

**COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT
No. 2021-P-0540**

Commonwealth of Massachusetts,

Appellee

v.

D.M.T.,

Defendant-Appellant.

**On Appeal from a Judgment of the
Dorchester Division of the Boston Municipal Court**

**BRIEF OF LAWYERS FOR CIVIL RIGHTS, MASSACHUSETTS
FAIR HOUSING CENTER, BOSTON SOCIETY OF VULCANS OF
MASSACHUSETTS, JEWISH ALLIANCE FOR LAW AND
SOCIAL ACTION, MASSACHUSETTS EMPLOYMENT
LAWYERS ASSOCIATION, RIGHTS BEHIND BARS, JUSTICE
AT WORK, AND MASSACHUSETTS ASSOCIATION OF
MINORITY LAW ENFORCEMENT OFFICERS AS AMICI
CURIAE IN SUPPORT OF DEFENDANT-APPELLANT D.M.T.**

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OTHER AUTHORITIES

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CORPORATE DISCLOSURE STATEMENT

Lawyers for Civil Rights, Massachusetts Fair Housing Center, Boston Society of Vulcans of Massachusetts, Jewish Alliance for Law and Social Action, Massachusetts Employment Lawyers Association, Justice at Work, and Massachusetts Association of Minority Law Enforcement Officers are non-profit corporations organized under the laws of Massachusetts. Amicus Rights Behind Bars is a non-profit corporation registered in the District of Columbia. None of the proposed *Amici* have a parent corporation, and no publicly held organization owns 10% or more of the stock.

INTEREST OF AMICI CURIAE¹

Founded in 1968, **Lawyers for Civil Rights (“LCR”)** fosters equal opportunity and fights discrimination on behalf of families of color and immigrants. LCR engages in creative and courageous legal action, education, and advocacy, in collaboration with law firms and community partners. As part of this work, LCR has long sought to challenge systemic issues of racial injustice.

With more than 50 years of civil rights experience in the community, LCR regularly serves individuals of color experiencing difficulty in accessing housing, public benefits, and employment due to past contact with the criminal justice system. The continuous punishment of those who have been caught up in the criminal justice system—often decades after the fact and sometimes even when there has been no conviction, or the behavior at issue is no longer criminalized— touches every aspect of a person’s life and fundamentally hinders their ability to truly rejoin their community. LCR thus has a strong interest in ensuring that remedial legislation aimed at ameliorating these effects is properly interpreted.

¹ Neither party’s counsel authored this brief in whole or in part, and no person other than *Amici* and their counsel contributed money towards the preparation or submission of this brief. *See* Mass. R. App. 17(c)(5).

The **Massachusetts Fair Housing Center (“MFHC”)** is the oldest full-service fair housing center in Massachusetts. Their mission is to end systemic housing discrimination and to create inclusive communities. According to their complaint data and community outreach, individuals with a criminal record—disproportionately people of color—face systemic housing discrimination in the rental market solely because of their criminal history. Landlords routinely refuse to rent to these individuals, without considering their current qualifications or analyzing the severity of the underlying charge, its remoteness in time, or its actual outcome. Eliminating the collateral consequences of having a criminal conviction in the rental housing market is central to MFHC’s mission because these housing denials have a disparate impact on the housing rights of individuals based on their race, national origin, and disability.

Founded in 1969, the **Boston Society of Vulcans of Massachusetts (“BSVM”)** is a community-based non-profit organization of Black and Latino firefighters and local civilians, who work together to empower urban Boston residents to pursue public safety careers and to promote knowledge and safety skills through prevention education programs and resources. During BSVM’s 30-plus years of serving the urban community, it has been instrumental in addressing cultural and

gender diversity in the Boston Fire Department, including helping to bring the Beecher litigation that challenged discriminatory employment practices for firefighters and resulted in a consent decree that transformed the hiring process for firefighters in Massachusetts. *Bos. Chapter, NAACP, Inc. v. Beecher*, 504 F.2d 1017 (1st Cir. 1974), *cert. denied*, 421 U.S. 910 (1975). BSVM therefore has a strong interest in ensuring that laws designed to remedy systemic injustice are properly interpreted and applied, so that unfair and unjust barriers do not stand as obstacles to hiring.

The **Jewish Alliance for Law and Social Action (“JALSA”)** is a membership-based non-profit organization based in Boston working for social and economic justice, civil and constitutional rights, and civil liberties for all. JALSA advocated for the 2018 Criminal Justice Reform Act prior to its passage. Consistent with Jewish principles of *teshuvah* – a word often translated as "repentance" but literally meaning "return" – JALSA strongly believes that all people should have an opportunity to return to productive, fulfilling lives after an encounter with the criminal legal system.

