

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

Superior Court Department

NEW ENGLAND INNOCENCE PROJECT  
Plaintiff,

v.

ROBERT S. CREEDON JR.,  
*in his official capacity as the Clerk of  
Courts for Plymouth County;*  
OFFICE OF THE DISTRICT ATTORNEY  
FOR PLYMOUTH COUNTY;  
MASSACHUSETTS OFFICE OF THE  
ATTORNEY GENERAL; *and*  
ALLAH JEROME MALLORY,  
Defendants.

**COMPLAINT**

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR RELIEF FROM IMPOUNDMENT AND,  
IN THE ALTERNATIVE, FOR DECLARATORY JUDGMENT**

**INTRODUCTION**

1. As found by a judge of the Superior Court and affirmed by the Massachusetts Appeals Court, Detective Matthew Graham of the Brockton Police Department made materially false statements in a warrant application, either knowingly, intentionally, or with reckless disregard for the truth. As a result of those falsehoods, sworn to a magistrate, Allah Mallory spent more than ten years in prison pursuant to *Commonwealth v. Mallory*, Plymouth Super. Ct. No. 1683CR00215.

2. While litigating the new trial motion that ultimately freed Mr. Mallory, his post-conviction counsel agreed to a narrow protective order. That order, endorsed by the Court (Gildea, J.), prevented counsel from disclosing to Mr. Mallory, or anyone else, “confidential informant identifying information (specifically name, phone number, address, or physical description).”

3. On the basis of this narrow protective order alone, a significant portion of the court file—including pleadings, transcripts, and even court rulings related to the new trial litigation and Detective Graham’s false statements—has been treated as impounded, restricted, or filed under seal, preventing public access. Whether or not this broad impoundment was proper and justified previously, it is not now justified, necessary, or supported by good cause.

4. Plaintiff brings this suit pursuant to Rules 6, 10, and 11 of the Uniform Rules on Impoundment Procedure (URIP), as well as the Declaratory Judgment Act, G. L. c. 231A, § 1, seeking relief from impoundment for all court records and all segregable portions thereof that do not reveal the confidential informant’s name, phone number, address, or physical description.

### **PARTIES**

5. Plaintiff New England Innocence Project (NEIP) is a nonprofit organization dedicated to correcting and preventing wrongful convictions in the six New England states, with an office at 1035 Cambridge Street, Suite 28A, Cambridge, Massachusetts 02141. In addition to providing pro bono legal representation to individuals with claims of innocence, NEIP advocates for judicial and policy reforms that reduce the risk of wrongful convictions.

6. Official government misconduct has contributed to a substantial share of official exonerations in Massachusetts since 1989 and is one of the leading causes of wrongful convictions in our Commonwealth. It is fundamental to NEIP’s mission to not only free those wrongfully imprisoned but to bring light and publicity to those instances when public officials have caused wrongful convictions by violating the trust of their office.

7. NEIP therefore has a direct and demonstrated interest in the records at issue. The records bear on the scope of official misconduct by Detective Graham and others directly or indirectly involved in presenting false statements for the purpose of obtaining a search warrant, as

well as the investigation and disclosure of that misconduct to the public, including to other defendants whose cases involve or involved Detective Graham or others who participated in the false statements.

8. Defendant Robert S. Creedon, Jr., Clerk of Courts for Plymouth County, is named in his official capacity as the keeper of the records of the prior criminal case. URIP Rule 6(b). The clerk's office for the Brockton session, where the prior action was prosecuted, is located at 72 Belmont Street, Brockton, Massachusetts 02301.

9. Defendant Office of the District Attorney for Plymouth County prosecuted the prior criminal case and obtained, or may defend, the withholding of the records at issue. Its office is located at 166 Main Street, Brockton, Massachusetts 02301. The District Attorney is named pursuant to URIP Rule 6(b).

