including, but not limited to, medical records and psychological test results.
3. The records maintained by the New England Patriots regarding Hernandez are potentially evidentiary and relevant in this case in that they may bear upon his circumstances and state-of-mind prior to the alleged offense, as well as his physical and mental state at the time.
4. On July 31, 2013 and September 12, 2013, respectively, undersigned counsel, sent written requests to the New England Patriots, accompanied by an appropriate release executed by Hernandez, requesting his medical records. *See* Exhibits 1 and 2, respectively, appended hereto. The New England Patriots did not provide any records in response to those requests. Accordingly, the records sought are not otherwise procurable reasonably in advance of trial by the exercise of due diligence.
5. It is essential for the defense to have access to these records in order to prepare effectively for trial. The failure to have access to these records prior to trial may tend to unreasonably delay the trial.
6. This application is made in good faith and is not intended as a general “fishing expedition.”
7. Under *Commonwealth v. Lampron*, 441 Mass. 265 (2004), and its progeny, all of the essential prerequisites for the issuance of a pretrial subpoena *duces tecum* have been satisfied. The subpoena should issue.

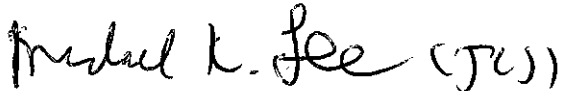
8. The defendant submits the accompanying affidavit of counsel in further support of this motion.

WHEREFORE, the defendant requests that the Court authorize the issuance of the proposed subpoena *duces tecum*, appended hereto as Exhibit 3.

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



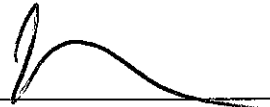
Michael K. Fee, BBO #544541
Latham & Watkins, LLP
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James L. Sultan, BBO #488400
Charles W. Rankin, BBO #411780
Rankin & Sultan
151 Merrimac Street, Second Floor
Boston, MA 02114
(617) 720-0011

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the parties by e-mailing and mailing a copy thereof, US mail, postage prepaid, to: Roger Michel, Assistant District Attorney, Bristol County, 888 Purchase Street, New Bedford, MA 02740 (roger.michel@state.ma.us), representing the Commonwealth; and Andrew C. Phelan, Esquire, Bingham McCutchen LLP, One Federal Street, Boston, MA 02110 (andrew.phelan@bingham.com), representing the New England Patriots, on June 12, 2014.



James L. Sultan

RANKIN & SULTAN
ATTORNEYS AT LAW

CHARLES W. RANKIN
JAMES L. SULTAN
CATHERINE J. HINTON
MICHELLE MENKEN

JONATHAN P. HARWELL
KERRY A. HABERLIN
AUDREY M. GRACE*
*ALSO ADMITTED IN MAINE

151 MERRIMAC STREET
SECOND FLOOR
BOSTON, MA 02114

(617) 720-0011
FAX (617) 742-0701
EMAIL OFFICE@RANKIN-SULTAN.COM

July 31, 2013

Keeper of the Records
New England Patriots
One Patriot Place
Foxboro, MA 02035

Re: **Aaron Josef Hernandez (DOB 11/6/89)**

Dear Sir/Madam:

I represent Aaron Josef Hernandez (DOB 11/6/89). Please send me a complete copy of any and all medical records pertaining to Mr. Hernandez relative to his employment by the New England Patriots between 2010 and 2013, including, but not limited to, psychiatric and psychological testing and results, X-rays, MRIs, CT Scans, drug or alcohol abuse-related records, scouting reports pertaining to medical and psychiatric/psychological issues, counseling records, physical therapy records, and any other medical records. I have enclosed a release signed by Mr. Hernandez authorizing you to release these records to me. I will forward a check for any costs associated with obtaining these records; please include an invoice when you mail the records to me. I would appreciate it if you could forward the requested records to me as soon as possible. If you have any questions concerning this request, please contact my office at the above telephone number or contact me by e-mail. Thank you for your anticipated assistance.

Sincerely,



James L. Sultan
jsultan@rankin-sultan.com

JLS:pcb

Enclosure

EXHIBIT 1

**AUTHORIZATION FOR RELEASE OF
PROTECTED HEALTH CARE INFORMATION**

TO: New England Patriots
One Patriot Place
Foxboro, MA 02035

FROM: Aaron Josef Hernandez
Bristol County House of Correction
400 Faunce Corner Road
Dartmouth, MA 02747

I, **AARON JOSEF HERNANDEZ**, hereby request that you furnish my attorneys, **RANKIN & SULTAN**, 151 Merrimac Street, Second Floor, Boston, MA 02114, or their representative, any and all medical records which may be requested regarding treatments/tests/diagnoses/discharge summaries/operative notes/consults rendered by or on behalf of the **NEW ENGLAND PATRIOTS** during my employment between 2010 and 2013, inclusive. I specifically authorize you to release to **RANKIN & SULTAN** information contained in my record in the categories initialed below:

<input type="checkbox"/> HIV or sexually transmitted disease	<input checked="" type="checkbox"/> Drug or alcohol abuse
<input checked="" type="checkbox"/> Psychiatric/psychological information	<input checked="" type="checkbox"/> Social worker information

I understand that some of the above information may be protected by Federal Regulation 42 CFR, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records. This information is to be released for the purpose of legal representation.