Massachusetts Employment Lawyers Association (“MELA”) is a membership organization of more than 175 lawyers who regularly

represent employees in labor, employment, and civil rights disputes in Massachusetts. MELA is an affiliate of the National Employment Lawyers Association (“NELA”), a membership organization of more than 3,000 lawyers who regularly represent employees in such disputes. MELA members routinely represent workers who have had past contact with the criminal justice system. MELA therefore has a strong interest in ensuring that Massachusetts laws that are designed to remove barriers to employment for such individuals are correctly interpreted, in furtherance of the Commonwealth’s public policy interest in ensuring equal opportunity for all workers.

Rights Behind Bars (“RBB”) is a non-profit organization representing incarcerated or formerly incarcerated individuals in challenges to their conditions of confinement. Through the organization’s tracking and representation of pro se litigants, RBB has developed particular knowledge, expertise, and interest in the barriers facing incarcerated individuals in accessing courts and barriers to those with a criminal record. RBB is concerned that the decision below misunderstands the realities facing persons with a criminal record and will only further exacerbate already existing consequences.

Justice at Work is a multilingual legal nonprofit founded solely to support organizations of workers in low-paying jobs. Justice at Work staff offer direct legal services and help ensure access to justice for worker center members; train workers and organizers on their workplace rights and ways to assert them; and provide ongoing legal counsel to groups of workers organizing for better conditions. Conscious of the impact of historic and ongoing inequities in access to good jobs experienced by people of color, Indigenous people, and immigrants, Justice at Work has a strong interest in ensuring that regardless of income, race, country of origin, language, religion, gender, age, disability, or sexual orientation, all people have the right to good jobs and to exercise their power on the job.

Massachusetts Association of Minority Law Enforcement Officers, Inc. (“MAMLEO”) is a not-for-profit civil law enforcement association comprised of a diverse group of sworn and retired officers and civilians who are African American, Caribbean, Hispanic, Asian, and Cape Verdean. Its membership is drawn from communities across Massachusetts, including the City of Boston. Its organizational goals include securing all legal rights and affirmative action goals and privileges for minorities.

STATEMENT OF FACTS²

Appellant D.M.T. was born in Vietnam in 1982 and moved to the United States with his family when he was ten years old. In 2003, his brother and friends sold drugs to an undercover police officer. When confronted by police and asked for their names, one of the suspects identified himself as D.M.T.

The suspects were not arrested at the time, but later, due to the false identification, a warrant for D.M.T. was issued. He was subsequently arraigned on charges related to the drug sales. Although substantial evidence demonstrated that he had been falsely identified, D.M.T.'s case proceeded through the courts for approximately two years. At the time, D.M.T. was a full-time student at the University of Massachusetts and was working part-time to support his studies. Finally, to avoid further disruption to his schooling and work and to eliminate what his attorney advised him was a risk of up to 20 years imprisonment, D.M.T. agreed, through an interpreter, to accept a continuance without a finding (CWOFF). His brother subsequently admitted to the false identification

² See RA 0012-0065.

and has attested that D.M.T. “was completely uninvolved in these offenses.”

When D.M.T. sought to expunge his record through the instant proceeding, the trial court found, based on clear and convincing evidence, that D.M.T.’s record was created due to unauthorized use or theft of his identity. *See* Findings and Order on Petition for Expungement, RA0054-55. Nonetheless, the Court denied expungement as a remedy, stating only that “The court does not believe that destroying all records of this offense is in the interest of justice.” *id.*

SUMMARY OF ARGUMENT

In 2018, the Commonwealth enacted a remedial statute, An Act Relative to Criminal Justice Reform (“2018 Criminal Justice Reform Act”), to address racial inequities and disparities in the criminal justice system and to alleviate collateral consequences for individuals with a criminal record. One of the law’s key provisions authorizes expungement of records created as a result of false identification or identity theft. M.G.L c. 276, § 100K. If a court finds by clear and convincing evidence that either of these conditions is met, then expungement is authorized “based on what is in the best interests of justice.” *Id.*

The “best interests of justice” standard must be construed in light of the vast array of collateral consequences that flow from a criminal record and the legislative intent of the 2018 Criminal Justice Reform Act.³ Amici Curiae join Appellant in his argument that where, as here, a trial court does not adequately recognize and account for the broad remedial purpose behind the Act’s expungement provisions in evaluating the best

³ The term “collateral consequences” in this brief refers to the social and institutional barriers posed to individuals who have a criminal record, including in housing, public assistance, and most relevant to this matter, employment.

interests of justice standard, the failure to allow expungement constitutes an abuse of discretion. The “best interests of justice” standard must be interpreted in light of the Legislature’s express intent to provide second chances to those eligible under the 2018 Criminal Reform Act. Amici Curiae therefore urge this Court to reverse the trial court’s decision denying expungement for the Appellant.

