Commonwealth of Massachusetts
Supreme Judicial Court

SJC-13727

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellee,
v.

NATHANIEL RODRIGUEZ,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE LOWELL DISTRICT COURT

BRIEF OF *AMICI CURIAE* INNOCENCE PROJECT, CENTER ON PRIVACY AND TECHNOLOGY, AND ISADORA BORGES MONROY IN SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL

April 14, 2025

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, the Innocence Project ("IP") represents that it is a 501(c)(3) organization domiciled in the State of New York. The IP does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF INTEREST[1]

The **Innocence Project (IP)** is a national nonprofit organization that works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. The IP's work is grounded in anti-racism and guided by science. In addition to pursuing post-conviction claims of innocence, the IP engages in strategic litigation and policy advocacy to effect reforms that will help prevent future wrongful convictions and promote the equitable administration of justice. As decades of exonerations have revealed stark racial disparities in wrongful convictions, the IP has a strong interest in shedding light on and preventing suspect-development practices that contribute to wrongful convictions by targeting people based on race or social affiliation without individualized suspicion.

The **Center on Privacy & Technology (Center)** at Georgetown Law is a think tank focused on privacy and surveillance law and policy. The Center has an interest in protecting the privacy of historically marginalized communities, who often are disparately impacted by surveillance programs while simultaneously

[1] Pursuant to Mass. R. App. P. 17(c)(5), amici and their counsel declare that: (a) no party or party's counsel authored the brief in whole or in part; (b) no party or party's counsel contributed money that was intended to fund the preparation or submission of the brief; (c) no person or entity—other than amici or their counsel—contributed money that was intended to fund the preparation or submission of the brief; and (d) neither amici nor their counsel represent or have represented any of the parties to the present appeal in another proceeding involving similar issues, or were a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

neglected in privacy debates. The Center has done extensive research and advocacy concerning police surveillance technology, including a series of groundbreaking reports on police use of facial recognition technology.

Dr. Isadora Borges Monroy is a political scientist and independent researcher with expertise in the political economy and public opinion of digital mass surveillance in Western democracies. She studies how group-based dynamics are mobilized by political, media and economic actors to legitimize law-and-order surveillance policies.

SUMMARY OF ARGUMENT

As people's lives become increasingly digital, the need for judiciaries to enforce the long held right to equal protection in online spaces is paramount. This Court is presented with the opportunity to do just that by reversing the District Court's denial of Mr. Rodriguez's motion to suppress evidence derived from Det. Krug's unconstitutional Snapchat surveillance. To affirm the District Court's decision would violate Mr. Rodriguez's constitutional rights and unduly burden communities of color in Massachusetts with discriminatory social media surveillance.

The motion judge erred in holding that Mr. Rodriguez failed to raise a reasonable inference of selective enforcement regarding Det. Krug's social media investigation. A defendant's burden in selective enforcement cases is to "point to specific facts from the totality of the circumstances" to support "a reasonable inference that the officer's decision to initiate the [investigation] was motivated by race or another protected class." *Commonwealth v. Long*, 485 Mass. 711, 713 (2020). This analysis cannot stop at an officer's knowledge—or lack thereof—of a defendant's race at the time the defendant encounters the police. This is especially true when the defendant has presented evidence that sustains a reasonable inference that the officer took intentional steps to increase the chances of encountering, investigating, or arresting members of nonwhite racial groups at any point in the

investigation. Mr. Rodriguez has done just that: By showing that Det. Krug intentionally chose to use a nonwhite username and bitmoji to monitor a predominantly white community, Mr. Rodriguez has raised a reasonable inference that Det. Krug was motivated by race.

In deciding this case, amici respectfully urge the Court to consider the disproportionate harms that would befall communities of color if this type of online police surveillance were left unchecked. Targeted social media monitoring provides law enforcement with yet another avenue to over police communities of color. *See* Nazgol Ghandnoosh & Celeste Barry, *One in Five: Disparities in Crime and Policing*, THE SENTENCING PROJECT (Nov. 2, 2023).[2] Moreover, it creates new harms: around-the-clock monitoring; suppressed development of online communities of color; and easier infiltration by undercover law enforcement into online communities. This is the exact "impos[ition] [of] unequal burdens based upon race" the Equal Protection Clause prohibits. *Commonwealth v. Dilworth*, 494 Mass. 579, 588 (2024) (quoting *Commonwealth v. Robinson-Van Rader*, 492 Mass. 1, 23 (2023)). Accordingly, amici respectfully urge this Court to reverse the District Court's denial of the motion to suppress and remand for further proceedings.

[2] https://www.sentencingproject.org/reports/one-in-five-disparities-in-crime-and-policing/ [https://perma.cc/T4S4-WNMX]

ARGUMENT

The Equal Protection Clause forbids the use of law enforcement practices that unjustifiably burden racial or ethnic groups because of their race. *See Robinson-Van Rader*, 492 Mass. at 16, 23. In this case, Mr. Rodriguez seeks to establish a reasonable inference that Det. Krug engaged in such a practice by using a Snapchat account with a nonwhite name and bitmoji to direct investigations toward nonwhite individuals. The use of nonwhite characteristics, in light of the easily available race-neutral options, strongly supports finding a reasonable inference of improper discrimination. Det. Krug's deliberate choice to employ nonwhite characteristics shows that race informed his thinking and sustains the conclusion that he was seeking to target nonwhite individuals. It is more than reasonable to infer that Det. Krug selected nonwhite characteristics to induce nonwhite individuals to follow the account and thus better enable him to surveil nonwhite inhabitants of Lowell.

To hold otherwise would not only contravene the thrust of this Court's recent equal protection jurisprudence, *see Long*, 485 Mass. at 715, but also risk leaving online communities of color with little protection from overbearing police monitoring. Racially discriminatory policing continues to plague this country and Massachusetts, and permitting racially suspect investigatory tactics to proliferate in the online sphere will only exacerbate existing harms. Without judicial checks, people of color will be caught in surveillance dragnets for no other reason than their

race, weakening their ability to form communities online and exposing them to the documented hazards of police encounters and the criminal justice system. Such outcomes are exactly what the Equal Protection Clause and the Massachusetts Declaration of Rights were meant to protect against.

