No. A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERTO LOPEZ-ORTIZ,

Applicant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

On Application for Extension of Time

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Ketanji Brown Jackson, Associate Justice of the United States Supreme Court and Circuit Justice for the First Circuit:

Pursuant to 28 U.S.C. § 2101(d) and Supreme Court Rule 13.5, applicant Roberto Lopez-Ortiz respectfully requests a 60-day extension of time, until December 22, 2025, within which to file a petition for a writ of certiorari. There is some uncertainty as to the current, correct due date for the petition. This application addresses that issue.

The Massachusetts Appeals Court issued its opinion in this case on February 12, 2025. *Commonwealth v. Lopez-Ortiz*, 105 Mass. App. Ct. 265, 276, 283 (2025). On February 28, 2025 and again May 2, 2025, Lopez-Ortiz timely moved in the Massachusetts Supreme Judicial Court for an extension of time for filing an application for "further appellate review" (discretionary review). Appendix, *infra* at 16. The Supreme Judicial Court granted the extensions. *Id.* The application for further appellate review was timely filed in the Supreme Judicial Court on May 9, 2025. *Id.* On June 6, 2025, the application was denied. *Id.* On June 20, 2025, Lopez-Ortiz, filed a motion to reconsider the denial of further appellate review. *Id.* On June 23, 2025, the Criminal Justice Institute at Harvard Law School filed an amicus letter in support of the motion to reconsider. *Id.* On July 25, 2025, the motion to reconsider was denied. *Id.*

Therefore, the time for filing a petition for a writ of certiorari properly expires on October 23, 2025. This Court's jurisdiction will be invoked under 28 U.S.C. § 1257.

Uncertainty as to Application of Rule 13

Lopez-Ortiz is moving for this extension at this time to avoid any uncertainty regarding the timeliness of his petition. Explanation follows.

This is the culmination of Lopez-Ortiz's direct appeal. After the state intermediate appellate court issued its decision (in four separate opinions),[1] Lopez-Ortiz

[1] The Massachusetts Appeals Court affirmed in a splintered opinion, consisting of a majority, a concurrence, a dissent, and an unpublished portion. The majority opinion (Englander, J.) affirmed but concurring and dissenting opinions explicitly called for a higher court to review the case. *Commonwealth v. Lopez-Ortiz*, 105 Mass. App. Ct. 265, 276, 283 (2025) (opinions of D'Angelo, J., concurring and Rubin, J.

sought discretionary review in the state's highest court, the Supreme Judicial Court. When that was denied, he timely sought reconsideration, which was also denied.

The uncertainty is whether the 90-day period for seeking certiorari runs from the denial of Lopez-Ortiz's motion to reconsider the denial of discretionary review or from the initial denial of discretionary review.

Supreme Court Rule 13.1 states that the 90 days begins to run upon "entry of the order denying discretionary review." But Supreme Court Rule 13.3 provides that the 90 days begins to run upon "denial of rehearing."[2]

The applicable due date turns on whether the denial of Lopez-Ortiz's motion to reconsider the denial of discretionary review (1) is an "order denying discretionary review" under Rule 13.1, (2) falls within Rule 13.3's rules regarding cases in which a "rehearing" was filed and denied, or (3) neither of these. It should and does fall within both Rules 13.1 and 13.3.

Massachusetts no longer uses the term "rehearing." It replaced the term with the phrase "reconsideration or modification of decision" in 2019. Mass. R. App. P. 27(a) (Reporter's Notes, 2019). The rule is drafted so as to presuppose that it applies

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dissenting); *Commonwealth v. Lopez-Ortiz*, 105 Mass. App. Ct. 1114 (February 12, 2025) (unpublished).

[2] "The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court." 28 U.S.C.A. § 2101(d).

to an order that decided the appeal and does not specifically address motions to reconsider the denial of discretionary review. *Id*.[3]

Lopez-Ortiz's motion was styled as a motion to "reconsider." Appendix, *infra* at 17.[4] Massachusetts generally permits motions to reconsider in its appellate courts. Mass. R. App. P. 15(a).[5] Motions to reconsider must be filed within a reasonable time, which Massachusetts normally considers to be 30 days. *Commonwealth v. Montanez*, 410 Mass. 290, 294 (1991); *Commonwealth v. Cronk*, 396 Mass. 194, 197 (1985).