ARGUMENT

I. Because of a Complex Array of Factors, People of Color in Massachusetts Are Disproportionately Involved in the Criminal Justice System Compared to Their White Peers, At Rates That Exceed National Trends.

Racial disparities pervade the criminal justice system in the United States. As a growing body of empirical and social science evidence demonstrates, these disparities arise out of a complex array of factors – including over-policing in communities of color, economic inequalities that often correlate with race, language barriers, and explicit and implicit bias throughout the system.⁴

It is undisputed that the racial and ethnic disparities in Massachusetts' criminal justice system are among the most profound nationwide. For example, in 2014, the Massachusetts Sentencing Commission undertook a comprehensive study of racial demographics in Massachusetts prisons.⁵ The Commission found that the national rate of imprisonment for Black people was 5.8 times that of white people, and for Latinx people, it was

⁴ See THE SENTENCING PROJECT, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System* (Apr. 2018), available at <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

⁵ *Selected Race Statistics*, MASSACHUSETTS SENTENCING COMMISSION (Sept. 27, 2016), <https://www.mass.gov/files/documents/2016/09/tu/selected-race-statistics.pdf>.

1.3 times that of white people.⁶ As stark as these nationwide disparities are, the Commonwealth significantly outpaces them, imprisoning Black people at a rate 7.9 times that of white people and Latinx people at 4.9 times that of white people.⁷ Similarly, a 2016 report by The Sentencing Project, an organization that analyzes imprisonment and incarceration rates, compared racial and ethnic disparities in incarceration rates across all 50 states and determined that Massachusetts was ranked the very highest in disparities for Latinx people and the 13th highest for Black people.⁸

The Massachusetts judiciary has taken note of these stark disparities. In his October 2016 State of the Judiciary address, then-Chief Justice Gants cited these statistics in highlighting the “great disparity in the rates of imprisonment among Whites, African-Americans, and Hispanics in this Commonwealth.”⁹ He called on the Commonwealth to take “a hard

⁶ *Id.*

⁷ *Id.*

⁸ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT 17 (June 14, 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>

⁹ Chief Justice Ralph D. Gants, *Massachusetts Supreme Judicial Court, Annual Address: State of the Judiciary*, 5 (Oct. 20, 2016) (transcript available at <https://www.mass.gov/doc/2016-state-of-the-judiciary-address-by-sjc-chief-justice-ralph-d-gants-oct-20-2016/>)

look at how we can better fulfill our promise to provide equal justice for every litigant” and announced a collaborative study with Harvard Law School to further probe racial and ethnic disparities in the Massachusetts criminal system.¹⁰ In his closing remarks, Chief Justice Gants noted that “[w]e must have the perspective and the humility to recognize that calling something a reform does not necessarily make it so... We must think hard not only about the consequences we intend, but about the foreseeable consequences that we do not intend.”¹¹

The study that then-Justice Gants announced in 2016 was released in September 2020, and confirmed that people of color are overrepresented across all stages of the criminal system relative to their share of population in the state.¹² The report by the Criminal Justice Policy Program (CJPP) at Harvard Law School showed that, at the outset, Black and Latinx people in the Commonwealth tend to face more serious initial charges.¹³ They also receive much longer sentences than their white

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 9-10.

¹² See generally Elizabeth Tsai Bishop et al., *Racial Disparities in the Massachusetts Criminal System*, THE CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL (Sept. 2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf> [hereinafter Harvard Law School, Racial Disparities Report].

¹³ *Id.*

counterparts when convicted.¹⁴ The study also showed that disparities are particularly extreme for defendants facing drug and weapons charges.¹⁵ Black and Latinx defendants facing drug and weapon charges are more likely to be convicted, more likely to be incarcerated and receive longer sentences than white people who are facing similar charges.¹⁶

Limited English proficiency contributes to and exacerbates racial disparities in the criminal justice system. As the U.S. Department of Justice has recognized, when defendants with limited English proficiency like D.M.T. become enmeshed in the criminal justice system, they can “face a judicial process that places unfair and unconstitutional burdens on their ability to fully participate in the proceedings.”¹⁷ In both Massachusetts and the nation as a whole, there is a significant overlap between race and limited English proficiency, particularly for Latinx and

¹⁴ *Id.*; see also Gal Tziperman Lotan, *Harvard Law study finds stark racial disparities in criminal court sentencing in Massachusetts*, BOS. GLOBE (Sep. 9, 2020),

<https://www.bostonglobe.com/2020/09/09/metro/harvard-law-study-finds-stark-racial-disparities-criminal-court-sentencing-massachusetts/>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Language Access in State Courts*, Part I, p.1, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (Sep. 2016),

<https://www.justice.gov/crt/file/892036/download>

Asian-American populations,¹⁸ thus contributing to and exacerbating the profound racial disparities in the criminal justice system.

