

No. _____

In the
Supreme Court of the United States

MICHELLE CARTER,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

Application for an Extension of Time
Within Which to File a Petition
for a Writ of Certiorari to the Supreme Judicial Court
of the Commonwealth of Massachusetts

**APPLICATION TO THE HONORABLE JUSTICE
STEPHEN G. BREYER AS CIRCUIT JUSTICE**

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APPLICATION FOR AN EXTENTION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Michelle Carter hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari up to and including Monday, July 8, 2019.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Commonwealth v. Michelle Carter*, 481 Mass. 352 (2019) (attached as Exhibit 1).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1257(a).

Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before Wednesday, May 7, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time, up to and including Monday, July 8, 2019, in which to file a petition for a writ of certiorari seeking review of the decision of the Supreme Judicial Court of the Commonwealth of Massachusetts.

1. The Supreme Judicial Court is the first court to have affirmed a conviction for a defendant who with her words alone advised, encouraged, or coerced another person to commit suicide, even though the defendant neither physically provided the means of death nor physically participated in the suicide or was even close to the scene. In doing so, the Supreme Judicial Court created a direct conflict

with at least three other state supreme courts about the application of the First Amendment in such circumstances. It also disregarded the precedents from this Court concerning the guarantee of Due Process.

2. In rejecting Applicant's First Amendment challenge, the Supreme Judicial Court relied on *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), a civil case involving an injunction against picketing, and held Applicant's words were not protected speech because they constituted "speech integral to criminal conduct." Before this case, no court had ever applied *Giboney* to affirm a conviction for assisted suicide. In so doing, the Supreme Judicial Court created a direct conflict with state supreme courts that have expressly rejected similar arguments in criminal cases involving suicide, *see State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014) (vacating assisted-suicide convictions, invalidating portions of Minnesota's assisted-suicide statute on First Amendment grounds, and remanding for further proceedings), and stalking, *see People v. Releford*, 2017 IL 121094 (2017) (invalidating stalking convictions based on "communications" alone and invalidating provisions of stalking and cyberstalking laws that criminalize communications to or about another person), and *State v. Shackelford*, 2019 N.C. App. LEXIS 257 (Oct. 18, 2018) (invalidating stalking convictions based on "communications" alone). These courts have refused to apply the *Giboney* exception where "the speech is the criminal act," *Releford*, 2017 IL 121094 at 10 (emphasis in original); *see also Shackelford*, 2019 N.C. App. LEXIS 257, at 21 (rejecting argument based on the *Giboney* exception because "his speech itself was the crime"), rather than an integral part of a broader course of criminal conduct.

3. Further, in rejecting Applicant’s Due Process challenge, the Supreme Judicial Court recognized that not all individuals who advise, encourage, or even actively assist other persons to commit suicide should face prosecution for involuntary manslaughter. But the Court failed to draw any clear lines, which the Constitution requires. Who is to say whether a particular case is an acceptable assisted-suicide or a blameworthy killing? In affirming Applicant’s conviction, the Supreme Judicial Court broadly authorized prosecutors to charge all persons who – with their words alone – cause others to commit suicide. It left to prosecutors (and judges) the difficult task of differentiating, on “an *ad hoc* and subjective basis,” between such cases. *Grayned v. Rockford*, 408 U.S. 104, 108-109 (1972); see *Sessions v. Dimaya*, 138 S. Ct. 1204, 1227-1228 (Gorsuch, J., concurring in part and in judgment). Although due process demands “minimal guidelines to govern law enforcement,” especially when the criminal law may implicate “expression sheltered by the First Amendment,” *Smith v. Goguen*, 415 U.S. 566, 574 (1974), the Supreme Judicial Court did not even mention that constitutional requirement, much less provide the requisite guidance. Its dubious “assumption” that prosecutors will act “responsibly” in charging involuntary manslaughter in future suicide cases undermines the constitutional protections, which this Court has clearly establish and consistently maintained, against the arbitrary enforcement of criminal laws. See *Marinello v. United States*, 138 S. Ct. 1108-1109 (2018) (quoting *McDonnell v. United States*, 136 S. Ct. 2355, 2372-2373 (2016) (quoting *United States v. Stevens*, 559 U.S. 460, 480 (2010))).

4. The requested extension of time is also necessary because of the press of other business, including representation of indigent clients in court-appointed matters under the Criminal Justice Act.


5. Since the Supreme Judicial Court affirmed Applicant's conviction, and in the coming months, undersigned counsel have numerous competing commitments representing retained and appointed clients in Federal and state courts before trial, on appeal, and in post-conviction proceedings. *See, e.g., United States v. Morel*, No. 17-1696, ___ F.3d ___ (argued April 4, 2019; decided April 19, 2019); *United States v. Frisiello*, No. 1:18-cr-10314-NMG (D. Mass.) (sentenced April 19, 2019); *United States v. Tkhilashvili*, No. 18-1098 (1st Cir.) (reply brief due April 29, 2019; argument set for May 9, 2019); *United States v. Bashir*, No. 1:18-cr-10188-ADB (D. Mass.) (sentencing set for April 26, 2019); *NTV Management, Inc. v. Lightship Global Ventures, LLC et al.*, No. 2018-P-1339 (Mass. App. Ct.) (reply brief due May 1, 2019); *United States v. Wolas*, No. 17-cr-10198-FDS (D. Mass.) (submission regarding forfeiture of substitute assets from third-party due May 6, 2019); *Weinstein v. United States*, Nos. 18-cv-894 & 18-cv-5575 (D.N.J.) (reply brief in consolidated 28 U.S.C. § 2255 proceedings due June 3, 2019); *United States v. Bautista-Diaz*, 28-cr-10285-PBS (D. Mass.) (trial set for June 17, 2019). In addition, counsel represent several clients in pending Federal criminal and civil investigations as well as a putative class of nearly 40,000 individuals in *Foster et al. v. Commonwealth of Massachusetts et al.*, 1:18-cv-10354-IT (D. Mass.), an ongoing Federal civil rights action seeking the return of fees and fines paid and property forfeited based on wrongful convictions that the

Supreme Judicial Court has vacated and dismissed with prejudice due to outrageous government misconduct in state drug labs.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant a 60-day extension, up to and including Monday, July 8, 2019, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,



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