

REPORT AND RECOMMENDATION OF THE  
COMMISSION ON JUDICIAL CONDUCT

APPENDIX B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 19-cr-10141-LTS
	)	
SHELLEY M. RICHMOND JOSEPH, and	)	
WESLEY MACGREGOR,	)	
	)	
Defendants	)	

**MOTION TO DISMISS COUNTS 1-3 AND**  
**DEFER PROSECUTION AS TO COUNT 4**

The United States of America, by and through its undersigned counsel, hereby moves, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, to dismiss Counts 1-3 of the Indictment in this case in accordance with an agreement reached with Massachusetts state District Court Judge Shelley Richmond Joseph under which she has attested to a statement of relevant facts and agreed to refer herself to the Massachusetts Commission on Judicial Conduct: the forum that is designed to investigate and address alleged misconduct by state judicial officers and to make final recommendations on discipline to the Supreme Judicial Court of Massachusetts. A separate agreement has been reached to defer prosecution against retired Massachusetts Court Officer Wesley MacGregor on Count 4 of the Indictment. Those agreements, which resolve the pending federal criminal charges against both defendants, are attached hereto as Exhibit A (as to Joseph) and Exhibit B (as to MacGregor). An affidavit attesting to the fact that Judge Joseph has referred herself to the Massachusetts Commission on Judicial Conduct is attached as Exhibit C. Both defendants, through counsel, consent to the requested dismissals.

The government has conducted a full review of the evidence, the applicable law, and all relevant equitable and prudential factors pertinent to this matter. Based on this review, the United

States has concluded that dismissal of the above-referenced counts is in the interests of justice, consistent with the Principles of Federal Prosecution set forth in Justice Manual § 9-27.22. Among other factors, respect for comity and federalism as between the state and federal judicial systems, as well as the availability of an alternative forum capable of adequately and proportionately addressing the alleged conduct, strongly favors dismissal.

Judge Joseph's actions on April 2, 2018, needlessly obscured the events surrounding the release of a Massachusetts state court defendant who was also the subject of an ICE civil detainer. *See United States v. Joseph*, 26 F.4th 528, 531-32 (1st Cir. 2022). Those actions contributed to the ambiguity of the factual record. But that ambiguity, any potential violations of Massachusetts state court policies, and the question of whether Judge Joseph's actions potentially undermined public confidence in the integrity and impartiality of a state court proceeding, are, in this case, best addressed by state judicial oversight, rather than federal criminal prosecution. Judge Joseph's agreement to refer herself to the Judicial Conduct Commission will allow for that oversight, as the Commission will have the ability to fully consider Judge Joseph's recent factual admissions as part of its review, along with the public allegations and filings made in this case.

Mr. MacGregor, who has already been subject to discipline for his conduct, has resigned his position as a Court Officer and is no longer employed by the Massachusetts state court system, has entered into a deferred prosecution agreement with respect to Count 4: the single count of perjury with which he is charged. The United States has determined that the deferred prosecution agreement entered with Mr. MacGregor represents a fair and balanced resolution of this matter and is likewise in the interest of justice.

For all of the foregoing reasons, the United States respectfully requests that the Court grant its motion to dismiss Counts 1-3 of the Indictment and defer prosecution as to Count 4.

Respectfully submitted,

ZACHARY A. CUNHA  
UNITED STATES ATTORNEY  
Acting Under Authority  
Conferred by 28 U.S.C. § 515

By: /s/ William Abely  
WILLIAM ABELY  
Criminal Chief  
AMANDA STRACHAN  
Deputy Criminal Chief  
U.S. Attorney's Office  
for the District of Massachusetts

September 22, 2022

EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 19-cr-10141-LTS
	)	
SHELLEY M. RICHMOND JOSEPH,	)	
	)	
Defendant	)	

AGREEMENT

This Agreement (the “Agreement”) is made between the United States Attorney’s Office for the District of Massachusetts (the “USAO”) and the defendant, Shelley M. Richmond Joseph (“Joseph”).