Disproportionate involvement in the criminal justice system for people of color ultimately results in them shouldering collateral consequences more often compared to their white counterparts as well.¹⁹

II. Criminal Record-Based Collateral Consequences Have a Disproportionate Impact on People of Color.

Because people of color are arrested, charged, convicted, and incarcerated at rates disproportionate to their share of the population, they also bear the brunt of the collateral consequences that flow from having a criminal record.²⁰ Collateral consequences are “invisible” punishments that restrict freedom and opportunity for people with criminal records but operate outside of the formal sentencing framework

¹⁸ *Demographic Profile of Adult Limited English Speakers in Massachusetts*, BOSTON PLANNING AND DEVELOPMENT AGENCY (Feb. 2019), <https://www.bostonplans.org/getattachment/dfe1117a-af16-4257-b0f5-1d95dbd575fe>. The majority of limited English-speaking adults in Massachusetts are Hispanic or Asian – 38 percent are Hispanic, and 24 percent are Asian. In contrast, 82% of Massachusetts adults who are proficient in English are non-Hispanic Whites. *Id.*

¹⁹ Chidi Umez & Joshua Gaines, *After the Sentence, More Consequences: A National Report of Barriers to Work*, NEW YORK: THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER 5 (2021).

²⁰ *Id.*

of the courts and beyond the public view.²¹ There are multiple types of collateral consequences. Some are set forth in statute: for example, prohibitions on who can receive professional licensure. M.G.L. c. 6 § 172(N). As of 2020, the National Inventory of Collateral Consequences of Conviction (NICCC) identified 752 provisions of Massachusetts law that create collateral consequences, “a large majority of which act as barriers to employment for people with criminal convictions.”²² Other collateral consequences operate more informally, but with consequences no less severe: for example, when private employers or housing providers refuse to hire or rent to people with criminal records.²³

²¹ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. COMMISSION ON CIVIL RIGHTS, (June 2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf>; JEREMY TRAVIS, *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT*, at 16 (Marc Mauer & Meda Chesney-Lind, eds., 2002) http://webarchive.urban.org/UploadedPDF/1000557_invisible_punishment.pdf.

²² *Massachusetts: Snapshot of Employment-Related Collateral Consequences*, THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER (Jan. 2021), <https://csgjusticecenter.org/publications/after-the-sentence-more-consequences/state-reports/state/?usState=Massachusetts>

²³ *Guide to Criminal Records in Employment and Housing*, COMMONWEALTH OF MASSACHUSETTS, <https://www.mass.gov/guides/guide-to-criminal-records-in-employment-and-housing>

Most of these collateral consequences extend indefinitely, unless or until a state or federal law allows the consequence to be removed through a legal process such as criminal record clearance, or expungement, or executive pardon.²⁴

Moreover, since defense counsel, prosecutors, and judges are generally not legally required to inform defendants of collateral consequences,²⁵ many individuals accused of committing crimes are not fully aware of the ramifications of a guilty plea or conviction.²⁶

Immigration consequences of having a criminal record can include being denied citizenship or legal permanent residency, or even facing detention and deportation.²⁷ A criminal record may lead to further income inequality by reduced lifetime and intergenerational earnings and act as

²⁴ *Id.*

²⁵ Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L.R. 623, 673 (2006).

²⁶ An exception to this rule is that counsel must inform a client of certain immigration consequences of a criminal plea. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010). However, no such similar duty exists for the myriad other collateral consequences.

²⁷ *Massachusetts Law About Immigration Consequences*, COMMONWEALTH OF MASSACHUSETTS, <https://www.mass.gov/info-details/massachusetts-law-about-immigration-consequences-of-state-convictions>. Individuals may face immigration consequences from a conviction even if expungement is granted.

an additional barrier to success, not only for the individual with a record, but for their dependents and other family members.²⁸

In this way, exposure to the criminal justice system, however long or however brief, carries consequences that extend far beyond a guilty plea, trial verdict, or release from prison. People convicted of a felony but not imprisoned for it see their annual earnings reduced by an average of 22 percent.²⁹ The damage done by conviction alone is significant. Over the course of a lifetime, cumulative earnings losses reach nearly \$100,000 for the average person with a conviction — easily the difference between escapable and inescapable poverty.³⁰

²⁸ *The Relationship between Poverty & Mass Incarceration*, MASS LEGAL SERVICES, https://www.masslegalservices.org/system/files/library/The_Relationship_between_Poverty_and_Mass_Incarceration.pdf [hereinafter Mass Legal Services, *The Relationship between Poverty & Mass Incarceration*].

²⁹ Terry-Ann Craigie, Ames Grawert & Cameron Kimble, *How Involvement with the Criminal Justice System Deepens Inequality*, BRENNAN CENTER FOR JUSTICE, CONVICTION, IMPRISONMENT, AND LOST EARNINGS (Sep. 15, 2020), https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf [hereinafter Brennan Center for Justice]

³⁰ *Id.* at 17.