I. THE USE OF A NONWHITE NAME AND BITMOJI BY THE LOWELL POLICE DEPARTMENT SUPPORTS A REASONABLE INFERENCE OF IMPERMISSIBLE RACIAL TARGETING.

This case represents a new frontier in the battle for equal protection of the laws. The historic and successful effort to bring down the legalized racism of segregation represented a leap forward in the mission to achieve the "promise of equality" guaranteed by the Constitution and the Massachusetts Declaration of Rights. But as this Court's recent cases have demonstrated, "particularly toxic" forms of discriminatory policing have continued to plague Massachusetts. *Long*, 485 Mass. at 717 (2020). Five years ago, this Court refashioned its framework for establishing selective enforcement claims to deal more effectively with the festering problem of discriminatory traffic enforcement, *id.* at 724–25, and soon thereafter expanded that approach to all investigatory practices, *Robinson-Van Rader*, 492 Mass. at 18. As the world has moved online, a new form of discriminatory policing risks garnering widespread adoption: the purposeful use of nonwhite social media profiles to target communities of color for surveillance. The Court should stop this development in its tracks.

The Commonwealth encourages this Court to resolve this case by reference to the moment Det. Krug's account befriended Mr. Rodriguez, when he was unaware of Mr. Rodriguez's race. Appellee's Br. at 20–21. However, the totality of the circumstances test enunciated in *Long* requires courts to consider "any relevant facts" in determining whether the defendant has provided sufficient evidence for a reasonable inference that police action "was motivated (whether explicitly or implicitly) by race." 485 Mass. at 724–25. Personal knowledge of a defendant's race, then, cannot be determinative; rather, if *any* evidence supports a reasonable inference that an officer took steps to increase the chances of successfully investigating a person based on their race, the defendant has met their burden. *Long* does not commend the narrow inquiry the Commonwealth advocates for, and instead counsels in favor of a broader gaze—one that accounts for the entirety of Det. Krug's conduct and the social realities of online surveillance of nonwhite communities—that would best guard against the "impos[ition] [of] unequal burdens based upon race." *Dilworth*, 494 Mass. at 588 (quoting *Robinson-Van Rader*, 492 Mass. at 23).

Here, Det. Krug's creation of the fake Snapchat account—the very event precipitating this case—is a "relevant fact" under the *Long* standard. Det. Krug's deliberate decisions to make a profile with a nonwhite username and a nonwhite bitmoji, *see* Tr. 7/28/23 at 13–14, support an inference that his investigation was motivated by racial bias against nonwhite people generally. This fact, combined with

other evidence of racial bias cited in Mr. Rodriguez's brief, Appellant's Br. at 27–39, is more than sufficient to support a reasonable inference that impermissible racial discrimination was a factor in the investigation leading to his arrest.

A. Equal protection doctrine turns on intent, not on knowledge of a specific person's membership in a protected class.

The history of equal protection jurisprudence is long and winding. However, for the last 50 years, at least one principle has been clear: "The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race." *Washington v. Davis*, 426 U.S. 229, 239 (1976). This basic principle—that "[e]qual protection analysis turns on the *intended* consequences of government classifications"—has been repeatedly upheld by the Supreme Court. *Hernandez v. New York*, 500 U.S. 352, 362 (1991) (emphasis added); *see also Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 485 (1982); *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 194 (2003). Indeed, the prohibition on discriminatory intent is so strong that it prohibits all government action where "invidious discriminatory purpose was a motivating factor," even if it was the not the only or even the primary factor. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

In light of the foregoing principles, "[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Id.* at 265. Courts can assess the existence of discriminatory intent using "circumstantial and

direct evidence of intent as may be available." *Id*. at 266. Thus, courts may, and often do, consider discriminatory outcomes as evidence of an equal protection violation. *See Crawford v. Bd. of Educ. of L.A.*, 458 U.S. 527, 544 (1982); *Hernandez*, 500 U.S. at 362 (noting that "disparate impact should be given appropriate weight in determining whether the prosecutor acted with a forbidden intent"). In some situations, even a relatively small number of data points can establish a *prima facie* case of discriminatory intent. *See Johnson v. California*, 545 U.S. 162, 172–73 (2005) (holding that defendant raised reasonable inference of discrimination where prosecutor struck all three Black candidates from pool of 43 eligible jurors).

While establishing an equal protection violation requires some proof of discriminatory intent, it does *not* require proof that the government intended to discriminate against a specific person. As this Court has explained, "the act of classification is itself invidious." *Finch v. Commonwealth Health Ins. Connector Auth.*, 459 Mass. 655, 676 (2011). Accordingly, individuals alleging discrimination need not show that they were specifically targeted in their capacity as individuals, but rather that a class of which they are a member was singled out for differential treatment. When the "natural, probable, and foreseeable result" of an official act is to selectively burden a protected class, that showing has been made. *Arthur v. Nyquist*, 573 F.2d 134, 142 (2d Cir. 1978) (internal quotations omitted).

B. Under Massachusetts law, a defendant need not show that they were identified as a member of a protected class at the start of the investigation.

In the context of selective enforcement cases, Massachusetts has adhered to the principles of the Supreme Court's equal protection jurisprudence.[3] *See Long*, 485 Mass. at 717. After *Washington v. Davis*, this Court established a presumption "that criminal arrests and prosecutions are undertaken in good faith," creating a process of *prima facie* proof, rebuttal by the prosecutor, and decision by the court. *Commonwealth v. King*, 374 Mass. 5, 22 (1977). Defendants bore the substantial evidentiary burden of showing (1) that a broader class of persons beyond those prosecuted have committed illegal conduct; (2) that a failure to prosecute those other persons was "consistent or deliberate"; and (3) that the failure to prosecute was rooted in an "impermissible classification." *Commonwealth v. Franklin,* 376 Mass. 885, 894 (1978). Until recently, this standard, which heavily emphasized statistical, comparative evidence, was applied to claims of both selective enforcement and selective prosecution. *Commonwealth v. Lora*, 451 Mass. 425, 442 (2008).