10. Defendant Massachusetts Office of the Attorney General, located at One Ashburton Place, Boston, Massachusetts 02108, is named pursuant to URIP Rules 4(d) and 6(b), which provide that the Attorney General must receive notice of, and an opportunity to be heard on, any motion filed by a nonparty to obtain access to impounded documents in a criminal case. See *Commonwealth v. Silva*, 448 Mass. 701, 706 (2007).

11. Defendant Allah Jerome Mallory was the defendant in the prior criminal case and is named pursuant to URIP Rule 6(b).

### **JURISDICTION AND VENUE**

12. Because a final disposition has entered in the underlying criminal case, an interested nonparty seeking relief from impoundment must "file a separate civil action in the court where the prior action commenced," naming as defendants the clerk of court in his official capacity, the

defendant in the prior case, the Office of the Attorney General, and the Office of the District Attorney of the county where the case commenced. URIP Rule 6(b).

13. Mr. Mallory was prosecuted in the Plymouth Superior Court. Therefore, this Court has jurisdiction and venue is proper. URIP Rules 6(b), 10.

14. This Court has jurisdiction to enter declaratory relief under G. L. c. 231A, § 1.

### **FACTUAL ALLEGATIONS**

#### **Legal Framework**

15. Massachusetts case records are presumptively open to the public. *New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Bus. in Suffolk County*, 462 Mass. 76, 82-83 (2012); *Republican Co. v. Appeals Court*, 442 Mass. 218, 222-23 (2004). Impoundment “is always the exception to the rule, and the power to deny public access to judicial records is to be ‘strictly construed in favor of the general principle of publicity.’” *Republican Co.*, 442 Mass. at 223.

16. A court may impound case records only upon a showing of good cause, determined by balancing all relevant factors, including the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, constitutional rights, and the reasons for the request. URIP Rule 7(b); *New England Internet Café*, 462 Mass. at 83.

17. Any order of impoundment must be in writing and supported by a written finding of good cause; must state specifically what material is impounded; must be narrowly tailored so that it does not exceed the need for impoundment; and must specify a duration with a date certain for expiration. The order itself is a public document. URIP Rule 8(a)-(d). The burden of

demonstrating that an impoundment order is narrowly tailored falls on the party seeking impoundment. *Republican Co.*, 442 Mass. at 223 n.8.

18. Impoundment “should be no more extensive than necessary,” an entire filing should not be impounded to protect a single exhibit or item, and “[w]hen possible, redacted versions of impounded documents should be filed.” URIP Rule 8, Committee Notes (Narrow Tailoring). A judge may “release the materials to the public . . . with redactions appropriate to protect the legitimate interests of the parties in investigative secrecy, privacy, property, or fair trial.” *New England Internet Café*, 462 Mass. at 85–86.

19. An order of impoundment is interlocutory and carries no continuing presumption of validity. A proper challenge to its continued validity is raised whenever a party comes forward with a nonfrivolous reason to modify or terminate it, and “[t]he burden of demonstrating the existence of good cause always remains with the party urging the continued impoundment.” *Republican Co.*, 442 Mass. at 225. A party seeking release “does not bear the burden of demonstrating either that there has been a material change in circumstances or that whatever good cause may once have justified [the] impoundment no longer exists.” *Id.* at 224–25; URIP Rule 10, Committee Notes.

### **The Prosecution of Mr. Mallory in 1683CR00215**

20. On April 15, 2016, Brockton Police Detective Matthew Graham applied for and obtained a search warrant for the third-floor apartment of a multifamily building in Brockton. Detective Graham’s supporting affidavit described an investigation of Mr. Mallory for drug distribution. It asserted that a confidential informant had made three controlled purchases of heroin, the second and third of which, according to the affidavit, were supervised by Detective Graham and Detective Brian Donahue.

21. On information and belief, policies of the Brockton Police Department require at least two officers to be present to supervise a controlled buy of illegal drugs.

22. Police executed the warrant on April 20, 2016, and recovered drugs, a firearm, and ammunition, among other items. Following a 2019 jury trial, Mr. Mallory was convicted of drug-trafficking and firearm offenses and was sentenced to sixteen to eighteen years in state prison.