Employers often refuse to hire applicants with criminal records, even those with minor offenses.³¹ According to one 2018 survey, 95 percent of employers conduct some form of background check on job candidates.³² In many instances, employers automatically reject applicants with criminal records, without ever analyzing the nature of the record and whether it should be disqualifying for the job in question.³³ Applicants with a criminal record are around 50 percent less likely to receive a callback interview, depriving them of even the chance to explain their history.³⁴ Conviction or incarceration no matter the cause

³¹ Harry J. Holzer et al., *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451, 453-54 (2006).

³² Thomas Ahearn, *NAPBS Survey Reveals 95 Percent of Employers Conducting Employment Background Screening in 2018*, ESR NEWS (July 2, 2018), <https://www.esrcheck.com/wordpress/2018/07/02/napbs-survey-reveals-95-percent-employers-conducting-employment-background-screening-2018>.

³³ Such blanket bans may run afoul of anti-discrimination laws. See *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (2012), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>. However, enforcement of such laws is rare, and many employers routinely use overly stringent background checks.

³⁴ See Devah Pager, Bruce Western & Naomi Sugie, *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*, 623 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCES 195, 213 (2009).

contributes to extended periods of joblessness, resulting in a high unemployment rate among the justice-involved population (estimated at 27 percent for formerly imprisoned people).³⁵ Criminal records may also lead people to accept jobs that pay less or offer fewer advancement opportunities than positions they might have otherwise found.³⁶

III. The Massachusetts Legislature Enacted the 2018 Criminal Justice Reform Act to Correct the Criminal Justice System and Provide Pathways for Expungement.

The disproportionate rate of people of color with criminal records, who in turn face collateral consequences at a disproportionate rate, became a point of reform where the Legislature was urged to redefine the goals of the criminal justice system. On April 13, 2018, the Massachusetts Legislature passed “An Act Relative to Criminal Justice Reform,” to address the ever-increasing racial and ethnic disparities that pervade the Massachusetts criminal justice system. As described by

http://scholar.harvard.edu/files/pager/files/annals_sequencingdisadvantage.pdf; *see also* Brennan Center for Justice.

³⁵ *See* Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POLICY INITIATIVE (2018), <https://www.prisonpolicy.org/reports/outofwork>; *see also* Brennan Center for Justice.

³⁶ *See* Naomi F. Sugie, *Finding Work: A Smartphone Study of Job Searching, Social Contacts, and Wellbeing After Prison* (Sept. 2014) (unpublished Ph.D. dissertation, Princeton University) (on file with author), <https://www.ncjrs.gov/pdffiles1/nij/grants/248487.pdf>; *see also* Brennan Center for Justice.

Governor Baker at the bill’s signing, the landmark bipartisan legislation was intended to “result in a better criminal justice system and give people across the Commonwealth greater opportunities to turn their lives around.”³⁷ Criminal justice reform was necessary to correct prior “tough on crime” policies that ultimately failed to reduce crime and disproportionately affected indigent people and people of color.³⁸ Before the reform, the Massachusetts criminal justice system was, in the words of Senator Brownsberger, viewed as a “sprawling bureaucracy that ensnares people but from which they cannot escape.”³⁹

Spanning more than 100 pages, the Act was intended to comprehensively examine and reform every element of the criminal justice system.⁴⁰ By its very passage, the Legislature affirmatively

³⁷ Matt Stout, *Charlie Baker signs off on sweeping criminal justice bill — but requests some changes*, BOS. GLOBE (Apr. 13, 2018), <https://www.bostonglobe.com/metro/2018/04/13/charlie-baker-sign-off-sweeping-criminal-justice-bill/y8oslXWyJk3FWxDP5qCKkI/story.html> [hereinafter Boston Globe, *Charlie Baker Signs Off*].

³⁸ Pauline Quirion, *Sealing and Expungement After Massachusetts Criminal Law Reform*, MASS. L.R. 100, 100 (2019) <https://www.massbar.org/docs/default-source/publications-document-library/massachusetts-law-review/2018/mlrvol100no4.pdf?sfvrsn=6> [hereinafter Pauline Quirion, *Sealing and Expungement*].

³⁹ Colin Young, *Major Criminal Justice Reform Bill Clears Mass. Legislature with Little Opposition*, NEW ENGLAND PUBLIC MEDIA (Apr. 4, 2018), <https://www.nepm.org/post/major-criminal-justice-reform-bill-clears-mass-legislature-little-opposition#stream/0>.