[3] "[R]eview of an equal protection claim under the Massachusetts Constitution is generally the same as the review of a Federal equal protection claim," though the Massachusetts Constitution may offer more protection of individual liberty in certain cases. *Commonwealth v. Roman*, 489 Mass. 81, 86 (2022) (quoting *Commonwealth v. Freeman*, 472 Mass. 503, 505 n.5 (2015)); *see also Commonwealth v. Grier*, 490 Mass. 455, 469 (2022).

More recently, this Court revised the standard for the *prima facie* showing in cases of selective enforcement, both as to the type of proof that may be used and the conclusions that evidence must support. *See Long*, 485 Mass. at 721–24. The *Long* Court removed the requirement for defendants to prove nonenforcement against a broader class, *id.* at 722, and expanded the proof that could be used to demonstrate an impermissible classification to include "any relevant facts" from "the totality of the circumstances," *id.* at 722, 724–25. It also warned that the defendant's initial inferential burden could not be "so heavy that it makes any remedy illusory." *Id.* at 723. Although initially limited to traffic stops, the Court quickly extended the *Long* standard to "pedestrian stops and threshold inquiries, as well as other selective enforcement claims challenging police investigatory practices." *Robinson-Van Rader*, 492 Mass. at 18.

Given the recency of *Long* and *Van Rader*, courts have not had much chance to describe what "specific facts" might support an inference of selective enforcement. *Id.* at 20 (citing *Long*, 485 Mass. at 724). The Commonwealth suggests that such facts must establish proof that the officer in question knew, when the decision to initiate the investigation was made, whether any given target of the investigation was a member of a protected class. *See* Appellee's Br. at 19–21. To be sure, selective enforcement claims can arise out of spontaneous decisions to investigate an individual, in which case knowledge of the target's race could be

relevant. *See Commonwealth v. Stroman*, 103 Mass. App. Ct. 122, 130 (2023). However, making this a universal requirement would be a step backwards in this Court's selective enforcement jurisprudence.

The Commonwealth's proposed knowledge requirement would create a massive loophole for "willfully class-blind" but nevertheless intentionally discriminatory police practices. Imagine that an officer decided to stop every patron leaving a club because the patrons of that club were predominantly Black, or Christian, or gay. Even though the officer could not know, *ex ante*, the race, religion, or sexual orientation of each person they would stop, targeting that club would be a decision made "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Commonwealth v. Shepherd*, 493 Mass. 512, 525 (2024) (quoting *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). Now imagine the same practice online, wherein police investigate the posting history of every member of an LBGTQ+ Facebook group or every person with Arabic writing in their Twitter profile—or everyone who accepts a friendly invitation from a user with a nonwhite name and bitmoji. That is precisely what this case is about.

C. Detective Krug's decision to use a nonwhite bitmoji and username supports a reasonable inference of intent to discriminate on the basis of race at the moment he created the profile.

As explained above, Massachusetts prohibits the improper use of race, or any other protected characteristic, as a factor in deciding whether to initiate an

investigation. In this case, the record is clear that Det. Krug made a deliberate decision to use a nonwhite username and bitmoji at the time he created the Snapchat account at issue. Appellant's Br. at 16–17; Appellee's Br. at 12. Neither of these choices were mandated by Snapchat's interface, and it is exceedingly unlikely that Det. Krug chose the name and bitmoji at random. Det. Krug's decisions demonstrate that he was consciously considering race at the time he generated the Snapchat profile. But why? One reasonable inference—perhaps the most reasonable—is that Det. Krug's decisions reflect his intent to have the account appeal more to nonwhite individuals. *See* section II.B, *infra* (explaining that individuals more readily convene online with others of their social ingroup). This would, in turn, burden that group with more surveillance than their white counterparts. Thus, the natural and clear consequence of the decision to use a nonwhite bitmoji and username—namely, purposeful direction of investigations toward Lowell's nonwhite community—supports a reasonable inference of discrimination.

Det. Krug's own testimony indicates that he considered race when creating the account in question. *See* Tr. 7/28/23 at 13–14. Snapchat imposes few rules regarding a profile's username, so Det. Krug could have used an entirely race-neutral option. *See Usernames and Display Names*, SNAPCHAT (May 2024).[4] Snapchat does

[4] https://values.snap.com/privacy/transparency/community-guidelines/usernames-and-displaynames [https://perma.cc/7RHJ-DVGX]

not require users to select a bitmoji at all; creating one is an extra step taken after the creation of an account. *How to Create and Edit My Bitmoji Avatar*, SNAPCHAT (last accessed Mar. 30, 2025).[5] Det. Krug could have skipped this step entirely. *See* Tr. 7/28/23 at 33. Thus, the fact that the profile was identifiable as *any* race was the product of a series of deliberate choices by Det. Krug. Moreover, Det. Krug testified that "he specifically created an extremely vague fictitious username so that there was no risk that the username could be confused with any person in the city." Appellee's Br. at 12 n.4. The fact that he nevertheless chose a username and bitmoji that was specific enough to be identifiably "nonwhite" means there must have been a strong countervailing interest—one that was distinctly "motivated by race." *See Dilworth*, 494 Mass. at 587 (quoting *Robinson-Van Rader*, 492 Mass. at 17).

