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Proskauer Partners with ACLU to File Amicus Brief Urging the Massachusetts Supreme Judicial Court to Curb Pretextual Stops and Reinforce Constitutional Protections Against Warrantless Arrests

Proskauer For Good on **December 22, 2025**

On November 21, 2025, Proskauer attorneys filed an amicus brief on behalf of the American Civil Liberties Union (ACLU) and ACLU of Massachusetts (ACLUM) before the Massachusetts Supreme Judicial Court (SJC) in the case of *Commonwealth v. Arias*, which presents foundational questions about the protections guaranteed by Article 14 of the Massachusetts Declaration of Rights and the limits of police power.

Officers from the Boston Drug Control Unit tailed Jose Arias as part of an unrelated drug investigation. After roughly six miles, officers witnessed a minor traffic infraction. Instead of immediately stopping Mr. Arias for the infraction, they waited more than 24 hours and pulled him over the next day. Officers acknowledged over police radio that their true goal was to advance the drug investigation rather than enforce traffic laws; however, they used the day-old infraction as justification for the stop. When Mr. Arias saw that the officers had activated their lights, he slowed down and attempted to turn onto the next available side street to stop safely without impeding traffic. Before he could complete the turn, officers blocked his path and ordered him out of his car, frisked him, and conducted a search of his car.

Notably, the officers never cited Mr. Arias for a traffic infraction. After Mr. Arias challenged his arrest in court, the prosecution argued that the arrest was justified under G.L. c. 90 § 25, which makes “neglect to stop” for police a misdemeanor. Although that statute contemplates only a fine, another section, G.L. c. 90 § 21, gives police authority to arrest for the offense.

The amicus brief advanced three core constitutional arguments. *First*, the brief argued that pretextual stops are inherently unreasonable under Article 14 of the Massachusetts Declaration of Rights, which governs searches and seizures. Permitting pretextual stops allows officers to surveil a target until they commit any minor infraction, then to use that infraction to justify a stop and search. The brief argued that such unbounded discretion invites abuses of the warrant requirement that Article 14 was designed to prevent. The brief encouraged the SJC to instead adopt a "would-have" test, asking whether a reasonable officer would have made the stop absent the ulterior investigative motive.

Second, the amicus brief argued that the SJC should reaffirm its prior ruling that Massachusetts common law requires a breach of the peace for a warrantless misdemeanor arrest and extend this holding to statutorily authorized arrests. Although the U.S. Supreme Court's decision in *Atwater v. City of Lago Vista* permits warrantless arrests for any misdemeanor committed in an officer's presence, the SJC declined to adopt the *Atwater* holding in *Lunn v. Commonwealth*, instead finding that warrantless misdemeanor arrests require a breach of the peace. In doing so, the Court affirmed that Article 14 provides more robust protections than the Fourth Amendment of the U.S. Constitution. The brief asked the SJC to hold that statutory authorization cannot override Article 14's fundamental requirement that arrests be reasonable. It argued that absent a breach of the peace, conducting an arrest for a fine-only misdemeanor intrudes on significant liberty interests without meaningfully furthering public safety and would allow officers to conduct searches incident to arrest for conduct as trivial as spitting or littering, contrary to constitutional principles and common sense.

Finally, the brief argued that G.L. c. 90, § 25, the statute cited retroactively by the police officers, which prohibits "refus[ing] or neglect[ing] to stop," fails to provide meaningful notice of what conduct is prohibited and gives officers unfettered discretion that is ripe for abuse. Mr. Arias slowed down and attempted to pull off a busy road to avoid blocking traffic. Yet under the Commonwealth's interpretation and in conjunction with the arrest authorization in G.L. c. 90, § 21, even such a brief (and safety-motivated) delay in pulling over for a police stop could be construed as criminal behavior sufficient to justify a full custodial arrest. An interpretation that gives officers such unbounded discretion creates a serious risk of arbitrary and discriminatory enforcement, in violation of Articles 12 and 14 of the Massachusetts Declaration of Rights.

Oral argument in *Commonwealth v. Arias* was held on December 3, 2025. The Proskauer team includes partners John E. Roberts, Steven E. Obus, and Mark W. Batten, associates Alisha Gupta, Emily E. Wakeman, Christina H. Kroll, and Alexander B. Guzy-Sprague, and paralegal Roberta K. Preyer.

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