⁴⁰ Pauline Quirion, *Sealing and Expungement* at 100.

acknowledged that the criminal justice system was not achieving its goals of public safety and rehabilitation, but instead, was inequitable in its operation.⁴¹ Attorney General Maura Healey described the legislation as “putting justice in our criminal justice system and getting it right.”⁴² The Legislature aimed to both address the racial and ethnic disparities in the criminal justice system and to provide a second chance for those with a criminal record through expungement.⁴³ In an effort to reform Massachusetts criminal laws, the Legislature included provisions such as: raising the age from seven to twelve for a child to be held criminally responsible; increasing the age eligibility for juvenile expungement from age eighteen to twenty-one; including bail reform where a defendant’s

⁴¹ *Id.* (“This is a big day for Massachusetts. This comprehensive, bipartisan, landmark legislation will create a more modern, equitable and fair criminal justice system in the Commonwealth...With a strong emphasis on rehabilitation, reintegration, and public safety, Massachusetts is leading the way forward to a better society and serves as a model for the rest of the nation.”) (quoting Senate President Harriette L. Chandler of Worcester); Press Release, Commonwealth of Mass., Baker-Polito Administration Signs Criminal Justice Reform Laws, Proposes Additional Reforms (Apr. 13, 2018), <https://www.mass.gov/news/baker-polito-administration-signs-criminal-justice-reform-laws-proposes-additional-reforms>.

⁴² Shira Schoenberg, *Gov. Charlie Baker signs landmark Massachusetts criminal justice overhaul, despite concerns*, MASSLIVE (Apr. 13, 2018), https://www.masslive.com/politics/2018/04/gov_charlie_baker_signs_landma.html.

⁴³ *See* Boston Globe, *Charlie Baker Signs Off*; *see also* Pauline Quirion, *Sealing and Expungement*.

ability to pay would be taken into account by a judge; greater use of diversion programs that, upon completion, would allow a person to have no criminal record; and the inclusion of expungement provisions for juvenile offenses, marijuana, and for miscarriages of justice.⁴⁴

Massachusetts lawmakers explicitly identified expungement as a critical tool in achieving the legislation's racial justice ends. As Senator Sonia-Chang Diaz testified: "This bill is about racial disparities, undoubtedly. It's about reducing the cost from mass incarceration as well. But it's about ending the vicious cycle of intergenerational harm. This bill contains serious, critical measures to break this cycle. If we go the distance on this bill, we will give hope to people who have almost given up on us. Let's not make them wait any longer." MassTrac Transcript, Report on SB2185. Representative Sheila Harrington testified to the importance of codifying expungement laws in stating: "Our CORI reform and expungement changes are a shift in philosophy. What we did learn is that sometimes something someone has done will plague them for the rest of their life. That doesn't help us nor them. When they get out, they'll be in your community. In any reform we must bear that in

⁴⁴ Steve Brown, *7 Key Provisions of the Criminal Justice Bill*, WBUR (Apr. 6, 2018), <https://www.wbur.org/news/2018/04/06/criminal-justice-reform-bill-key-provisions>.

mind. The consequences are taken, but they must be able to live anew.” MassTrac Transcript, Report on SB2371. Senator Brownsberger remarked that the 2018 Criminal Justice Reform was “about lifting people up instead of locking people up,” and added that “[i]t’s about cutting the chains that hold people down from trying to get back on their feet, and it’s about protecting public safety.”⁴⁵ Criminal justice laws were failing people of color and residents of Massachusetts, and the reform was a remedial statute aimed to repair harms of prior criminal laws and consider the consequences that follow a record.

As one of its key provisions, the 2018 Criminal Justice Reform Act codified expungement as a remedy that can reduce barriers to an individual’s livelihood and career. An Act Relative to Criminal Justice Reform, St. 2018, c. 69, § 195 (codified at M.G.L. c. 276, §§ 100E–100U (effective Oct. 13, 2018)). Criminal record expungement permanently erases or destroys a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency, or county agency. M.G.L. c. 276, § 100E.

⁴⁵ Michael Jonas, *Criminal Justice Bill Reaches Finish Line*, COMMONWEALTH MAG. (Apr. 13, 2018), <https://commonwealthmagazine.org/criminal-justice/criminal-justice-bill-reaches-finish-line/>.

Although courts had long recognized their inherent authority to expunge records in appropriate cases, that authority was not spelled out in statute, leaving courts to widely apply variable standards as to how and when an individual qualified for expungement. *Commonwealth v. S.M.F.*, 660 N.E.2d. 701, 703 (Mass. App. Ct. 1996) (finding that courts may invoke their inherent authority to expunge criminal records when an innocent party is named as a defendant because another individual provided the police with another person’s identification).