Given that Det. Krug almost certainly considered race when creating the account, the question is whether those acts support a reasonable inference that he was engaged in "the improper use of race as a basis for taking law enforcement action." *See Stroman*, 103 Mass. App. Ct. at 129 (quoting *Lora*, 451 Mass. at 426 n.1). They do. Police know that individuals will be more likely to trust and accept new connections if they share a common trait like race, religion, or ethnicity, and they exploit it. For example, the New York Police Department used an undercover

[5] https://help.snapchat.com/hc/en-us/articles/7012345832596-How-to-Create-and-Edit-My-Bitmoji-Avatar [https://perma.cc/8N3K-57JN]

operative who purported to be a Turkish Muslim to more closely monitor Islamic students at Brooklyn College. *See* Tom Hays, *Who Is Mel? Terror Case Could Unmask NYPD Mole*, NBC NEW YORK (Apr. 11, 2017).[6] The Memphis Police Department used an account purporting to be a Black, leftist protestor to facilitate online surveillance of the local Black Lives Matter movement. *See* Jon Schuppe, *Undercover Cops Break Facebook Rules to Track Protesters, Ensnare Criminals*, NBC NEWS (Oct. 5, 2018).[7] As in these cases, Det. Krug's deliberate efforts to give his undercover account nonwhite characteristics suggests that he intended to "impose[] unequal burdens based upon race" by directing investigations towards the nonwhite population of Lowell. *See Dilworth*, 494 Mass. at 588 (citation omitted). That Lowell itself is predominantly white only strengthens the conclusion that Det. Krug was aiming his surveillance towards a specific part of Lowell's population—the nonwhite community—as opposed to the Lowell community writ large. *See Quick Facts: Lowell City, Massachusetts*, U.S. CENSUS BUREAU.[8]

The Commonwealth argues that, because Det. Krug did not have personal knowledge about Mr. Rodriguez's race or ethnicity before monitoring his account,

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[6] https://www.nbcnewyork.com/news/local/who-is-mel-us-terror-case-could-unmask-new-york-police-mole/94679/ [https://perma.cc/HL2D-CDVJ]
[7] https://www.nbcnews.com/news/us-news/undercover-cops-break-facebook-rules-track-protesters-ensnare-criminals-n916796 [https://perma.cc/3NCW-M9B7]
[8] https://www.census.gov/quickfacts/fact/table/lowellcitymassachusetts/PST045224 [https://perma.cc/AMW7-JTUP]

he could not have used race as a factor. Appellee's Br. at 20–23. Appellee bases this claim on assertions by Det. Krug that he "added other users as friends to create as large of a base of friends as possible, and not in an effort to target specific individuals." *Id.* at 20. Whether or not this is the case, it does not preclude a reasonable inference that Det. Krug intended to target specific populations—populations that were impermissibly defined by race. At this stage, Mr. Rodriguez's evidence need not be conclusive and should be assessed with a mind towards this Court's decision to ease the burden for raising an inference of discrimination in *Long*. *See Long*, 485 Mass. at 724. Further, *Long* made clear that the Court should consider the *movant's* evidence in inferring discriminatory intent. *See id.* The Commonwealth's explanations for Det. Krug's conduct only become relevant after that inference has been made. *Id.*; *see also* Tr. 7/28/23 at 52–53.

The Commonwealth's attempt to reduce selective enforcement to a question of personal knowledge is contrary to equal protection jurisprudence generally and the *Long* standard in particular. As discussed above, the crux of an equal protection violation is intent to discriminate, not knowledge of any one person's protected characteristic. In applying this rule, this Court has held that in determining whether an "[investigation] was motivated (whether explicitly or implicitly) by race," a court should consider all the circumstances leading to the arrest. *Long*, 485 Mass. at 724. Thus, an officer's lack of personal knowledge of a defendant's race cannot be

dispositive. The friend request to Mr. Rodriguez was simply the act that brought Mr. Rodriguez into the scope of an already unconstitutional investigation. The question is whether Det. Krug took intentional steps to increase the chances of encountering, investigating, or arresting members of nonwhite racial groups at any point in the investigation, not just when he befriended Mr. Rodriguez.

Det. Krug's behavior established discriminatory intent the moment he chose a nonwhite name and bitmoji for his undercover Snapchat account. It may be that Det. Krug chose a nonwhite name and bitmoji because it reflected the "variety of cultures" present in the crime hot spot of Lowell, Tr. 7/28/23 at 31–32, or because he believed nonwhite individuals committed most crimes in Lowell.[9] However, this would not excuse his conduct. In *Floyd v. City of New York*, 959 F.Supp.2d 540 (S.D.N.Y. 2013), the court addressed disparities in stop-and-frisk encounters stemming from a conscious effort by the police to target "members of any racial group that is heavily represented in [their] crime suspect data." *Id.* at 603. Judge Schiedlin determined that this policy constituted "an indirect form of racial profiling" and was therefore an equal protection violation, for it imposed greater

[9] Amici do not suggest that such a belief would be justified—based on data from the Lowell Police Department itself, white residents are frequently designated as offenders in reported crimes. *See Lowell Police Department 2020 Crime Report* at 16–17 (reporting 30% of offenders as white in Domestic Aggravated Assaults and 41% in Domestic Simple Assaults), *available at* https://lowellpolice.org/wp-content/uploads/2023/01/Lowell-Police-Department-2020-Crime-Summary-FINAL.pdf.

burdens on certain racial groups for the simple reason that some members of the group appeared more often in the department's crime statistics. *Id.* at 603, 664; *see also Hassan v. City of New York*, 804 F.3d 277 (3d Cir. 2015) (holding police targeting of Muslims for surveillance unconstitutional, despite department's professed motive of improving public safety).

The Commonwealth's own analogy to a traffic stop, Appellee's Br. at 21–22, is informative. The pattern evident in the record—dragnet surveillance, a low hit rate, and racially biased results[10]—strongly resembles the in-person investigative techniques that troubled this Court in *Long*. *See* 485 Mass. at 718 (describing the racially disproportionate harms associated with traffic stops). In this analogy, the moment Det. Krug sent a friend request to Mr. Rodriguez is, in some way, like the moment an officer decides to stop a vehicle—a point in time that requires careful review for impermissible discrimination. If anything, the concerns of impropriety are amplified by social media surveillance as compared to traffic stops, which must at least be putatively justified by some sort of traffic infraction. *See id*. at 727; *see also Whren v. United States*, 517 U.S. 806, 811 (1996). With digital surveillance,

[10] The minimal disclosure by the Lowell Police Department frustrates any attempt to assess just how many people have been subjected to the practice at issue in this case. However, the record suggests that Det. Krug's account had over one hundred friends, and that the Lowell Police Department ran multiple such accounts. *See* Appellant's Br. at 16, 18. Of these connections, only a handful led to further investigations, all of which targeted nonwhite individuals. *Id.* at 19

law enforcement bypasses even that minimal threshold before drawing innocent individuals into their surveillance dragnet. *See* Tr. 7/28/23 at 15–16 (explaining that Det. Krug's friend requests were not based on any individualized suspicion).