As a result, the SJC has the power to reconsider the denial of further appellate review if timely requested and has done so on multiple occasions. *See Commonwealth v. Wotan*, 37 Mass. App. Ct. 727, further rev. denied, 419 Mass. 1106, rev. granted, 419 Mass. 1110 (1995), 422 Mass. 740, 740 (1996) (vacating conviction); *Commonwealth v. Gagnon,* 37 Mass. App. Ct. 626 (1994), further rev. denied, 419 Mass. 1103,

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[3] "Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present. Oral argument in support of the motion will not be permitted, except by order of the appellate court which decided the appeal. The motion shall be decided by the quorum or panel of the appellate court which decided the appeal." Mass. R. App. P. 27.

[4] Lopez-Ortiz's motion to reconsider also complied with the other requirements of the Mass. R. App. P. 27. It was filed within 14 days, it was fewer than 2,000 words, and it stated with particularity the points of law or fact that the court overlooked or misapprehended. Mass. R. App. P. 27(a), (b); Appendix, *infra* at 16–21.

[5] Even if the Massachusetts Rules of Appellate Procedure explicitly prohibited motions to reconsider, the Supreme Judicial Court has the power to suspend its own rules for good cause. Mass. R. App. P. 2.

rev. granted, 419 Mass. 1106, reversing in part 419 Mass. 1009 (1995); *Commonwealth v. Bolden*, 84 Mass. App. Ct. 1106, further rev. denied, 466 Mass. 1108 (2013), rev. granted, 467 Mass. 1101 (2014), reversing in part, 470 Mass. 274, 277 (2014).[6]

Therefore, the straightforward conclusion is that the 90-day certiorari period does not begin to run until after the SJC's final action on a timely (and actually-filed) motion to reconsider the denial of discretionary review. *Compare Jimenez v. Quarterman*, 555 U.S. 113, 120 & n.4 (2009) (where state court reopened untimely direct appeal, certiorari period ran from conclusion of reopened appeal). *F.C.C. v. League of Women Voters of California*, 468 U.S. 364, 373 (1984) (motion to reconsider suspends

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[6] It also regularly makes orders on applications for further appellate review that do not finally grant or deny the application but invite the applicant to return after a remand to intermediate appellate court. *Commonwealth v. Sespedes*, 442 Mass. 95, 96 (2004) (SJC had previously denied discretionary review but remanded to Appeals Court, later granting review and reversing conviction); *Commonwealth v. French*, 462 Mass. 41, 42 (2012) (same); *Commonwealth v. Johnson*, 461 Mass. 1012, 1012 (2012) (same); *Commonwealth v. Crowley-Chester*, 476 Mass. 1030, 1030 n.1 (2017) (SJC had previously denied discretionary review without prejudice but remanded to Appeals Court for reconsideration, later granting review and ordering evidence suppressed); *Sheriff of Suffolk Cnty. v. Jail Officers & Emps. of Suffolk Cnty.*, 465 Mass. 584, 586–87 (2013) (SJC had denied further appellate review and remanded for reconsideration, then later granted review). Such orders are common. *See, e.g.*, *Commonwealth v. Davoren*, 486 Mass. 1115 (2021) (denying discretionary review without prejudice and remanding to Appeals Court for reconsideration); *Commonwealth v. Hill*, 462 Mass. 1104 (2012); *Commonwealth v. Haggett*, 462 Mass. 1101 (2012); *Commonwealth v. Pete P.,* 466 Mass. 1112 (2013); *Commonwealth v. Leatham*, 463 Mass. 1101 (2012); *Commonwealth v. Sasso*, 462 Mass. 1101 (2012); *Commonwealth v. Hill*, 462 Mass. 1104 (2012); *Commonwealth v. Santana*, 458 Mass. 1112 (2010); *Commonwealth v. Santana*, 457 Mass. 1106 (2010); *Commonwealth v. Famania*, 458 Mass. 1112 (2010). The SJC also has the power to fully dispose of an application for discretionary review as to some issues and remand as to others. *See, e.g.*, *Commonwealth v. Coutu*, 474 Mass. 1103 (2016) (denying in part and remanding in part); *Emmons v. Linn*, 453 Mass. 1103 (2009) (denying discretionary review but remanding to Appeals Court for reconsideration of single issue); *DeLong v. Comm'r of Correction*, 452 Mass. 1102 (2008) (same).

