

No. ___ - _____

IN THE
SUPREME COURT OF THE UNITED STATES

JENNIFER COTTO, on behalf of herself and all others similarly situated; JAMIE KIMBALL, on behalf of herself and all others similarly situated; DAVID CUMMINGS, on behalf of himself and all others similarly situated; TODD MOTON, on behalf of himself and all others similarly situated; and TRAVIS MORAN, on behalf of himself and all others similarly situated,
Petitioners,

v.

ANDREA J. CAMPBELL, Attorney General; TIMOTHY SHUGRUE, Berkshire County District Attorney; THOMAS M. QUINN, III, Bristol County District Attorney; ROBERT J. GALIBOIS, II, Cape and Islands District Attorney; PAUL TUCKER, Essex County District Attorney; ANTHONY GULLUNI, Hampden County District Attorney; MARIAN RYAN, Middlesex County District Attorney; MICHAEL W. MORRISSEY, Norfolk County District Attorney; DAVID E. SULLIVAN, Northwestern District Attorney; TIMOTHY J. CRUZ, Plymouth County District Attorney; KEVIN R. HAYDEN, Suffolk County District Attorney; JOSEPH D. EARLY, JR, Worcester County District Attorney; THOMAS G. AMBROSINO, Administrator of the Trial Court, and JOHN MAWN, JR., Massachusetts State Police Interim Superintendent,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

To the Honorable Ketanji Brown Jackson, Circuit Justice for the First Circuit:

Petitioners Jennifer Cotto, Jamie Kimball, David Cummings, Todd Moton, and Travis Moran, on behalf of themselves and all others similarly situated, hereby move by their undersigned counsel, pursuant to Rule 13(5) of the rules of this Court, for an extension of time of 60 days, to and including June 20, 2025, for the filing of a petition

for writ of certiorari to review the decision of the United States Court of Appeals for the First Circuit dated January 21, 2025 (attached as Exhibit 1). The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

1. The date within which a petition for writ of certiorari would be due, if not extended, is April 21, 2025. The instant Application is therefore timely under Rule 13(5).

2. This case presents one or more substantial issues of law as to which there is conflict between the decision below of the United States Court of Appeals for the First Circuit and precedents of this Court, including *Nelson v. Colorado*, 581 U.S. 128 (2017), as well confusion among the circuits about the application of *Ex Parte Young*, 209 U.S. 123 (1908), and its progeny.

3. Petitioners—and the tens of thousands of Class Members whom they seek to represent—were wrongfully convicted of drug offenses in Massachusetts state courts based on evidence that was tainted by former state chemists. After the outrageous government misconduct in the state drug labs came to light, the Massachusetts Supreme Judicial Court vacated those wrongful convictions in the largest mass exoneration in U.S. legal history.

4. When Petitioners' convictions were vacated, their presumption of innocence was fully restored. At that point, the Commonwealth had “zero claim of right” to the fees and fines that Petitioners had paid, or to the money and property that they had forfeited, in connection with their wrongful convictions. *Nelson*, 581

U.S. at 135 (holding due process prohibits “the continuing deprivation of property, after a conviction has been reversed or vacated, with no prospect of re prosecution”).

5. Respondents, all District Attorneys and other state officials, conceded that basic principle, but only in part. They agreed that Petitioners were entitled to the return of fees and fines, but drew the line at forfeited money and property.

6. In other words, Respondents insist that, notwithstanding the unprecedented government malfeasance that caused the drug lab scandals in Massachusetts and led to the dismissal with prejudice of tens of thousands of wrongful convictions, they can nevertheless keep millions of dollars in cash and property (cars, cellphones, etc.) that were taken from the innocent victims of those scandals—in many cases, literally from their pockets—and continue to be unlawfully withheld today. And they further contend, notwithstanding *Nelson*, there is no federal remedy.

7. In their putative federal class action lawsuit, Petitioners allege that the continued withholding of money and property that was forfeited in connection with their vacated, wrongful convictions violates both the Fourteenth Amendment’s guarantee of due process (because absent reliable drug evidence, there is no probable cause for forfeiture) and the Eighth Amendment’s prohibition on excessive punishment (because punitive fines may not be imposed on people who are presumed innocent). To remedy those continuing violations, Petitioners request various forms of prospective declaratory and injunctive relief.

8. Pursuant to the *Ex parte Young* doctrine, the district court has the authority to order Respondents, all state officials, to comply with federal law. Although the federal court cannot order Respondents to pay retrospective monetary compensation to Petitioners, it can exercise its broad discretion to provide a wide range of prospective equitable relief—for example, an accounting of wrongfully withheld property, notice of the right to seek its return, and implementation of procedures to provide due process.

9. The First Circuit erroneously reversed the district court’s denial of the Respondent’s motion to dismiss on the basis that Petitioners’ complaint did not allege an ongoing violation of federal law or seek any prospective relief.

10. Petitioners’ counsel requires the additional requested time to research the legal issues, to consult with the Petitioners, and to prepare an appropriate petition for consideration by this Court.

11. Counsel for respondents have stated that they will not oppose this application.

For the foregoing reasons, Petitioners hereby request that an extension of time to and including June 20, 2025, be granted within which Petitioners may file a petition for a writ of certiorari.

Respectfully submitted,

WILLIAM W. FICK, ESQ.

Counsel of Record

DANIEL N. MARX, ESQ.

FICK & MARX LLP

24 Federal Street, 4th Floor

Boston, MA 02210

(857) 321-8360

WFICK@FICKMARX.COM

DMARX@FICKMARX.COM

LUKE RYAN, ESQ.

STREHORN, RYAN & HOOSE

100 Main Street, 3d Floor

Northampton, MA 01060

(413) 586-4800

LRYAN@STRHLAW.COM

April 9, 2025