The friend request, however, is not the only relevant event, just as the stop itself is not the sole point of analysis in the case of physical investigations. Decisions leading up to the moment of the stop are also pertinent: Where police decide *ex ante* to "'target[] intensive traffic enforcement efforts only at neighborhoods where most residents are people of color,' a discriminatory intent might be inferred." *Stroman*, 103 Mass. App. Ct. at 128–29 (quoting *Long*, 485 Mass. at 730). When officers monitor a location because of the racial composition of the population they anticipate encountering, their conduct does not stand up to equal protection scrutiny. *Melendres v. Arpaio*, 989 F.Supp.2d 822, 895–905 (D. Ariz. 2013) (holding that department's choice to conduct patrols at locations based on expected presence of Latino individuals violated Equal Protection Clause).

Just as the choice to cruise a neighborhood or monitor an intersection affects who will be pulled over, the specific characteristics of a profile influence who will interact with it. *See* section II.B, *infra*. Likewise, Det. Krug's choice of a nonwhite name and bitmoji, by itself, positioned the account in a particular corner of Snapchat more likely to have nonwhite occupants. As such, it sustains a reasonable inference

that, in creating the account, he intended to increase the chance that nonwhite individuals would be caught in his investigative dragnet.

II. LAW ENFORCEMENT INTRUSION INTO ONLINE SPACES SUBJECTS MARGINALIZED COMMUNITIES TO TANGIBLE HARMS.

Amici also encourage the Court to consider the history of racialized surveillance, infiltration of communities of color, and misuse of social media by police—and the ways each of these factors can contribute and have contributed to racially skewed risks of wrongful conviction—when making its decision. As this Court observed, in assessing the totality of the circumstances, "any relevant facts may be raised for the judge's consideration." *Long*, 485 Mass. at 724–25. The Court expressly encouraged this kind of socially-informed judicial decision-making in *Commonwealth v. Warren*, 475 Mass. 530 (2016), when it stated that the analysis of legal factors "cannot be divorced" from reality. *Id.* at 539–40 (considering Boston Police Department's history of disproportionately targeting of Black men in context of suspect's flight as a reasonable suspicion factor). Here, that means taking into consideration how members of a protected class perceive others who have the same characteristics—or, at least, pretend to online.

The United States has a long history of law enforcement agencies targeting underrepresented communities. Frequently, targeted investigations have involved the technique of placing an officer or informant directly in the specific community—

be it a political movement, a neighborhood, or a place of worship. *See, e.g.*, Edith Evans Asbury, *Detective Tells of Panther Role*, NEW YORK TIMES (Feb. 17, 1971)[11]; Leila Rafei, *How the FBI Spied on Orange County Muslims and Attempted to Get Away With It*, ACLU (Nov. 8, 2021).[12] The advent of social media surveillance has opened new avenues of targeted police surveillance, where a police officer can pose as a member of any group, including a constitutionally protected racial or ethnic class. *See* Rachel Levinson-Waldman, *Principles for Social Media Use by Law Enforcement*, BRENNAN CTR. FOR JUST. (Feb. 7, 2024).[13] This practice extends the harms associated with discriminatory surveillance to the online world.

In addition to replicating and reinforcing offline discrimination, social media surveillance raises new concerns. Online communities have become important spaces. Widespread adoption of the internet created alternative channels for people of all stripes to meet and form communities. In this respect, online spaces—in particular social media services—have been a boon to many communities, including racial minority communities. Alexandria Lockett, *What is Black Twitter? A*

[11] https://www.nytimes.com/1971/02/17/archives/detective-tells-of-panther-role-testifies-to-taking-part-in-affairs.html [https://perma.cc/8Q8F-LWE3]
[12] https://www.aclu.org/news/national-security/how-the-fbi-spied-on-orange-county-muslims-and-attempted-to-get-away-with-it [https://perma.cc/JBQ3-WP5R]
[13] https://www.brennancenter.org/our-work/research-reports/principles-social-media-use-law-enforcement [https://perma.cc/92ED-9QEW]

Rhetorical Criticism of Race, Dis/information, and Social Media, *in* RACE, RHETORIC, AND RESEARCH METHODS, 172–73 (Iris D. Ruiz et al. eds., The WAC Clearinghouse; University Press of Colorado, 2021); Brooke Auxier, *Social Media Continue to be Important Political Outlets for Black Americans*, PEW RSCH. CTR. (Dec. 11, 2020). Members who are unaware of social media surveillance practices unknowingly risk increased scrutiny—up to and including wrongful arrest, detention, or conviction—while those who are aware cannot engage freely and openly in their online communities.

A. Police targeting of online communities replicates the harms of in-person targeting, including increased risk of wrongful convictions.

The harms associated with excessive contact with law enforcement are well documented. Among the most severe, and most common, consequences of increased police contact are increased chances of being stopped, searched, and arrested. Study after study has shown that Black and Hispanic individuals are more likely to be stopped and searched than whites, even though police are *less* likely to find drugs, weapons, or contraband in such searches. Nazgol Ghandnoosh & Celeste Barry, *supra*. Stops of Black and Hispanic people are also more likely to end in arrest, violence, or both. *Id*. These disparities are driven, in large part, by over-policing of minority neighborhoods: A 2023 study found that increased police presence in neighborhoods with higher Black populations was the single most significant factor in explaining racial disparities in arrest rates. *See* M. Keith Chen et al., *Smartphone*

Data Reveal Neighborhood-Level Racial Disparities in Police Presence, REV. ECON. & STAT. (Sept. 2023).[14]

Moreover, numerous studies show that increased likelihood of arrest translates into worse outcomes for underrepresented groups. Black and Hispanic defendants are more likely to be detained pretrial than their white counterparts, Wendy Sawyer, *How Race Impacts Who Is Detained Pretrial*, PRISON POL'Y INITIATIVE (Oct. 9, 2019),[15] and less likely to receive probationary sentences, United States Sentencing Commission, *Demographic Differences in Federal Sentencing* (Nov. 2023).[16] Data from the National Registry of Exonerations shows that Black Americans are seven times more likely than white Americans to be falsely convicted of crimes. Samuel R. Gross et al., *Race and Wrongful Convictions in the United*