the finality of judgment if it seeks a substantive alteration of the rights adjudicated). *Cf. Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 445 (1974) (motion to reconsider suspended the finality of judgment until motion disposed). Even where — unlike Massachusetts — state procedural rules explicitly forbid motions for reconsideration, such motions toll the certiorari period if such a motion is actually and timely filed and the state court disposes of it.[7] *Wilson v. Cain*, 564 F.3d 702, 705–07 (5th Cir. 2009); *Buniff v. Cain*, 349 F. App'x 3, 4 (5th Cir. 2009); *Emerson v. Johnson*, 243 F.3d 931, 934–935 (5th Cir.2001) (same as to "properly filed" requirement of 28 U.S.C. § 2244(d)(2)). *See also Clarke v. United States*, 898 F.2d 162, 163–64 (D.C. Cir. 1990) (motion to vacate as moot, while not enumerated in rules of appellate procedure, tolled the limitations period).[8] Federal district courts have reached similar conclusions. *McCoy v. Walker*, No. 99 CIV 3926 RWS, 1999 WL 1191988, at *5 (S.D.N.Y. Dec. 14, 1999) (motion to reconsider denial of discretionary review tolled certiorari period). *See also Camp v. Neven*, No. 2:09-CV-01117-GMN, 2011 WL 3651269, at *2 (D. Nev. Aug. 18, 2011) (state petition for rehearing en banc tolled certiorari period). But there is at least one outlier decision, which causes Lopez-Ortiz to file the instant motion. *Hanson v. Haines*, No. 13-CV-0896, 2014 WL 4792648, at *1–2 (E.D. Wis.

[7] *Contrast Missouri v. Jenkins*, 495 U.S. 33, 47 n.14 (1990) (certiorari period not tolled where "suggestion [for rehearing en banc] is neither a petition nor a motion; consequently, it requires no disposition by the court.").

[8] *Contrast Stone v. I.N.S.*, 514 U.S. 386, 396–97 (1995) (normal rule is motion to reconsider tolls review period but specific statutory scheme intended to require litigants to follow different rule requiring initial petition for review and then additional petition following disposition of any motion for reconsideration)

Sept. 25, 2014) (certiorari period not affected by request for reconsideration because state rules did not authorize motion to reconsider denial of discretionary review).

Lopez-Ortiz's motion to reconsider the denial of discretionary review should be considered as falling under Rule 13.3 because to do otherwise would violate the principle of federalism and would be unwieldy. It would ask the Court to assume federal jurisdiction of a matter that was still being litigated in a state appellate court. *Carey v. Saffold*, 536 U.S. 214, 220 (2002) (construing habeas deadline statute 28 U.S.C. § 2244(d)(2) to avoid requiring petitioners to file for federal relief before state review complete). There is no mandatory deadline for the SJC to issue a decision on a motion to reconsider. Therefore, the time for certiorari could run before the SJC disposes of a motion to reconsider. That would cause litigants to petition for certiorari while an appeal was still under consideration in state court. That would result in federal intrusion in ongoing state criminal proceedings, which is only permissible in dire circumstances, not in a normal criminal prosecution. *Younger v. Harris*, 401 U.S. 37, 53 (1971). *See also Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975); *City of Los Angeles v. Lyons*, 461 U.S. 95, 111–12 (1983).

The time for petitioning runs from July 25, 2025 when Lopez-Ortiz's motion to reconsider was denied.

Substance of Forthcoming Petition

This case implicates two significant issues: a peremptory challenge issue and an issue regarding the retroactivity of the abolition of the offense of conviction while Lopez-Ortiz's direct appeal was pending.

Peremptory Challenge

The majority opinion below mangles the test for analyzing peremptory challenges. *Batson v. Kentucky,* 476 U.S. 79 (1986). *Batson* requires a three-step analysis: "[(1)] once a prima facie case of discrimination has been shown by a defendant, [(2)] the State must provide race-neutral reasons for its peremptory strikes. [(3)] The trial judge must determine whether the prosecutor's stated reasons were the actual reasons or instead were a pretext for discrimination." *Flowers v. Mississippi*, 588 U.S. 284, 298 (2019) (citing *Batson*, 476 U.S. at 97–98).