Joseph acknowledges that the USAO has independently developed evidence during its investigation and that a Grand Jury sitting in the District of Massachusetts returned an indictment in this case; Joseph does not challenge the validity of the Grand Jury’s action.

Term of the Agreement

1. This Agreement is effective for a period, running from the date on which it is signed until the date the conditions below are satisfied (the “Term”).

Cooperation with Massachusetts Commission on Judicial Conduct

2. Joseph agrees that within thirty days of the effective date of this agreement, she will formally refer herself to the Massachusetts Commission on Judicial Conduct and will thereafter cooperate fully in any investigation or proceeding into her conduct that has been or may be initiated or conducted by the Massachusetts Commission on Judicial Conduct, until any such investigation or proceeding is closed or concluded. Such referral shall include a stipulation by Joseph to the accuracy of the facts set forth in the attached Statement of Facts (“Statement”). The parties agree

that the attached agreed-upon statement of facts may not represent all relevant facts. Joseph agrees that she will: (1) not contest the accuracy of the Statement; (2) not object to the consideration, or admissibility into evidence, of the Statement in any investigation or proceeding that has been or may be initiated or conducted by the Massachusetts Commission on Judicial Conduct; and (3) attest in writing, under penalty of perjury, to her compliance with the conditions of this Paragraph at the time of her submission to the Massachusetts Commission on Judicial Conduct. Joseph further agrees that the Indictment, and any other public filings on the docket in this case shall be available to the Massachusetts Commission on Judicial Conduct. Except as expressly provided herein, nothing in this paragraph shall be read to impair Joseph's ability to otherwise defend or contest any proceeding before, or sanction imposed by, the Massachusetts Commission on Judicial Conduct, including any appeals.

Dismissal of Prosecution

3. If Joseph complies with her obligation under Paragraph 2 of this Agreement to refer herself to the Massachusetts Commission on Judicial Conduct, and provides sworn attestation of her self-referral, the USAO will file an assented-to motion for dismissal of the Indictment no later than thirty days after receiving the attestation; such dismissal shall be without prejudice to the United States ability to re-present the indictment in the event of a material breach of Joseph's obligations under Paragraph 2.

4. The USAO and Joseph understand that the Court must approve the dismissal of the charges in the Indictment.

Agreement Binding Only on Joseph and USAO

5. This Agreement is binding only on Joseph and the USAO and does not bind any other component of the U.S. Department of Justice, any federal agency, or any state or local law enforcement or administrative authority, including, but not limited to, the Massachusetts

Commission on Judicial Conduct and the Massachusetts Supreme Judicial Court. Further, the waivers and other agreements made by Joseph herein shall not be binding on Joseph in any civil or criminal proceeding initiated by any person or entity other than the USAO or Joseph.

6. Nothing in this Agreement restricts in any way the ability of the USAO to proceed against any individual or entity not a party to this Agreement.

Miscellaneous

7. Joseph and the USAO agree that this Agreement, including the Statement, shall be made available to the public.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. Signatures transmitted by facsimile or email shall be deemed to be original signatures for all purposes.

9. This Agreement, including the Statement, constitutes the entire agreement between the parties, and supersedes any prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations, or agreements have been made other than those set forth in this Agreement. This Agreement may be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

10. Joseph is aware that 18 U.S.C. § 3006A, the so-called “Hyde Amendment,” authorizes courts in criminal cases to award to certain prevailing defendants’ attorneys’ fees and other litigation expenses. In executing this agreement, Joseph voluntarily and knowingly waives any claim Joseph might assert under this statute.

Advice of Counsel

11. Joseph acknowledges the following: she has read and understands the terms and provisions of this Agreement; she has had a full and complete opportunity to consult with legal

counsel and to ask any questions about the terms and provisions of this Agreement and her agreements and waivers stated herein are knowing and voluntary and are made with the advice of counsel; and she is satisfied with the legal representation provided by her legal counsel.

AGREED.