[14] This study of 21 major cities showed that neighborhood characteristics like "density, socioeconomics, social cohesion, and violence" explain only one-third of the increased police presence in neighborhoods with higher Black and Hispanic populations. *Id.* at 10. Moreover, an analysis of six cities that provided both patrol and arrest data (New York City, Los Angeles, Chicago, Dallas, Austin, and Washington D.C.) showed that increased police presence in Black neighborhoods explained approximately 55% of the racial disparity in arrest rates between Black and white neighborhoods, with the remaining 45% being attributed to officers' higher propensity to make arrests in Black neighborhoods generally. *Id.* at 3–4, 13–15. The full study is available at https://doi.org/10.1162/rest_a_01370.

[15] https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/ [https://perma.cc/53M7-49UR]

[16] https://www.ussc.gov/research/research-reports/2023-demographic-differences-federal-sentencing [https://perma.cc/6S69-JSY3]

States, NAT'L REGISTRY OF EXONERATIONS (Sept. 2022).[17] Sexual minorities are more likely to suffer sexual abuse in prison and spend more time in solitary confinement. Ilan H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 AM. J. PUB. HEALTH 267, 267 (2017). From the first police encounter to incarceration, underrepresented groups suffer when their communities are selectively targeted by law enforcement.

The harms extend beyond the criminal legal system. Individuals who have contact with the criminal system are apt to engage in "'system avoidance,' whereby individuals who have had contact with the criminal justice system avoid surveilling institutions that keep formal records." Sarah Brayne, *Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment*, 79 AM. SOCIOLOGICAL REV. 367, 367 (2014). Surveilling institutions include medical, financial, and educational institutions, as well as labor markets. *Id.* at 368. To give one example of these impacts, people that had contact with the criminal legal system were thirty-one percent less likely to be working or receiving an education than those who had not had contact. *Id.* at 379. A separate analysis recognized the growing scholarly consensus that "even routine or low-level contact with the criminal justice

[17] https://www.law.umich.edu/special/exoneration/Documents/Updated%20CP%20-%20Race%20Report%20Preview.pdf

system impacts health outcomes." Richard Carbonaro, *System Avoidance and Social Isolation: Mechanisms Connecting Police Contact and Deleterious Health Outcomes*, SOC. SCI. & MED., May 2022, at 1. So too has police contact been correlated with decreased public participation, among other harms. *See, e.g.*, Jonathan Ben-Menachem & Kevin T. Morris, *Ticketing and Turnout: The Participatory Consequences of Low-Level Police Contact*, 117 AM. POL. SCI. REV. 822, 830 (2022) (finding that police encounters shortly before an election reduced turnout at a greater rate for Black voters than non-Black voters); Paul J. Fleming et al., *Policing Is a Public Health Issue: The Important Role of Health Educators*, 48 HEALTH EDUC. BEHAV. 553 (2021) (collecting studies on impact of over-policing on racial, sexual, and other minority communities). These effects, by leading to worse health and economic outcomes, may contribute to social stratification. *See* Brayne, *supra*, at 367, 386.

Online spaces have given law enforcement new means of targeting minority communities at heightened levels. This development is troubling in its own right, and that concern is amplified by the fact this surveillance catches online activity that lacks any nexus to criminal wrongdoing. Social media monitoring has become of the most prevalent online investigative techniques, and it is used by law enforcement at all levels of government. Harsha Panduranga & Emil Mella Pablo, *Federal Government Social Media Surveillance, Explained*, BRENNAN CTR. FOR JUST. (Feb.

9, 2022)[18] (noting that both ICE and the FBI have employed social media monitoring techniques); KiDeuk Kim et al., Urban Institute, *2016 Law Enforcement Use of Social Media Survey* (Feb. 2017), at 3 (reporting that 70% of state and local police departments use social media for investigations).[19] Police departments here in Massachusetts have used social media to monitor speech that is strongly correlated with a protected class, such as race or religion. *See* Nasser Eledroos & Kade Crockford, *Social Media Monitoring in Boston: Free Speech in the Crosshairs*, ACLU MASSACHUSETTS (2018)[20] (finding that the Boston Police Department used social media tracking tools to surveil Black Lives Matter activists in 2014); Sahar F. Aziz & Khaled A. Beydoun, *Fear of A Black and Brown Internet: Policing Online Activism*, 100 B.U. L. REV. 1151, 1173 (2020) (noting that the Boston Police Department monitored social media for political slogans like #MuslimLivesMatter and common Islamic terms).

As with in-person investigative techniques, excessive online surveillance increases unwarranted law enforcement encounters and their associated harms. In 2012, a Black teenager in New York City was arrested, charged with attempted

[18] https://www.brennancenter.org/our-work/research-reports/federal-government-social-media-surveillance-explained [https://perma.cc/7DYX-H5UR]
[19] https://www.urban.org/sites/default/files/publication/88661/2016-law-enforcement-use-of-social-media-survey.pdf
[20] https://privacysos.org/social-media-monitoring-boston-free-speech-crosshairs/ [https://perma.cc/W29N-EWJW]

murder, and held for a year and a half based on posts he had "liked" on Facebook; the case was eventually dismissed without explanation. Ben Popper, *How the NYPD is Using Social Media to Put Harlem Teens Behind Bars*, THE VERGE (Dec. 10, 2014).[21] In 2021, a climate activist in Minnesota was charged with aiding and abetting trespass after police recorded her Facebook livestream—only to be acquitted by the judge. Gabriella Sanchez & Rachel Levinson-Waldman, *Police Social Media Monitoring Chills Activism*, BRENNAN CTR. FOR JUST. (Nov. 18, 2022).[22] A few months later, a 13-year-old Black girl in Florida was arrested and held for 11 days over social media posts made on a fake account set up by a classmate. N'dea Yancey-Bragg, *Family of "Heartbroken" Teen Sues Instagram, Florida School After Wrongful Arrest Over Fake Threats*, USA TODAY (Feb. 17, 2022).[23] As these cases demonstrate, any form of dragnet surveillance exposes innocent people to police scrutiny; the ease and breadth of online surveillance only amplifies this risk. All too often, that risk has been realized.