The majority opinion below conflates the requirement of group-neutrality with genuineness, claiming that "'race neutral' simply means an explanation that is not based on (*motivated by*) the race of the juror." *Lopez-Ortiz*, 105 Mass. App. Ct. 265, 276 n.11 (emphasis added) (dismissing race-neutrality question, stating the "actual question" is always motive).

This is a significant and dangerous deviation from this Court's precedent because the reason for the strike in this case was not group-neutral. A race-neutral explanation is one "based on something other than the race of the juror." *Hernandez v. New York*, 500 U.S. 352, 360 (1991). *See also Purkett v. Elem*, 514 U.S. 765, 768–769 (1995) (rationale "peculiar" to any race is not race-neutral). But here, the prosecutor struck the juror because the Puerto Rican juror "seemed upset or offended in some way about the particular question … 'Do you believe that Dominicans or Puerto Ricans are more likely than members of other ethnic groups to commit crimes?' And even upon your explanation, it is the Commonwealth's opinion that he did not seem

satisfied by saying very flippantly, 'Sure.'" *Lopez-Ortiz*, 105 Mass. App. Ct. at 269. Justice Rubin correctly stated, *Lopez-Ortiz*, 105 Mass.App.Ct. at 282, that one of the prosecutor's reasons for striking Juror 3 was explicitly based on the juror's race: the fact that the Puerto Rican juror took offense at a question asking whether jurors believed a vicious stereotype that Puerto Ricans are prone to criminality. *Id.* at 292. The juror was offended at the anti-Puerto Rican racism because he is Puerto Rican. That is his "group association."[9] The juror's offense and his race are inextricable. Using the juror's offense at the question as a reason for the strike is race-based. *Lopez-Ortiz*, 105 Mass. App. Ct. at 291–292 (Rubin, J., dissenting).

The trial judge and majority below also improperly volunteered and approved rationales for the strike that the prosecutor never articulated. *Johnson v. California*, 545 U.S. 162, 168–173 (2005). The trial judge committed this error by misstating the juror's words. She recast the prosecutor's rationale as concern that the juror said, "the system is not fair, and ... slanted against certain people," even though Lopez-Ortiz correctly pointed out that the juror did not say that. Tr.2:41.[10]

Then the majority perpetuated that error by relying on its own speculation that "the prosecutor may well have been concerned that juror no. 3 would view the case, not through the lens of the facts presented and the law provided, but through

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[9] He earlier described himself as "100 percent Puerto Rican." Tr.2:32.

[10] *Compare Porter v. Coyne-Fague*, 35 F.4th 68, 79–81 (1st Cir. 2022) (state appellate court shortened prosecutor's stated reason, omitted race-based reasoning, habeas granted).

the lens of the race of the defendant and perceived unfairness of the system."[11] *Lopez-Ortiz*, 105 Mass. App. Ct. at 272. The prosecutor never said this.[12] It is "improper to 'rel[y] on judicial speculation to resolve plausible claims of discrimination.'" *Williams v. Louisiana*, 579 U.S. 911, 911 (2016) (Ginsburg, J., plurality opinion concurring in summary reversal) (quoting *Johnson*, 545 U.S. at 173). "The judge is an arbiter not a participant in the judicial process. Allowing the court to provide race-neutral reasons for the State violates the Constitution." *Id.* (cleaned up).[13] If a judge's intercession is called for on anyone's behalf, it should be for the juror whose right to serve is at issue and is unrepresented. *Powers v. Ohio*, 499 U.S. 400, 406–409 (1991). Instead, the judge helped the prosecutor deprive the juror of his right to serve.

There are additional errors regarding Lopez-Ortiz's *Batson* claim, including errors at step three: misstating the record, failure to question the juror on the purported basis for the strike, disparate questioning of similar jurors, and failing to strike similar jurors. They need not be recounted here. The point is that the forthcoming petition is substantial.

Retroactivity of abolition of second-degree felony-murder

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[11] This speculation is incoherent. The defendant, the victim, and multiple witnesses were Latino. The phrase "lens of race" is either meaningless or camouflage for racist assumptions.