ZACHARY A. CUNHA  
UNITED STATES ATTORNEY  
Acting Under Authority Conferred by 28  
U.S.C. § 515

By:   
WILLIAM ABELY  
Criminal Chief  
AMANDA STRACHAN  
Deputy Criminal Chief  
U.S. Attorney's Office  
for the District of Massachusetts

Date: 9-20-22

  
SHELLEY M. RICHMOND JOSEPH

Date: 9-13-22

  
THOMAS M. HOOPES, ESQ.

ELIZABETH N. MULVEY, ESQ.  
DOUGLAS S. BROOKS, ESQ.

Date: 9-15-22

Statement of Facts

1. Shelley Richmond Joseph (“Joseph”) was appointed as a Massachusetts District Court Judge on November 2, 2017, and thereafter was assigned to sit at various district courts, including Newton District Court, in accordance with a monthly assignment schedule.

2. Joseph was the only judge sitting at Newton District Court on April 2, 2018.

3. Joseph knew that criminal defendants in Newton District Court custody were kept in the lockup area in the basement of the courthouse and were brought upstairs by a court officer to the courtroom for their court appearances. The normal custom and practice in Newton District Court, subject to certain exceptions, was that a defendant would be released from custody into the courtroom. This courtroom had only one public entry/exit, which led to the courthouse lobby.

4. The Massachusetts Rules of Court, which prescribe rules for all state district courts, including the Newton District Court, provided, in pertinent part, that “all courtroom proceedings,” which includes sidebar conferences, were required to be electronically recorded.

5. On or about November 10, 2017, the Executive Office of the Massachusetts Trial court issued guidance to all Massachusetts state judges, clerks and other courthouse personnel titled, “Policy and Procedures Regarding Interactions with the U.S. Department of Homeland Security,” (“DHS Policy”). The DHS Policy instructed, in pertinent part, that (1) “Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees;” (2) “DHS officials may enter a courthouse and perform their official duties;” (3) “pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel’s custody; and (4) “[t]o the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse.”

6. One of the cases that Joseph heard on April 2 was Commonwealth v. A.S. Joseph knew that A.S. was initially being held on a warrant as a fugitive from Pennsylvania and had been charged with two counts of narcotics possession in violation of Massachusetts law. She also knew that A.S. was being held in the downstairs lockup area of the courthouse.

7. Joseph also knew that Immigration and Customs Enforcement (“ICE”), which is part of the U.S. Department of Homeland Security, intended to take custody of A.S. pursuant to a civil immigration detainer. The detainer stated that ICE had probable cause to believe that A.S. was a deportable alien based on a final order of removal previously issued against him.

8. Joseph knew that an ICE officer was present in the courthouse waiting to take

custody of A.S. if he was released from state custody. Joseph directed a court clerk to request that the ICE officer remain outside the courtroom in accordance with the practice of the presiding justice in Newton District Court. This direction was contrary to the DHS policy, which reflects, consistent with Supreme Court precedent and constitutional guarantees, that courthouses and courtrooms are public spaces and open to the public absent extraordinary circumstances not present here.

9. When A.S.'s case was recalled that afternoon, his defense attorney asked for a sidebar. At sidebar, the prosecutor stated that she no longer believed that this defendant was the same person subject to the Pennsylvania charge and thus that she was dismissing the fugitive warrant and not seeking to detain the defendant on the remaining Massachusetts narcotics charges. The defense attorney stated that an ICE officer was waiting outside the courtroom with an immigration detainer for A.S. and would pick up A.S. if Joseph released A.S. After hearing this information, Joseph stated, among other things, "ICE is gonna get him? .... What if we detain him?" The defense attorney asked if the sidebar was being recorded and asked to go off the record. Contrary to Massachusetts Rules of Court, Joseph directed the court clerk to turn off the recording device.

10. After the recorder was turned off, there was a 52 second off-the record sidebar conference with Joseph, the defense attorney and the prosecutor present. In the course of this conference, the defense attorney asked Joseph to allow A.S., who had been escorted up to the courtroom by a court officer, to go back downstairs.

11. After the off-the record portion of the sidebar, the defense attorney asked, on the record, if he could go downstairs with A.S. and an interpreter so that they could speak. The defense attorney also stated that his client had property downstairs. Joseph stated on the record that she was granting the defense attorney's request. The clerk reminded the Judge on the record that ICE agents were present and seeking to take the defendant into custody.