The specific practice at issue here—using a fake profile to gain access to individuals' private media—follows the familiar racialized pattern of targeted

[21] https://www.theverge.com/2014/12/10/7341077/nypd-harlem-crews-social-media-rikers-prison [https://perma.cc/C9HN-6N3V]
[22] https://www.brennancenter.org/our-work/analysis-opinion/police-social-media-monitoring-chills-activism [https://perma.cc/AS3Y-HUX8]
[23] https://www.usatoday.com/story/news/nation/2022/02/17/florida-teen-sues-instagram-nia-whims/6828800001/ [https://perma.cc/XKW8-NXGW]

surveillance. In a 2022 report, Minnesota's Department of Human Rights found that the Minneapolis Police Department used fake social media accounts to surveil Black individuals, organizations, and elected officials that bore "no nexus to a criminal investigation or to a public safety objective." *See* Minnesota Department of Human Rights, *Investigation into the City of Minneapolis and the Minneapolis Police Department*, at 35–36 (Apr. 27, 2022).[24] The Brennan Center has detailed the LAPD's use of fake social media accounts to monitor individuals, particularly those from "minority and activist communities," with impunity. Mary Pat Dwyer, *LAPD Documents Reveal Use of Social Media Monitoring Tools*, BRENNAN CTR. FOR JUST. (Sept. 8, 2021)[25] (noting that these practices could exacerbate the harms of false identifications of gang affiliation). In 2016 and 2017, a white detective in Memphis posed as a person of color, liking Black Lives Matter pages and friending local Black leaders and professionals, so the police could monitor everything from book recommendations to vegan cookouts. Antonia Noori Farzan, *Memphis Police Used Fake Facebook Account to Monitor Black Lives Matter, Trial Reveals*, WASH. POST

[24] https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf

[25] https://www.brennancenter.org/our-work/analysis-opinion/lapd-documents-reveal-use-social-media-monitoring-tools [https://perma.cc/8GMC-LL4Q]

(Aug. 23, 2018).[26] The banality of these data points highlights the habitualness of monitoring everyday activities. All activities are scrutinized for potential criminality, normalizing a fishing expedition mentality in law enforcement.

Police posing as members of communities of color online is, at its core, another way for police to increase their presence in those communities. If defendants like Mr. Rodriguez are unable to challenge police intrusions into their online communities, this investigative technique will inevitably lead to the same racialized disparities in arrests, detentions, and wrongful convictions seen in physical techniques, in addition to other negative externalities.

B. Police intrusion into online communities also creates its own unique harms and challenges.

The studies and examples cited above make clear that police intrusion into minority communities—whether physical or virtual—contributes to harmful outcomes, including a disproportionate risk of wrongful conviction. In this sense, police presence in targeted online communities is no different from over-policing of minority neighborhoods. In other ways, though, online infiltration of communities of color poses even greater threats, because it enables surveillance that "*never* would

[26] https://www.washingtonpost.com/news/morning-mix/wp/2018/08/23/memphis-police-used-fake-facebook-account-to-monitor-black-lives-matter-trial-reveals/ [https://perma.cc/67YL-HHM3]

be available through the use of traditional law enforcement tools of investigation." *Commonwealth v. Perry*, 489 Mass. 436, 449 (2022).

The myth that digital surveillance is necessarily less intrusive than analog methods has long been dispelled. For example, the Fifth Circuit has determined that geofencing warrants sought by law enforcement can facilitate the same sort of "general, exploratory rummaging" the Fourth Amendment was designed to prevent. *United States v. Smith*, 110 F.4th 817, 837 (5th Cir. 2024) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971)). Further, just like the physical infiltration of dissident groups in the past, the Brennan Center observes that digital surveillance can cause self-censorship and lead to unexpected invasions of privacy. *Compare* Rachel Levinson-Waldman et al., *Social Media Surveillance by the U.S. Government*, BRENNAN CTR. FOR JUST. (Jan. 7, 2022)[27] *with Police Infiltration of Dissident Groups*, 61 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 181 (1970) (noting injury to speech, associational, and privacy rights from police infiltration of minority political groups). And just last year, this Court rejected arguments that covert social media monitoring was legally distinguishable from in-person stops for the purpose of equal protection. *See Dilworth*, 494 Mass. at 587.

[27] https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-us-government [https://perma.cc/3PN4-H6RY]

However, online surveillance also presents its own, novel risks. One such risk is more efficient, around-the-clock monitoring on a large scale. An officer following an individual on social media is, in some ways, comparable to an officer tailing a suspect to gather information. In both cases, the officer selects whom to follow, observes their conduct, and draws conclusions. However, the officer using social media can target numerous, unrelated individuals simultaneously, and do so from the comfort of their desk or patrol car. *See* Tr. 7/28/23 at 18 ("We'd be driving around the city. I would literally look at every single story.") One officer's efforts can be likened to that of "millions of tiny constables" tracking a person of interest—or even a random resident—by traditional means. Alan Butler, *Symposium: Millions of Tiny Constables — Time to Set the Record Straight on the Fourth Amendment and Location-Data Privacy*, SCOTUSBLOG (Aug. 3, 2017, 10:50 AM)[28]; *see also United States v. Jones*, 565 U.S. 400, 420 n.3 (2012) (Alito, J., concurring in the judgment) (analogizing GPS surveillance to "a tiny constable . . . with incredible fortitude and patience").