I understand that the protected health information requested herein may be subject to redisclosure by **RANKIN & SULTAN**.

This authorization will expire 90 days after the below date. I acknowledge that I may revoke this authorization at any time, provided that the revocation is in writing, except to the extent that action has been taken in reliance thereon.

Date: 7/31/13

Signature: 

Aaron Josef Hernandez

Date of Birth: November 6, 1989

Social Security #

RANKIN & SULTAN

ATTORNEYS AT LAW

CHARLES W. RANKIN
JAMES L. SULTAN
CATHERINE J. HINTON
MICHELLE MENKEN

JONATHAN P. HARWELL
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September 12, 2013

Jane Becker, Esquire
New England Patriots
One Patriot Place
Foxboro, MA 02035

Re: **Aaron Josef Hernandez (DOB 11/6/89)**

Dear Ms. Becker;

I represent Aaron Josef Hernandez (DOB 11/6/89), a former employee of the New England Patriots. On July 31, 2013, I sent a letter requesting medical records of Mr. Hernandez. I have enclosed a copy of that letter, including a release signed by Mr. Hernandez authorizing the Patriots to release these records to me.

Because no one from the Patriots responded to my July 31st letter, my office manager called the Patriots on August 20, 2013 to check on the status of my request. She was transferred to Drew Kruger, who told her she would have to speak to the Patriots legal counsel. He was unable to provide legal counsel's name. My manager called the Patriots' main phone number again and asked for the legal department. She responded to the receptionist's inquiry indicating the call concerned a request for medical records, and asked to be transferred to the legal department. The receptionist refused to transfer the call and refused to provide the name of legal counsel due to "policies." The receptionist said she would tell the legal department that we would like to hear back from them ASAP. My office manager then came up with Jim Cobery's name through the Linked-In web site. She called his direct line and left a message in his voicemail box requesting a call back on the status of our request for records. Once again, we received no response.

On August 27, 2013, my office manager again called the main number and asked for Mr. Cobery's office. She managed to reach his secretary, Karen. She told Karen that, after nearly a month, we were still awaiting a response to our request for Mr. Hernandez's medical records. Karen took our contact information and said she would have Mr. Cobery get back to us concerning our request. It is now two weeks later, and we still have not received a response of any kind. After

EXHIBIT 2

Jane Becker, Esquire
New England Patriots
September 12, 2013
Page 2

discovering your name on a second check of the Linked-In web site, my office manager left a message in your voicemail box on Monday, September 9th. We are still awaiting a response; therefore, I am sending this letter to you.

I would appreciate the courtesy of a response to my request at your earliest convenience. Mr. Hernandez is legally entitled to his medical records. I would appreciate it if you could forward the requested records to me as soon as possible. If you have any questions concerning this request, please contact my office at the above telephone number or contact me by e-mail. Thank you for your anticipated assistance.

Sincerely,

Handwritten signature of James L. Sultan in black ink, with a stylized flourish at the end.

James L. Sultan
jsultan@rankin-sultan.com

JLS:pcb

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED #7007-1490-0000-5843-6002

cc: James Cobery, Esquire (with enclosure)

Commonwealth of Massachusetts

Bristol, ss.

To: Keeper of the Records
New England Patriots
One Patriot Place
Foxboro, MA 02035

Greetings. You are hereby commanded, in the name of the Commonwealth of Massachusetts and at the request of the defendant, to produce to the Office of the Clerk, Bristol Superior Courthouse, 186 South Main Street, Fall River, Massachusetts on or before July 15, 2014 the following documents:

You are further required to bring with you the following:

Any and all records pertaining to Mr. Hernandez' employment by the New England Patriots between 2010 and 2013, inclusive, including, but not limited to, psychological testing, medication records, X-rays, MRIs, CT scans, drug or alcohol abuse-related records, other medical records, physical therapy records, scouting reports, and investigative reports.

Hereof fail not, as you will answer your default under the pains and penalties the law in that behalf made and provided.

Dated at Fall River the ____ day of _____ 2014.

Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
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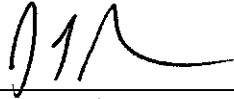
AARON HERNANDEZ

**AFFIDAVIT OF JAMES L. SULTAN IN SUPPORT OF
DEFENDANT'S MOTION FOR ISSUANCE OF
PRETRIAL SUBPOENA *DUCES TECUM*
TO THE NEW ENGLAND PATRIOTS**

James L. Sultan, being duly sworn according to law, hereby says and deposes as follows:

1. I am a member in good standing of the Massachusetts Bar and co-counsel to the defendant in the above-captioned criminal case. I make this affidavit based on personal knowledge.
2. All of the factual averments set forth in the accompanying *Defendant's Motion for Issuance of Pretrial Subpoena Duces Tecum to the New England Patriots* are true to the best of my knowledge.

Signed and sworn to under the pains and penalties of perjury this 12th day of June 2014.


James L. Sultan

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the parties by e-mailing and mailing a copy thereof, US mail, postage prepaid, to: Roger Michel, Assistant District Attorney, Bristol County, 888 Purchase Street, New Bedford, MA 02740 (roger.michel@state.ma.us), representing the Commonwealth; and Andrew C. Phelan, Esquire, Bingham McCutchen LLP, One Federal Street, Boston, MA 02110 (andrew.phelan@bingham.com), representing the New England Patriots, on June 12, 2014.



James L. Sultan