### **The New Trial Litigation and its Impoundment**

23. While his direct appeal was pending, Mr. Mallory brought a motion for a new trial. He argued, among other things, that his trial counsel was constitutionally ineffective for failing to develop the evidence needed to show there were materially false statements in Detective Graham's search warrant affidavit.

24. The Commonwealth opposed post-conviction discovery, citing concerns regarding disclosure of the identity of the confidential informant.

25. As a result of those concerns, on or about March 28, 2023, the Court endorsed the following stipulated protective order:

The discovery will be provided to counsel for the defendant, with the following conditions, which are intended to protect the confidential informant privilege and the concerns animating it.

1. Counsel for the defendant will not share any confidential informant identifying information (specifically name, phone number, address, or physical description) with the defendant, nor shall defense counsel disseminate this information publicly in any way.
2. At the conclusion of defense counsel's representation, any document which includes identifying information of the confidential informant will be returned to the court file under seal.
3. This protective order shall remain in effect unless and until a Court orders any alterations or relief from its terms.

26. No other protective order or order of impoundment was endorsed by the Court.

27. When Mr. Mallory's counsel sought to clarify that the dates of the alleged controlled buys did *not* fall within the scope of this protective order, see Paper #150, 1683 CR

00215, Motion to Clarify the Protective Order, the Commonwealth opposed, taking the position that the dates of the alleged buys would tend to show the informant's identity, Paper #152, 1683 CR 00215, Commonwealth's Response to Defendant's Motion to Clarify the Protective Order.

28. The Court never ruled on Defendant's motion, and both parties appear to have proceeded as if Mr. Mallory's motion was denied, and the dates were protected.

29. Nearly all of the subsequent briefing in the new trial litigation was therefore filed as impounded or under seal.

30. An examination of the trial court docket and the files available for public inspection in the Plymouth County Clerk's Office shows no indication that an impoundment hearing was held pursuant to URIP Rule 7(a). On information and belief, no such hearing occurred.

31. An examination of the trial court docket and the files available for public inspection in the Plymouth County Clerk's Office shows no indication that an impoundment order meeting the requirements of URIP Rule 8 was entered in this case. On information and belief, no such order exists.

32. At various points both parties filed motions for their new trial litigation papers and evidence to be filed "under the protective order" or "pursuant to the protective order." On information and belief, those motions to file "under the protective order" were not formally ruled on, but the papers they reference are being treated as if they are fully impounded.

33. Post-conviction discovery eventually yielded phone records and detailed officer time sheets that showed Detective Donahue could not have been present for the third controlled buy.

34. After a closed evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), the motion judge (Gildea, J., who was also the trial judge) found that Detective Graham's

statements attesting to Detective Donahue’s presence during the third controlled purchase were materially false and “at a minimum, reckless,” and that, with those statements excised, the warrant was stale.

35. Judge Gildea’s determination that these findings did not warrant a new trial was eventually reversed by the Appeals Court. *Commonwealth v. Mallory (No. 2)*, 106 Mass. App. Ct. 689 (2026).

36. On appeal, the Commonwealth did not treat the dates of the alleged controlled buys as protected, filing them in its public brief, and filing no redacted or impounded brief.

37. The published opinion of the Appeals Court likewise discusses the timing of the controlled buys in a way that would allow any reader to calculate the dates. Specifically, it notes the date of the search, that the third controlled purchase occurred fourteen days after the second purchase, and that the search occurred twenty days after the second purchase. See *Mallory*, 106 Mass. App. Ct. at 690–93.

38. Review of the public docket in the Plymouth County Superior Court (No. 1683 CR 00215) and in the Appeals Court (No. 2025-P-0069) shows that essentially all of the briefing for Mr. Mallory’s new trial motion – including, notably, the case-dispositive memoranda and orders deciding the new trial motion itself – are still being treated as fully impounded from public inspection.

39. Review of those same dockets shows that at least four hearing transcripts are also currently withheld from public inspection as impounded or sealed.