Social media investigations pose another distinct harm: suppressing the development of underrepresented communities online. Social media has become centrally important for political organizing, especially organizing led by historically

[28] https://www.scotusblog.com/2017/08/symposium-millions-tiny-constables-time-set-record-straight-fourth-amendment-location-data-privacy/ [https://perma.cc/WTU2-Z79L]

marginalized groups. *See* Brooke Auxier, *Activism on Social Media Varies by Race and Ethnicity, Age, Political Party*, PEW RSCH. CTR. (July 13, 2020)[29] (finding that Black and Hispanic users are more likely to describe social media as "important to them personally for finding other people who share their views about important issues"). Social media also creates important digital "third places" for groups which are "'anchors' of community life and facilitate and foster broader, more creative interaction." PETE MYERS, GOING HOME: ESSAYS, ARTICLES, AND STORIES IN HONOUR OF THE ANDERSONS 37 (2012); Matthew N. Berger et al., *Social Media Use and Health and Well-being of Lesbian, Gay, Bisexual, Transgender, and Queer Youth: Systematic Review*, 24 J. MED. INTERNET RES. 9 (2022). In poor, rural, or underdeveloped communities, which may lack physical third places like coffee shops and bars, marginalized communities have been able to create their own digital equivalents. As explained in section II.A, *supra*, police presence negatively impacts members' associational and speech rights and makes these spaces less safe, and therefore less useful, for the groups that use them. Further, this practice risks that the phenomena of system avoidance, section II.A, *supra*, will extend to social media, further diminishing the use of social media by minority communities that are disproportionality put into contact with the criminal justice system.

[29] https://www.pewresearch.org/short-reads/2020/07/13/activism-on-social-media-varies-by-race-and-ethnicity-age-political-party/ [https://perma.cc/PLV5-4H5A]

The specific technique at issue here—police use of fake social media profiles—adds a third layer of complication. Police infiltration of an in-person group is premised on a police agent or informant passing as a member of the targeted group. On the internet, however, an officer can choose to adopt any race, ethnicity, or gender. Freed from practical personnel constraints, police can more easily infiltrate online communities of color than in-person groups. Thus far, like the Boston Police Department in *Dilworth* and the Lowell Police Department here, law enforcement agencies have avoided sharing details about the undercover accounts they use. The few data points we have, though, suggest that police are in fact posing as people of color. *See* Minnesota Department of Human Rights, *supra*, at 35 (noting that officers posed as members of the Black community and "used language to further racial stereotypes associated with Black people, especially Black women"). Given the racialized history of police practices in the United States, there are several inferences one might draw from this data, limited though it may be.

One reasonable inference is that police understand that, in digital spaces, shared community and identity are strong predictors of trust. It is no secret that "people act more prosocially towards members of their own group relative to those outside their group." Jim A. C. Everett et al., *Preferences and Beliefs in Ingroup Favoritism,* FRONTIERS BEHAV. NEUROSCIENCE, Feb. 13, 2015, at 1. Preference for individuals belonging to one's shared group—such as gender, ethnic background, or

religion—can cause people to feel more connected to those with whom they share characteristics. *See id.* This dynamic is reflected in social media use trends. Research has demonstrated that friend requests from Black profiles are "more likely to be accepted as friends by Black than non-Black participants," and that this disparity increases if the profile is more "stereotypically" Black. Michelle R. Hebl et al., *Selectively Friending: Racial Stereotypicality and Social Rejection*, 48 J. EXPERIMENTAL SOC. PSYCH. 1329, 1331 (2012). While there do not appear to be studies on the propensity of Black users to accept Black- versus white-profile friend requests, research does indicate that both Black and white individuals subconsciously prefer members of their same race, suggesting that they would be more apt to accept friend requests from their in-group. *See* Rich Morin, E*xploring Racial Bias Among Biracial and Singe-Race Adults: The IAT*, PEW RSCH. CTR. (August 19, 2015).[30] Moreover, networking tools like Snapchat's "You May Know" feature make recommendations to users based on mutual friends. *See* Kamil Anwar, *What Does "You May Know" on Snapchat Mean?*, MSN (Apr. 2024).[31] Use of this tool generates a snowball effect, whereby unwitting community members give credence to undercover accounts and ultimately expand the surveillance. This in turn

[30] https://www.pewresearch.org/social-trends/2015/08/19/exploring-racial-bias-among-biracial-and-single-race-adults-the-iat/ [https://perma.cc/R5U7-CGJZ]
[31] https://www.msn.com/en-gb/money/technology/what-does-you-may-know-on-snapchat-mean-2024/ar-AA1ntmbo [https://perma.cc/B9NW-ZJ6L]

could lead to a network effect where initial racial bias becomes more pronounced as an undercover account adds more "friends."

Social media investigations have greatly amplified law enforcement agencies' reach. While in-person observation of a suspect requires time and effort, social media surveillance is largely passive. When conducted at scale, such investigations can subject scores of innocent individuals to investigation based on race and affiliation rather than individualized suspicion and put them at increased risk of needless harm and wrongful prosecution.

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court reverse the denial of the motion to suppress and remand to the District Court with instructions to determine whether the Commonwealth can rebut Mr. Rodriguez's reasonable inference of racial discrimination.

Dated: April 14, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 17(c)(9) of the Massachusetts Rules of Civil Procedure, I, Mason A. Kortz, hereby certify that the foregoing **Brief of *Amici Curiae* Innocence Project, Center on Privacy and Technology, and Isadora Borges Monroy in Support of Defendant-Appellant and Reversal** complies with the rules of court that pertain to the filing of amicus briefs, including, but not limited to:

Mass. R. A. P. 16(e) (references to the record);
Mass. R. A. P. 17(c) (cover, length, and content);
Mass. R. A. P. 20 (form and length of brief); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font Times New Roman at size 14 points and contains 7,231 total non-excluded words as counted using the word count feature of Microsoft Word 365.

Dated: April 14, 2025

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-13727

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellee,

v.

NATHANIEL RODRIGUEZ,
Defendant-Appellant.

CERTIFICATE OF SERVICE

Pursuant to Mass. R. A. P. 13(e), I, Mason A. Kortz, hereby certify, under the penalties of perjury, that on this date of April 14, 2025, I have made service of a copy of the foregoing **Brief of *Amici Curiae* Innocence Project, Center on Privacy and Technology, and Isadora Borges Monroy in Support of Defendant-Appellant and Reversal** in the above captioned case upon all attorneys of record by electronic service through eFileMA.

Dated: April 14, 2025

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