12. The defense attorney and the interpreter accompanied A.S. downstairs to the lockup area. Shortly thereafter, a court officer used his key card to open the door to the sallyport and released A.S. out the back door

13. The ICE officers learned about A.S.'s release after it happened. A.S. was not taken into ICE custody on April 2, 2018.

EXHIBIT B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:1-cr-1-141-LTS
	)	
WESLEY MACGREGOR,	)	
	)	
Defendant	)	

DEFERRED PROSECUTION AGREEMENT

This Deferred Prosecution Agreement (the "Agreement") is made between the United States Attorney's Office for the District of Massachusetts (the "USAO") and the defendant, Wesley MacGregor ("MacGregor").

1. MacGregor acknowledges that the USAO has independently developed evidence that could be sufficient to establish beyond a reasonable doubt that MacGregor violated federal law as described in Count 4 of the Indictment.

Term of the Agreement

2. This Agreement is effective for a period of six months from the date on which the Information is filed (the "Term"). If the Court rejects this Agreement, all provisions of this Agreement shall be deemed null and void, and the Term shall be deemed not to have begun.

Deferral of Prosecution As to Count 4

3. If MacGregor complies with all his material obligations under this Agreement for the full Term, the USAO will file a dismissal of Count 4 of the Indictment as to him no later than thirty days after the Term expires.

4. Absent a material breach by MacGregor of his obligations under this Agreement, the USAO will bring no additional charges against MacGregor relating to the conduct forming the basis for the Indictment.

5. This Agreement does not protect MacGregor from prosecution for any crimes except those arising out of the conduct described in the Indictment. This Agreement does not apply to any individual other than MacGregor.

6. The USAO and MacGregor understand that the Court must approve the deferral of prosecution set out and agreed to in this Agreement in accordance with 18 U.S.C. § 3161(h)(2). Specifically, for purposes of the Speedy Trial Act, the Court must approve the delay of a trial on the Indictment to allow MacGregor sufficient time to demonstrate his good conduct by complying with Paragraph 10 of this Agreement.

Dismissal of Counts 1-3

7. Within thirty days after execution of this agreement by all parties, the USAO will file an assented-to motion for dismissal of Counts 1-3 of the Indictment as to MacGregor; such dismissal shall be without prejudice to the United States' ability to re-present the indictment in the event of a material breach of MacGregor's obligations under Paragraph 10.

8. The USAO and MacGregor understand that the Court must approve the dismissal of the charges in the Indictment.

Breach of the Agreement

9. If, during the Term, MacGregor (a) commits any violation of federal criminal law, (b) fails to comply with his obligations herein, or (c) otherwise fails to perform or fulfill completely each of his obligations under this Agreement, MacGregor will thereafter be subject to prosecution for Count 4 of the Indictment.

10. Determination of whether MacGregor has breached this Agreement and whether to pursue prosecution of MacGregor will be in the USAO's sole discretion. If the USAO determines that MacGregor has breached this Agreement, it will give MacGregor written notice before instituting any prosecution resulting from such breach. Within thirty days after receiving such notice, MacGregor will have the opportunity to make a presentation to the USAO to demonstrate that: (a) no breach occurred, (b) the breach was not a knowing breach and could not have been avoided with the exercise of due diligence, or (c) the breach has been cured. The USAO will consider any such presentation in determining whether to pursue prosecution of MacGregor.

11. MacGregor agrees that the consequences for a breach set forth in this Agreement are remedies to which the USAO is entitled in the event of a breach and shall survive the termination of this Agreement in the event of a breach. MacGregor agrees that the USAO's remedies for a breach are not limited to those set forth in this Agreement. MacGregor further agrees that, in the event of a breach, MacGregor nevertheless will be bound by his waivers of legal, equitable, and constitutional rights set forth in this Agreement, and those provisions will survive even in the event of a breach.

