

#68

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT
CRIMINAL #2013-983

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT’S MOTION FOR TRANSFER FROM THE BRISTOL COUNTY
JAIL AND HOUSE OF CORRECTION TO ANOTHER COUNTY JAIL
LOCATED CLOSER TO BOSTON**

Defendant Aaron Hernandez, (“Hernandez”) by and through his counsel, respectfully moves this Court, pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article XII of the Massachusetts Declaration of Rights, and M.G.L. c.276, sec.52A, to order that he be transferred forthwith from the Bristol County Jail and House of Correction (“Bristol County HOC”) in North Dartmouth to another county jail located closer to Boston. As grounds therefore, Hernandez avers as follows:

1. Hernandez has recently been indicted by a Suffolk County Grand Jury on two counts of first degree murder and related charges. Accordingly, both he and his counsel now face the highly-unusual challenge of simultaneously preparing a defense to two distinct homicide cases pending in two distant counties. The charges in Suffolk County mean that the Hernandez’s need to meet and confer with his counsel – all of whom maintain offices in Boston – has multiplied exponentially, indeed, to a level

heretofore never envisioned. In order for Hernandez to receive constitutionally-guaranteed effective access to and assistance of counsel, in both cases, he needs to be held in a facility that does not require his counsel to drive from two, up to three to four hours round-trip each time they need to meet with him.

2. Moreover, while held at the Bristol HOC, Hernandez has been subjected to unreasonable restrictions on his ability to confer meaningfully with his counsel. For example, Hernandez cannot always speak privately over the telephone to his attorneys, and his in-person attorney visits are generally subject to a bizarre and unprecedented restriction that limits their location to one specially-designated visitation room.

3. Ever since he was arrested and denied bail in June, 2014, Hernandez has been a pre-trial detainee at the Bristol County HOC in the care of the Sheriff of Bristol County ("Sheriff"). Throughout the period of his pre-trial detention, the Sheriff has collaborated closely with the Office of the District Attorney in an attempt to generate evidence to be used against Hernandez in this criminal case. At times, the Sheriff and his staff have undertaken to scour every piece of information imaginable relating to Hernandez and his detention in a hunt to generate evidence that could be used against Hernandez in the homicide case for which he is awaiting trial. The reach and depth of the collaboration between the Sheriff and the District Attorney is breathtaking, with the Sheriff and his staff working at the beck and call of the prosecution team on a daily basis. As a result, the Sheriff, an individual charged with the simple task of safely detaining Hernandez prior to trial, has abandoned his role as a professional jailer, and instead, energetically embraced a role as a full-time agent of the District Attorney. The Sheriff has gladly served as an eager partner in the investigation and prosecution of his pre-trial detainee,

funneling to the District Attorney, both at the prosecutors' request and *sua sponte*, every conceivable bit of information about Hernandez's mail, visitors, attorneys, recorded phone calls, cellblock neighbors, recorded conversations with visitors, and even his silent gestures during videotaped family visits. In assuming an active role as part of the prosecution team, the Sheriff has impinged upon the due process rights of his detainee, Aaron Hernandez.

4. Recently, the Sheriff joined forces with the District Attorney to bring criminal charges against Hernandez based on two alleged jailhouse infractions for which Hernandez had already been disciplined internally. The District Attorney and the Sheriff bypassed a probable cause hearing before a Clerk Magistrate and instead obtained indictments from a Bristol County Grand Jury based on an alleged altercation between Hernandez and another inmate, as well as on an alleged threat to a corrections officer that had occurred seven months earlier. The indictments and resulting media coverage served the multiple objectives of concocting a new criminal case against Hernandez in Bristol County, providing more opportunities for media preening by the Sheriff, and generating another round of unfavorable publicity in advance of Hernandez's homicide trial.

5. Significantly, one of the recent indictments alleges that last November 1st, Hernandez uttered a verbal threat to kill or do bodily harm to a correctional officer and/or his family when he is released. This charge – one that has been refuted by a witness and is vigorously contested by Hernandez – raises serious concerns about Hernandez's safety while housed at the Bristol County HOC. Surely, there is now reason to be seriously concerned about Hernandez's personal safety while housed at the Bristol County HOC and to question the ability of that facility's staff to treat Hernandez fairly

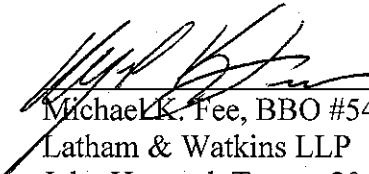
and professionally while he is subject to their total control. The Sheriff clearly has an actual conflict of interest: while charged with ensuring Hernandez's safety and well-being as a pretrial detainee, the Sheriff is now Hernandez's accuser and alleged victim. This dynamic is simply untenable!

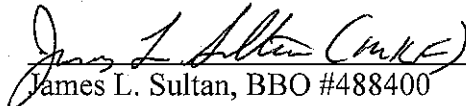
6. Ever since Hernandez was delivered into the hands of the Sheriff twelve months ago, his involuntary presence at the Bristol County HOC has been relentlessly exploited by the Sheriff for self-promotion and virtually non-stop publicity of every imaginable kind, much of which has violated Hernandez's basic rights to privacy. A recent editorial in *The Massachusetts Lawyer's Weekly* entitled "Sheriff Should Cease Media Exposure at Inmate's Expense," echoed the same concerns harbored by Hernandez's counsel, as have other commentaries. After a year of the Sheriff's relentlessly exploiting the presence of Hernandez in his jail for shameless self-promotion in print, radio, television, and internet media outlets, despite the entry of a comprehensive order by this Court to prevent the Commonwealth and its agents from engaging in prejudicial extrajudicial statements, it is now clear that the only way to stop the Sheriff from continuing to poison the potential jury pool in this case is to move Hernandez to another jail where professional correctional standards are adhered to.

7. The grounds for the instant motion are set forth more fully in the Memorandum of Law and Affidavits (with Exhibits), filed herewith.

WHEREFORE, Hernandez respectfully requests the Court order that he be transferred from the Bristol County HOC to another county jail closer to Boston.

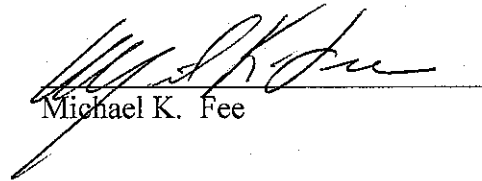
Respectfully Submitted,
Aaron Hernandez, by his counsel


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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and by mailing a copy thereof, by first class mail, to Roger Michel, Assistant District Attorney, Bristol County, 218 South Main Street, Suite #101, Fall River, MA 02720 on June 19, 2014.


Michael K. Fee