[12] In the end, the import of the majority opinion is that it is legitimate to believe that Puerto Ricans cannot be impartial because they notice racism, but Anglo-descended people can be impartial because they do not notice it.

[13] *Accord Johnson v. Martin*, 3 F.4th 1210, 1224 (10th Cir. 2021) (volunteering reasons disregards judge's core function).

Lopez-Ortiz repeatedly objected at trial to the validity of the theory of felony-murder. Tr.1/24/17:14–23; Tr.3:6-10; Tr.11:19. Six months later, while this case was pending on direct appeal, the SJC abolished second-degree felony-murder. *Commonwealth v. Brown*, 477 Mass. 805, 807–808, 825 (2017) (opinion of Gants, C.J.).[14] However, the Appeals Court refused to afford Lopez-Ortiz the benefit of his own objections on direct appeal. *Commonwealth v. Lopez-Ortiz*, 105 Mass. App. Ct. 1114 (2025) (unpublished).

Justice Rubin's dissent provided context for why this mattered.

> [T]he jury in this case concluded that the defendant was not armed and was not the shooter. He was acquitted of murder in the first degree, armed home invasion, and armed assault with intent to rob. *He was convicted, rather, of unarmed assault with intent to rob, and, with that as the predicate crime, felony-murder in the second degree*, a judge-made crime "of questionable origin," that "eroded the relation between criminal liability and moral culpability," and that ceased to exist in this Commonwealth 187 days after the defendant's conviction, but for which he was sentenced to, and is now serving a sentence of, life imprisonment (quotations and citations omitted).

Lopez-Ortiz, 105 Mass. App. Ct. at 283 (Rubin, J. dissenting) (emphasis in original).

Where Lopez-Ortiz's conviction is not yet final on direct review and he preserved the issue, due process requires that his conviction be evaluated under the elements of the offense as they currently exist. *Bunkley v. Fla.*, 538 U.S. 835, 840 (2003) ("proper question under *Fiore* is not whether the law has changed" but what the law required "at the time [the] conviction became final"). *See also Fiore v. White*, 531 U.S.

[14] The opinion of Chief Justice Gants is the majority opinion on this point. *Commonwealth v. Shepherd*, 493 Mass. 512, 522 (2024).

225, 228–29 (2001); *Bell v. State of Md.*, 378 U.S. 226, 230 (1964). The jury convicted Lopez-Ortiz of murder on a theory that no longer exists. The issue is incredibly serious.[15]

Need for Extension

Mr. Lopez-Ortiz respectfully requests a 60-day extension of time to file his petition for a writ of certiorari. The additional time is warranted to allow Mr. Lopez-Ortiz to prepare and file his petition on the important, constitutional issues described above.

Further, counsel has not yet been able to begin preparing the petition in this case because of counsel's commitments in the following matters:

a. *Rogers v. Lizotte,* No. 1:24-cv-12419 (first-degree murder). Rogers filed a 142-page memorandum in support of this habeas petition on August 13, 2025.

b. *Commonwealth v. Rooney*, No. SJC-12535 (first-degree murder). Rooney has filed an 87-page motion for new trial. The Commonwealth filed a 90-page opposition. Rooney filed a 50-page reply to their opposition on August 6, 2025.

c. *United States v. Figueroa*, First Circuit No. 24-1311 (direct appeal, 18 U.S.C. § 1956(h)). Counsel argued this case on July 28, 2025.

d. *Kozubal v. K.C.*, No. 2025-P-0493 (action to modify impoundment order related to criminal case). Counsel's brief for the appellant is due on October 2, 2025. A related criminal filing is substantially drafted and nearing completion.

e. *Undisclosed client* (second-degree murder). This client is immediately eligible for parole, suffers from traumatic brain injuries and intellectual disabilities, and is entitled to counsel under *Crowell v. Massachusetts*

[15] There have been other challenges to the SJC's refusal to apply the *Brown* decision to first-degree murder convictions. *See, e.g., Martin v. Massachusetts*, No. 20-6050 (March 8, 2021). Lopez-Ortiz is the only defendant who preserved the issue at trial.

