

No. A-_____

In the Supreme Court of the United States

MAREK KOZUBAL,

Applicant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

**Application for Extension of Time to File
Petition for Writ of Certiorari
to the Supreme Judicial Court of Massachusetts**

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Marek Kozubal respectfully requests a 60-day extension of time, to and including March 14, 2021, within which to file a petition for a writ of certiorari.

The decision of Supreme Judicial Court (SJC) of Massachusetts entered on its docket on October 15, 2021. *Commonwealth v. Kozubal*, 488 Mass. 575, 174 N.E.3d 1169 (2021). The opinion is attached.

Unless extended, Kozubal's time to file a petition for a writ of certiorari will expire on January 13, 2021. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257.

Issue to be Presented in Certiorari Petition

The petitioner's forthcoming certiorari petition presents the following question:

Does Massachusetts' construction of the term "mandated reporter" render it unconstitutionally vague?

More specifically, M.G.L. c. 265, § 13B½ punishes indecent assault and battery by a "mandated reporter" with a mandatory minimum of ten years in state prison. But that statute does not define "mandated reporter." It refers instead to a civil statute that defines that term as including specific job titles as well as "a person who is [a] . . . person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under chapter 15D." M.G.L. c. 119, § 21

Kozubal was a part-time private school employee with no defined job, the school was not funded or licensed under chapter 15D, the incidents at issue occurred at a club event open to adults and children, and the complainant was not a student.

Over vagueness and lenity arguments, the Massachusetts courts held that the statute applied to Kozubal. They construed the statute to punish any person paid to work with children in any public or private facility. Under this construction, even a sales clerk in a children's shoe store becomes a mandated reporter. In violation of the constitutional pillar of due process, ordinary persons would have to guess at whether

they are subject to enhanced punishment as mandated reporters.

United States v. Davis, 139 S.Ct. 2319, 2325–26 (2019).

Basis of Jurisdiction and Judgment Sought to be Reviewed

This Court has jurisdiction under § 1257(a) because the judgment of the SJC affirming Petitioner’s convictions “rendered by the highest court of a State in which a decision could be had.” The SJC substantively reviewed and rejected Kozubal’s argument that the due process doctrine of lenity required a stricter construction of the statute.

Kozubal, 174 N.E.3d at 1189-1190.

Good Cause for Extension

Undersigned counsel is not able to properly prepare the contemplated petition by January 13, 2021 for the reasons listed below.

First, Kozubal is scheduled to be resentenced on two counts of the eight count indictment on January 25, 2021.

Second, undersigned counsel is currently seeking appointment to this matter in the state courts. Undersigned counsel was privately retained throughout state appellate proceedings. Mr. Kozubal’s family is unable to pay for his representation any longer, including this petition. If the state court appoints counsel, that issue is resolved.

Finally, undersigned counsel is responsible for the following cases which have required his attention or will require his attention during the period for seeking certiorari:

1. *Commonwealth v. Rogers*, No. SUCR2004-10439 (Suffolk Sup. Ct.) (first degree murder). Counsel litigated post-conviction evidentiary hearings in this matter on December 10 and 29, 2021.
2. *Commonwealth v. Robinson*, No. 1969-40114–17 (first degree murder, two counts). The Commonwealth’s response to the motion for new trial is due December 31, necessitating a reply brief.
3. *Commonwealth v. Rooney*, No. SJC-12535 (first degree murder). On remand to the trial court, the defendant’s reply brief regarding post-conviction discovery and motion for funds is due January 12, 2022 and the matter is set for hearing on January 24.
4. *Garrey v. Silva*, No. 21-1197 (1st Cir) (28 U.S.C. § 2254 petition, first degree murder). The respondent’s brief is due on January 14, 2022, with an anticipated reply brief due on February 4, 2022.
5. *Commonwealth v. Dowds*, No. SJC-10340 (first degree murder). Resentencing to second-degree murder will be scheduled in January, 2022.
6. *Commonwealth v. Lopez-Ortiz*, No. 1481CR00430 (Middlesex Sup. Ct.) (second degree murder). Assembly of the record in this direct appeal is imminent, which will trigger a forty day deadline for filing of the brief.

Conclusion

For all the foregoing reasons, the Court should grant Kozubal an extension of time to and including March 14, 2021, within which to file a petition for a writ of certiorari.

Respectfully submitted,

DAVID NATHANSON
Counsel of Record
Wood & Nathanson, LLP
50 Congress Street, Suite 600
Boston, MA 02109
(617) 248-1806
dnathanson@woodnathanson.com

DECEMBER 29, 2021