40. To the extent any effective or intended order of impoundment remains in the case, good cause no longer exists to impound anything in the record, except for the narrow category of

information that would tend to identify the confidential informant — such as the informant’s name, address, date of birth, telephone number, and physical description.

41. Any other possible cause for impoundment, if it existed at all, has dissipated.

42. The prosecution is over and ended in the defendant’s favor. Mr. Mallory is at liberty.

43. There will be no retrial.

44. The events underlying the 2016 search warrant are a decade old and have been examined at length in a published appellate opinion.

45. Tailoring requirements of the Uniform Rules on Impoundment Procedure mean that everything else in the record should be public, subject only to any limited, appropriately tailored redactions necessary to protect the informant’s identity.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **(Relief From Impoundment — URIP Rules 6(b) & 10; S.J.C. Rule 1:15)**

46. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

47. To the extent any effective or intended order of impoundment applies to the records of *Commonwealth v. Mallory*, No. 1683 CR 00215, that impoundment is subject to termination or modification upon a nonfrivolous showing, and the burden of demonstrating good cause for its continuation lies with the party urging it. URIP Rule 10; *Republican Co.*, 442 Mass. at 223–25.

48. No good cause supports the continued impoundment of any portion of the record except the narrow category of confidential-informant identifying information — the informant’s name, address, date of birth, telephone number, and physical description.

49. Any impoundment broader than that narrow category is not narrowly tailored and cannot stand. URIP Rule 8(c); *Adams v. Adams*, 459 Mass. 361, 362 n.1 (2011).

50. There is no good cause for any document or hearing transcript to be impounded in its entirety.

51. The date of the third controlled buy is not subject to any valid impoundment, the Commonwealth and the Appeals Court having already disclosed it publicly. *Mallory*, 106 Mass. App. Ct. at 690–93.

52. Plaintiff is therefore entitled to an order terminating any impoundment and directing that the records be made available for public inspection, subject only to redaction of confidential-informant identifying information.

53. On information and belief, Defendant Mallory supports relief from impoundment, subject to the limited redactions described above, so that journalists can better report on the police falsehoods that were instrumental to his conviction and decade behind bars.

## COUNT II

### **(Declaratory Judgment, In the Alternative — G. L. c. 231A)**

54. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

55. An actual controversy exists between Plaintiff and one or more Defendants, within the meaning of G. L. c. 231A, § 1, as to whether, and to what extent, the records of *Commonwealth v. Mallory* are impounded. The trial court entered a discovery protective order limited to confidential-informant identifying information, but never entered a written order of impoundment with the findings, specificity, tailoring, and expiration date required by URIP Rule 8, even as numerous filings, orders, and transcripts have been treated by the clerks of the trial court and the Appeals Court as impounded, restricted, or sealed.

56. Given that uncertainty, Plaintiff is entitled to a declaration establishing what, if anything, in the record is impounded, by what authority, and the validity and scope of any such

impoundment, and a declaration that no good cause supports the continued impoundment of anything other than confidential-informant identifying information.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1. Declare that, to the extent any effective or intended order of impoundment exists in *Commonwealth v. Mallory*, No. 1683 CR 00215, good cause no longer supports it, except as to confidential-informant identifying information;
2. Declare that the dates of the controlled buys — which the Commonwealth disclosed in its public appellate brief, and the timing of which the Appeals Court set out in its published opinion, *see Mallory*, 106 Mass. App. Ct. at 690–93 — are not confidential-informant identifying information subject to impoundment.
3. Order the termination of any such impoundment and direct the Clerk to make the records available for public inspection, subject only to redaction of confidential-informant identifying information (name, address, date of birth, telephone number, and physical description);
4. In the alternative, declare what, if anything, in the record is impounded, by what authority, and the validity and scope of any such impoundment (Count II);
5. Grant such other and further relief as the Court deems necessary, just, and appropriate under the circumstances.

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Dated: July 6, 2026

Respectfully submitted,

NEW ENGLAND INNOCENCE  
PROJECT,

By its attorney,

/s/ Mitchell Kosht

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