Parole Bd., 477 Mass. 106 (2017) and the Americans with Disabilities Act. The client's hearing is scheduled for November, 2025. This is requiring intensive release planning and close work with the client (who suffers from profound verbal delays) to prepare for his parole hearing. This requires that counsel move with alacrity in preparing a parole memorandum, gathering records, as well as engaging and supervising the work of experts and social workers.

f. *Undisclosed client* (first-degree murder). This client is immediately eligible for parole under the Supreme Judicial Court's decision in *Commonwealth v. Mattis*, 493 Mass. 216 (2024). This similarly requires that counsel move with alacrity in preparing a parole memorandum, gathering records, as well as engaging and supervising the work of experts and social workers.

g. *Commonwealth v. Scogland*, Lynn District Court No. 1913CR003118. This is a direct appeal. Counsel is preparing a substantive motion for filing in the District Court.

h. *Commonwealth v. Bufford*, Suffolk Superior Court No. 2084CR00367 (first-degree murder). This is a direct appeal. The transcripts have been partially produced and review has begun. A motion for funds and significant investigation are anticipated.

i. *Commonwealth v. Fisher*, No. 1581CR00353 (first-degree murder, 28 volumes of transcript). A motion to reduce verdict was filed on January 29, 2025. Investigation of a motion for new trial is ongoing.

j. *Undisclosed client* (first-degree murder). This client is seriously disabled and has suffered repeated seizures, falls, and brain injuries. Counsel is preparing both a motion for new trial and a petition for commutation. The tasks involved in these undertakings are numerous and arduous. A petition for medical parole was filed on July 30, 2025.

k. *Commonwealth v. Williams*, No. 8181CR01383 (first-degree murder, 15 volumes of transcripts, motion for new trial pending). Significant litigation related to the motion for new trial is anticipated.

l. *Moore v. Zoldak*, No. 23-cv-11973 (D. Mass.) (first-degree murder, four counts, habeas corpus petition, 83 volumes of transcript). Counsel is assigned as a habeas corpus mentor to Attorney Jellison.

m. *Don v. Alves*, No. No. 21-CV-10468-AK (first-degree murder, habeas corpus petition, 12 volumes of transcript). Counsel is assigned as a habeas corpus mentor to Attorney Jellison.

n. *Additional Mentoring*: Counsel is formally mentoring five additional attorneys.

Finally, undersigned counsel's former law partner left the firm to assume the appellate bench in December, 2024. This required the remaining two partners (including the undersigned) to assume representation of the former partner's clients. In the case of the undersigned that meant assuming six active clients, including three first-degree murders. Combined with the administrative burden of transitioning the prior firm to a new firm, the impact of those events on undersigned counsel's practice is hard to overstate. The focus required for those tasks set undersigned counsel's work back by several months.

Conclusion

The time for seeking certiorari began upon the SJC's July 25, 2025 disposition of Lopez-Ortiz's motion to reconsider the denial of discretionary review. Therefore, the petition is currently due on October 23, 2025. Lopez-Ortiz requests that the Court extend the time for filing to and including December 22, 2025.[16]

[16] If the Court construes Rule 13.3 not to encompass Lopez-Ortiz's motion to reconsider, then the 90-day certiorari period would run from June 6, 2025. The petition would be due on September 4, 2025 and the Court would only have the authority to grant an extension to November 3, 2025. Lopez-Ortiz requests such an extension in the alternative.

Respectfully submitted,

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Dated: August 22, 2025

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

COMMONWEALTH vs. ROBERTO LOPEZ-ORTIZ
FAR-30230

CASE HEADER

Case Status	FAR denied	**Status Date**	06/06/2025
Nature	Murder2	**Entry Date**	02/28/2025
Appeals Ct Number	2023-P-0295	**Response Date**	05/23/2025
Appellant	Defendant	**Applicant**	Defendant
Citation	496 Mass. 1103	**Case Type**	Criminal
Full Ct Number		**TC Number**	
Lower Court	Middlesex Superior Court	**Lower Ct Judge**	Kathe M. Tuttman, J.