The 2018 Criminal Justice Reform Act codified both the criteria for expungement eligibility and the discretion of the court to grant expungement if in the “best interests of justice.” The statute provides that a court may order the expungement of a record created as a result of criminal court appearance or dispositions if the court determines, based on clear and convincing evidence, that the record was created as a result of: (1) false identification of the petitioner or the unauthorized use or theft of the petitioner’s identity; (2) an offense at the time of the creation of the record which at the time of expungement is no longer a crime, except in cases where the elements of the original criminal offense continue to be a crime under a different designation. (3) demonstrable errors by law enforcement; (4) demonstrable errors by civilian or expert

witnesses; (5) demonstrable errors by court employees; or (6) demonstrable fraud perpetrated upon the court.” M.G.L. c. 276, § 100K(a)(1).

In subsection (b), the Massachusetts Legislature gave courts discretion to grant expungements under the “best interests of justice” standard. Section 100K(b) provides: “The court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice. Prior to entering an order of expungement pursuant to this section, the court shall hold a hearing if requested by the petitioner or the district attorney. Upon an order of expungement, the court shall enter written findings of fact.” M.G.L. c. 276, § 100K(b). These provisions demonstrate the Legislature’s commitment to racial justice by providing avenues for expungement.

IV. The Court Should Review the Trial Court’s Decision Under an Abuse of Discretion Standard and Grant Appellant’s Request for Expungement as it is in the “Best Interests of Justice.”

In reviewing Appellant’s petition for expungement, the trial court abused its discretion in failing to consider the remedial purposes of the statute and its express intent to alleviate the collateral consequences of criminal conduct in communities of color. This failure constitutes “a

clear error of judgement in weighing’ the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives.” *Commonwealth v. M.A.*, No. 19-P-1356, 2021 WL 278355, at *2 (Mass. App. Ct. Jan. 28, 2021) (citing *L.L. v. Commonwealth*, 470 Mass. 169, 185 n. 27 (2014) (delineating the abuse of discretion standard)).

The trial court found, based on clear and convincing evidence, that the record was created because of the unauthorized use or theft of the identity. *See* Findings and Order on Petition for Expungement, RA0054-55. The incident at issue occurred when the Appellant, an immigrant, was twenty-one years old, in school, maintaining a job, who spent over two years attempting to dissolve the matter in court, and relied on his attorney’s advice, with the assistance of an interpreter, of what his best option would be for having his charges dismissed. *See* Statement of Facts, RA 0063, 65.

Nonetheless, the Court denied expungement as a remedy, stating only that “The court does not believe that destroying all records of this offense is in the interest of justice.” *See* Findings and Order on Petition for Expungement, RA0054-55. The trial court provided no support for its assertion, nor did it give any indication that it had weighed the

Appellant's interests in expungement in light of the remedial purposes of the statute.

Because the 2018 Criminal Justice Reform Act is a remedial statute, the Court was required to interpret Section 100K(b) liberally and consistent with the legislative intent. "The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *Monell v. Boston Pads, LLC*, 471 Mass. 566, 575 (2015) (quoting *Lowery v. Klemm*, 446 Mass. 572, 576-577 (2006)). Clear and unambiguous language in a statute is conclusive as to legislative intent. *Id* (citing *Commissioner of Correction v. Superior Court Dep't of the Trial Court for the County of Worcester*, 446 Mass. 123, 124 (2006)). In addition, "a remedial statute . . . should be given a broad interpretation . . . in light of its purpose . . . to promote the accomplishment of its beneficent design." *Id* (citing *Sellers v. Workers' Compensation Trust Fund*, 452 Mass. 804, 810 (2008)).

At a minimum here, this liberal construction requires consideration of the harsh collateral consequences that Appellant is facing – one of the

primary ills that the Legislature was aiming to rectify in passing the Act. In other contexts where the “best interests of justice” standard is employed, courts have held that this means all relevant factors must be weighed. For example, Massachusetts Rules of Criminal Procedure, which governs criminal proceedings in the Commonwealth of Massachusetts, uses the same standard of “best interest of justice.” Mass. R. Crim. P. 9(a). This Court has addressed the standard in that context by stating: “The determination of what will be in the ‘best interests of justice’ requires weighing, in each case, the defendant's interests against judicial economy.” *Commonwealth v Gray*, 465 Mass. 330, 335 (2013) (quoting *Commonwealth v. Sylvester*, 388 Mass. 749, 758 (1983)). That the Legislature intended all relevant factors to be weighed in the expungement context is further supported by the provisions of the Act authorizing a hearing if requested by the petitioner and requiring findings of fact. M.G.L. c. 276, § 100K(b).

In this current matter, the best interests of justice are served by granting expungement, as all relevant factors weigh in its favor.⁴⁶ Maintaining a false record furthers no legitimate judicial

⁴⁶ Notably, the Legislature used the word “best” in the standard, rather than the more typical “interests of justice” standard. The trial court essentially read this word out of the statute. Under the Supremacy-of-

interest and is harmful to the Appellant’s ability to gain meaningful employment.