Agreement Binding Only on MacGregor and USAO

12. This Agreement is binding only on MacGregor and the USAO and does not bind any other component of the U.S. Department of Justice, any federal agency, or any state or local law enforcement or administrative authority. Further, the waivers and other agreements made by MacGregor herein shall not be binding on MacGregor in any civil or criminal proceeding initiated by any person or entity other than the USAO.

13. Nothing in this Agreement restricts in any way the ability of the USAO to proceed against any individual or entity not a party to this Agreement.

Miscellaneous

14. MacGregor and the USAO agree that this Agreement shall be made available to the public.

15. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. Signatures transmitted by facsimile or email shall be deemed to be original signatures for all purposes.

16. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations, or agreements have been made other than those set forth in this Agreement. This Agreement may be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

17. MacGregor is aware that 18 U.S.C. § 3006A, the so-called "Hyde Amendment," authorizes courts in criminal cases to award to certain prevailing defendants' attorneys' fees and other litigation expenses. In exchange for concessions the U.S. Attorney made in this Agreement, MacGregor voluntarily and knowingly waives any claim MacGregor might assert under this statute.

Advice of Counsel

18. MacGregor acknowledges the following: he has read and understands the terms and provisions of this Agreement; he has had a full and complete opportunity to consult with legal counsel and to ask any questions about the terms and provisions of this Agreement; he fully understands the nature of the crime alleged against him in the Indictment, the maximum

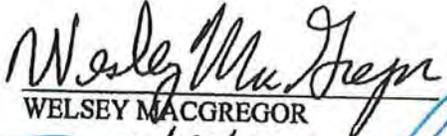
penalties and Sentencing Guidelines provisions applicable to the offense, and penalties potentially applicable to him; he has discussed with counsel the charge against him, possible defenses he might have, and whether he should go to trial; his agreements and waivers stated herein are knowing and voluntary and are made with the advice of counsel; and he is satisfied with the legal representation provided by his legal counsel.

AGREED.

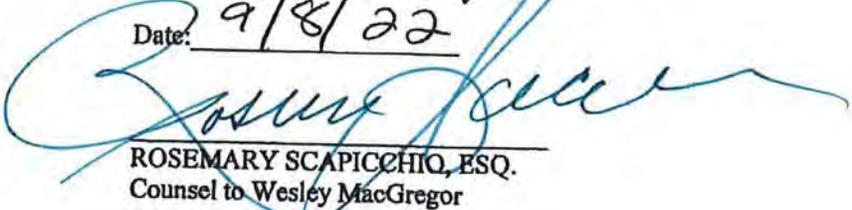
ZACHARY CUNHA  
UNITED STATES ATTORNEY  
Acting under Authority Conferred by  
28 U.S.C. § 515

By:   
WILLIAM ABELY  
Criminal Chief  
AMANDA STRACHAN  
Deputy Criminal Chief

Date: 9-20-22

  
WELSEY MACGREGOR

Date: 9/8/22

  
ROSEMARY SCAPICCHIO, ESQ.  
Counsel to Wesley MacGregor

Date: 9/8/22

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

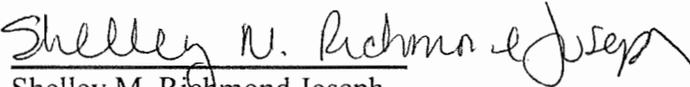
UNITED STATES OF AMERICA            )  
  )  
v.    )  
  )  
SHELLEY M. RICHMOND JOSEPH        )  
  )

Criminal No. 1:19-cr-10141-LTS

**ATTESTATION OF SHELLEY RICHMOND JOSEPH**

I hereby attest that I have complied with paragraph 2 of the Agreement (“Agreement”) with the United States Attorney’s Office (“the USAO) and myself dated September 20, 2022, by formally referring myself to the Massachusetts Commission on Judicial Conduct (“the CJC”) and by providing the CJC with a copy of the Agreement and Statement of Facts contained within the Agreement, including my stipulation to the accuracy of the same.

Signed under the penalties of perjury this 22<sup>nd</sup> day of September, 2022.

  
Shelley M. Richmond Joseph