ADDITIONAL INFORMATION

Volume number for second order in case: Volume number for second opinion in case: 105
Page number for second order in case: Page number for second opinion in case: 1114

INVOLVED PARTY	ATTORNEY APPEARANCE
Commonwealth Plaintiff/Appellee	Thomas D. Ralph, A.D.A. Jamie Michael Charles, A.D.A.
Roberto Lopez-Ortiz Defendant/Appellant	David J. Nathanson, Esquire Melissa Ramos, Esquire Mark W. Shea, Esquire
Lawyers for Civil Rights Amicus (defendant)	Lori Jane Shyavitz, Esquire Leah Rachel McCoy, Esquire
Criminal Justice Institute at Harvard Law School Amicus	Katharine Naples-Mitchell, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
02/28/2025		Docket opened.
02/28/2025	#1	MOTION to file FAR application late filed for Roberto Lopez-Ortiz by Attorney David James Nathanson. (Allowed).
05/02/2025	#2	MOTION to file FAR application late filed for Roberto Lopez-Ortiz by Attorney David James Nathanson. (5/6/2025: Allowed).
05/09/2025	#3	FAR APPLICATION filed for Roberto Lopez-Ortiz by Attorney David James Nathanson and Attorney Melissa Ramos.
05/09/2025	#4	MOTION to exceed page limits filed for Roberto Lopez-Ortiz by Attorney David James Nathanson. (5/16/2025: The motion is allowed).
05/13/2025	#5	Supplemental Citation filed for Roberto Lopez-Ortiz by Attorney David James Nathanson.
06/06/2025	#6	DENIAL of FAR application.
06/20/2025	#7	MOTION to reconsider denial of FAR application filed for Roberto Lopez-Ortiz by Attorney David James Nathanson. (7/25/2025: The motion is denied).
06/23/2025	#8	Amicus statement in support of motion to reconsider denial of FAR application filed for Criminal Justice Institute at Harvard Law School by Attorney Katharine Naples-Mitchell.

As of 07/25/2025 1:20pm

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX COUNTY **SUPREME JUDICIAL COURT**
NO. FAR-30230
APPEALS COURT
NO. 2023-P-0295

COMMONWEALTH

v.

ROBERTO LOPEZ-ORTIZ

MOTION TO RECONSIDER DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Mr. Lopez-Ortiz moves that this Court reconsider its denial of further appellate review in this matter. The decision below jeopardizes the right of Latino people generally and Puerto Rican jurors specifically to serve as jurors. *Commonwealth v. Lopez-Ortiz*, 105 Mass. App. Ct. 265 (2025). The issue is timely and urgent.

In its "Letter from the Seven Justices of the Supreme Judicial Court to Members of the Judiciary and the Bar," this Court exhorted the bar and the judiciary "to reexamine why, too often, our criminal justice system fails to treat African-Americans the same as white Americans, and recommit ourselves to the systemic change needed to

make equality under the law an enduring reality for all. This must be a time not just of reflection but of action."[1]

Now is the time for action by this Court, not silence. Across the nation, but in Massachusetts specifically,[2] Latino citizens — potential jurors — are being racially profiled and detained in law enforcement sweeps.[3] These are — in the words of the juror in this case —

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[1] Supreme Judicial Court, Letter from the Seven Justices of the Supreme Judicial Court to Members of the Judiciary and the Bar (June 3, 2020) https://www.mass.gov/news/letter-from-the-seven-justices-of-the-supreme-judicial-court-to-members-of-the-judiciary-and-the-bar-june-3-2020 (last accessed June 18, 2025).

[2] Dan Glaun and Yoohyun Jung "ICE mandate to arrest 3,000 immigrants per day fuels raids in Massachusetts communities," Boston Globe, June 10, 2025 https://www.bostonglobe.com/2025/06/10/metro/ice-arrests-interior-enforcement-quota-massachusetts/?p1 (last accessed June 18, 2025) (describing so-called Operation Patriot, acting ICE director Todd Lyons said at a Boston press conference, "'Make no mistake, ICE is going to keep doing this … We're going to keep coming back.'"). *See also* Camilo Fonseca and Dan Glaun , Boston Globe (February 23, 2025) https://www.bostonglobe.com/2025/02/22/nation/trump-border-czar-boston-police-immigration/?p1 (last accessed June 20, 2025). (Acting Director of Immigration and Customs Enforcement declares "I'm coming to Boston and I'm bringing hell with me")

[3] Terry Tang, Fears of racial profiling swirl over registration policy for immigrants in the US illegally, Boston Globe (April 25, 2025) https://www.bostonglobe.com/2025/04/25/nation/fears-racial-profiling-swirl-over-registration-policy-immigrants-us-illegally/?p1 (last accessed June 18, 2025) ("The renewed strict registration requirement forces U.S. citizens to carry birth certificates or other proof of citizenship at all times, 'especially if they have a 'foreign appearance,' Marcus said.");

"disgusting" experiences of Latino potential jurors based on their group membership.