The trial court failed to consider the collateral consequences of the Appellant’s record, which has precluded him from pursuing employment in the financial services sector. Under the Massachusetts “Ban the Box” law, most employers in Massachusetts are not allowed to ask applicants about their criminal record on a job application. However, there are a few limited exceptions for certain types of jobs in specific industries (for example, jobs at day cares and certain financial institutions) where employers can ask about criminal records on job applications because they are legally prohibited from hiring people with criminal records for those jobs.⁴⁷ Financial institutions are prohibited from employing any person who has been convicted of any criminal offense involving dishonesty or breach of trust, including money laundering or any criminal offense concerning the illegal manufacture, sale or distribution of or

the-Text Principle, “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” JUSTICE ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012), <https://jm919846758.files.wordpress.com/2020/09/rlilt.pdf>.

⁴⁷ *Guide to Criminal Records in Employment and Housing*, COMMONWEALTH OF MASSACHUSETTS, <https://www.mass.gov/guides/guide-to-criminal-records-in-employment-and-housing>.

trafficking in controlled substances.⁴⁸ This would include any person who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for any such offense.⁴⁹

As the record below made clear, Appellant's record has had and will continue to have significant collateral consequences for employment. On three separate occasions, the Appellant's sealed record has been made discoverable by the heightened level of background check used in the financial sector. *See* Statement of Facts. Sealing has not been sufficient in allowing the Appellant to pursue employment of his choice. Yet there was no indication that the trial court considered this factor in exercising its discretion. Rather, the court simply stated in conclusory fashion: "The court does not believe that destroying all records of this offense is in the interest of justice." *See* Findings and Order on Petition for Expungement, RA0054-44.

The "best interests of justice" was provided in the statute as a meaningful standard, not one to be left for vagueness, but one to be supplied with justification by the Court. Additionally, consideration of

⁴⁸ Section 19 of the Federal Deposit Insurance Act (FDIA) and Section 205(d) of the Federal Credit Union Act (FCUA) govern whether an individual may be employed by a federally insured depository institution or an insured credit union, respectively.

⁴⁹ *Id.*

the Appellant’s interests and any given collateral consequences aligns with the intent of the Criminal Justice Reform Act.⁵⁰ If the statute does not apply in this instance—an individual of color with limited English proficiency whose identity was stolen and who wishes to pursue gainful employment as a productive citizen—then the law is devoid of meaning. This Court should supply an interpretation of the best interests of justice that avoids that illogical and ill-founded result.

In defining “best interests of justice,” the Court should require trial judges evaluating whether to expunge a record to consider the collateral consequences of that record and their impact upon the petitioner. Such an interpretation would be consistent with the broad, remedial goals of the statute and the plain language of the law.

⁵⁰ *Supra*, Section III.

CONCLUSION

For the foregoing reasons, *Amici Curiae* urge this Court to reverse the trial court's decision and order the Appellant's criminal record be expunged pursuant to M.G.L. c. 276, §§ 100K(a)(1) and (b).

Respectfully Submitted,

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RULE 16(K) CERTIFICATION

The undersigned hereby certifies that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). The brief complies with the applicable page limit of Rule 20(a)(3)(E) because it uses proportionally spaced Times New Roman font, size 14, and contains 4966 non-excluded words, generated by Microsoft Word.

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RULE 17(C)(5) CERTIFICATION

The undersigned hereby certifies that no party or a party's counsel authored the brief in whole or in part; no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; no person or entity—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief; neither the amicus curiae nor its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

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ADDENDUM
M.G.L. c. 276 § 100K

Section 100K: Expungement of record resulting from false identification, an offense no longer a crime at time of expungement, error or fraud

Section 100K. (a) Notwithstanding the requirements of section 100I and section 100J, a court may order the expungement of a record created as a result of criminal court appearance, juvenile court appearance or dispositions if the court determines based on clear and convincing evidence that the record was created as a result of:

- (1) false identification of the petitioner or the unauthorized use or theft of the petitioner's identity;
- (2) an offense at the time of the creation of the record which at the time of expungement is no longer a crime, except in cases where the elements of the original criminal offense continue to be a crime under a different designation.
- (3) demonstrable errors by law enforcement;
- (4) demonstrable errors by civilian or expert witnesses;
- (5) demonstrable errors by court employees; or
- (6) demonstrable fraud perpetrated upon the court.

(b) The court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice. Prior to entering an order of expungement pursuant to this section, the court shall hold a hearing if requested by the petitioner or the district attorney. Upon an order of expungement, the court shall enter written findings of fact.

(c) The court shall forward an order for expungement pursuant to this section forthwith to the clerk of the court where the record was created, to the commissioner and to the commissioner of criminal justice information services appointed pursuant to section 167A of chapter 6.