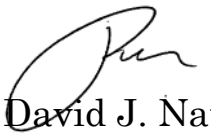
Jennifer Medina, 'I'm American, Bro!':Latinos Report Raids in Which U.S. Citizenship Is Questioned, The New York Times (June 15, 2025) https://www.nytimes.com/2025/06/15/us/hispanic-americans-raids-citizenship.html (last accessed June 18, 2025) ("'They came in over here looking for a specific look, which is the look of our Latino community," Mr. Melendez said of federal agents. "They're just going to apprehend anybody that looks Latino. We just feel extremely frustrated and angry as a community.'"); Jose Olivares, US citizen detained by immigration officials who dismissed his Real ID as fake, The Guardian (May 24, 2025), https://www.theguardian.com/us-news/2025/may/24/us-citizen-detained-ice-real-id (last accessed June 18, 2025) ("'I feel sad because, even though we were born here, that doesn't matter any more,' the cousin said. She added: 'To have our skin color has, apparently, become a crime. And it has become a crime deserving of this type of treatment – as if we were real criminals.'"); UnidoUS, National Latino and Civil Rights Groups Denounce Federal Overreach in Los Angeles Raids (June 11, 2025) https://unidosus.org/press-releases/national-latino-and-civil-rights-groups-denounce-federal-overreach-in-los-angeles-raids/ (last accessed June 18, 2025) ("'What we are witnessing is not immigration enforcement, it's political terror. These raids and military deployments are designed to instill fear, divide families and criminalize Latino communities for political gain.'"); Pei-Sze Cheng, NY man driving to work is handcuffed by ICE despite being a U.S. citizen, 4 New York (June 13, 2025) https://www.nbcnewyork.com/long-island/video-long-island-man-driving-to-work-handcuffed-by-ice-despite-being-citizen/6301068/ (last accessed June 18, 2025) (video showing Latino US citizen detained based on how he looks)
Jason Taper, Facial Recognition Is Getting a Lot More Invasive Under Trump, Slate (June 6, 2025) https://slate.com/technology/2025/06/ice-facial-recognition-camera-surveillance-mistake-deported.html (last accessed June 18, 2025) (U.S. citizen Juan Carlos Lopez-Gomez arrested as unauthorized alien and detained for 30 hours based on inaccurate and racially biased facial recognition technology).

But under the Appeals Court's decision, the Commonwealth will be able to strike those jurors who were targeted because of their race. They can be struck even if they, like the juror in this case, are able to differentiate between their negative experience with one law enforcement agency (Florida or ICE, for example) and positive experiences with more relevant agencies (Massachusetts or Maine, for example). Racist targeting of a population and then citing that racist targeting as a reason why Latino people cannot serve as fair jurors is completely unjust, to put it mildly. It penalizes the victim and provides an incentive to racist wrongdoers to continue their behavior.

This adds even greater urgency to Justice Rubin's plea for this Court to grant further appellate review: "Given this court's unfortunate and unwarranted action, it will be up to the Supreme Judicial Court to restore Massachusetts antidiscrimination law to what it was before today's decision." *Commonwealth v. Lopez-Ortiz*, 105 Mass. App. Ct. 265, 283 (2025) (Rubin, J., dissenting). The Justices' 2020 letter called for the judiciary to reexamine systemic problems and biases in order to ensure enduring equality. This is a compelling opportunity to do that.

The Court should grant further appellate review.[4]

Respectfully submitted,



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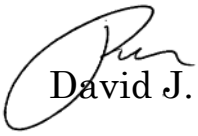
I, David Nathanson, hereby certify that a true copy of the above document with attachments was served upon ADA Jamie Charles on June 20, 2025 via email through the Tyler e-file system.



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[4] The Court has the power to limit its grant of further appellate review to just the peremptory challenge issue. Mass. R. App. P. 27.1(e); *Commonwealth v. Morrison*, 494 Mass. 763, 769 (2024).