No. SJ-2026-______

In the Massachusetts Supreme Judicial Court

COMMONWEALTH OF MASSACHUSETTS

v.

JOSHUA GUZMAN
Defendant-Appellee

Court of Appeals Docket No. 2025-P-1254

On Appeal from the Superior Court — Essex County — Docket No. 2477CR00474

APPLICATION FOR DIRECT APPELLATE REVIEW

CHRISTOPHER O'BRIEN
COUNSEL FOR DEFENDANT-APPELLEE
BBO NO. 683048
LAW OFFICE OF CHRISTOPHER O'BRIEN
49 ELMWOOD RD., #302
SWAMPSCOTT, MA 01907
(617) 313-3438
CHRIS@ATTORNEY-OBRIEN.COM

DATED: May 7, 2026

APPLICATION FOR DIRECT APPELLATE REVIEW

TO THE HONORABLE JUSTICES OF THE SUPREME JUDICIAL COURT:

Defendant-Appellee Joshua Guzman respectfully applies, pursuant to Mass. R. App. P. 11, for direct appellate review by the full Supreme Judicial Court of the above-captioned appeal, currently pending in the Appeals Court. This case presents constitutional questions of first impression and extraordinary public importance that warrant resolution by this Court without the delay of intermediate appellate proceedings. Specifically, the matter pending concerns the constitutionality of the Massachusetts Assault Weapons Ban as applied to the Defendant-Appellee. The application is filed contemporaneously with the Defendant-Appellee's brief in the Appeals Court.

I. STATEMENT OF PRIOR PROCEEDINGS

On July 10, 2024, Joshua Guzman was arrested in Haverhill following a motor vehicle stop unrelated to any firearms offense. At the time of his arrest, Mr. Guzman possessed a valid Class A Large Capacity License to Carry Firearms issued pursuant to G.L. c. 140, §

131. His LTC was suspended following his arrest, and he was directed to surrender his firearms. On July 17, 2024, Mr. Guzman voluntarily surrendered a Daniel Defense .556 caliber AR-15 style rifle.

On November 14, 2024, Mr. Guzman was indicted on two charges: unlawful possession of an assault weapon in violation of G.L. c. 140, § 131M, and unlawful possession of a large capacity feeding device in violation of G.L. c. 269, § 10(m).

Mr. Guzman moved to dismiss both indictments. After a hearing, the motion judge (Tabit, J.) issued a Memorandum of Decision and Order on June 24, 2025, allowing the Motion to Dismiss on both counts. On the § 10(m) charge, the motion judge applied the rule of lenity to the plain language of the statute, which exempts holders of a valid LTC. On the § 131M charge, the motion judge rejected Mr. Guzman's facial challenge but held the statute unconstitutional as applied to his possession of the Daniel Defense AR-15 under the framework of *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

The Commonwealth moved for reconsideration. On August 14, 2025, the motion judge allowed reconsideration but declined to disturb the

result. The Commonwealth timely appealed. The appeal was docketed in the Appeals Court as No. 2025-P-1254. The Commonwealth filed its brief on December 30, 2025, challenging only the as-applied § 131M disposition; the § 10(m) ruling is not on appeal. The Defendant-Appellee's brief was filed contemporaneously with this application.

II. STATEMENT OF FACTS

The material facts are undisputed. Mr. Guzman held a valid Class A Large Capacity License to Carry Firearms ("LTC") prior to the suspension by Haverhill Police Department. At their request, Mr. Guzman surrendered to police a Daniel Defense .556 caliber AR-15, a semiautomatic rifle. The rifle bore a collapsible stock, pistol grip, and removable muzzle device, qualifying it as an "assault weapon" under the pre-amendment version of G.L. c. 140, § 121.

The AR-15 is the most commonly owned rifle platform in the United States. Americans possess an estimated 20 to 30 million AR-15s, and the rifle is legal in 41 of the 50 states. See *Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (Kavanaugh, J., statement respecting denial of certiorari). *See also Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (Kagan, J., for unanimous Court)

(AR-15 rifles "are both widely legal and bought by many ordinary consumers. (The AR-15 is the most popular rifle in the country.)").

III. STATEMENT OF THE ISSUES OF LAW

The following issue, raised and properly preserved in the lower court, is presented on appeal:

> Whether the motion judge properly dismissed the indictment charging Mr. Guzman with violation of G.L. c. 140, § 131M, where Mr. Guzman held a valid Class A Large Capacity License to Carry Firearms ("LTC") issued by the Haverhill Police Department, placing him squarely within the class of individuals the Second Amendment historically protects, and the Commonwealth has failed to demonstrate a historical tradition of firearms regulation justifying a criminal prohibition on possession of a semiautomatic rifle legal in 41 states and owned by 20 to 30 million Americans.

IV. LEGAL ARGUMENT

The motion judge correctly dismissed the assault weapon indictment. Section 131M is not constitutional as applied to a licensed firearm owner's possession of a common semiautomatic rifle.

Under the two-step framework established by the Supreme Court in *Bruen*, and reinforced in *United States v. Rahimi*, 602 U.S. 680 (2024), the analysis begins with the Second Amendment's plain text, which "extends, prima facie, to all instruments that constitute bearable arms."

District of Columbia v. Heller, 554 U.S. 570, 582 (2008). The Daniel Defense AR-15 is indisputably a bearable arm. The Commonwealth's attempt on appeal to exclude it from protection at Step One, by arguing that AR-15s are "like" M-16s and are not in "common use for self-defense," conflates the two steps of the *Bruen* framework, improperly loading onto the challenger a burden that belongs to the government at Step Two.

At Step Two, the Commonwealth bears the burden of demonstrating that the Massachusetts assault weapons ban is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. It has wholly failed to do so. The historical analogues the Commonwealth offers, including gunpowder storage laws, Bowie knife carry restrictions, explosives regulations, and short-barrel shotgun/machine gun bans, are categorically different from a permanent, categorical prohibition on a class of arms lawfully owned by 20 to 30 million Americans in 41 states. Even under *Rahimi*'s instruction that the government need identify only historical analogues, not historical twins, the Commonwealth's proposed analogues fail both prongs of the "how and why" inquiry required of this analysis: they

regulated storage, carry, or narrow categories of weapons not in common use, rather than permanent possession bans on commonly owned arms. *Rahimi,* 602 U.S. at 683, 692.

Rahimi and *Commonwealth v. Donnell*, 495 Mass. 471 (2025) (abrogated in part on other grounds by *Commonwealth v. Rodriguez*, 496 Mass. 627, 642 n.8 (2025)), together crystallize the point. *Rahimi* sustained disarmament of a person posing a "credible threat to the physical safety of others," an individualized restriction on a demonstrably dangerous person, squarely within the historical tradition of disarming such persons. *Rahimi*, 602 U.S. at 700. *Donnell* parsed that tradition into individualized restrictions on demonstrably dangerous persons and blanket restrictions on "otherwise qualified, law-abiding citizen[s]." *Donnell*, 495 Mass. at 480. The first is supported by history; the second is not. *Id*.

The Commonwealth's examples are inapposite as applied to Mr. Guzman, and disanalogous on the "how and why" prong of the Step Two analysis. The proffered examples, purporting to show a historical tradition, do not authorize a categorical ban on commonly owned arms. They certainly cannot authorize such a ban imposed on a

Massachusetts-licensed possessor for whom the Commonwealth itself made an individualized non-dangerousness determination (suitability) when it issued his LTC.

The AR-15 is not “unusual” under any metric this Court recognized in *Commonwealth v. Canjura*, 494 Mass. 508 (2024), and the conjunctive “dangerous and unusual” test forecloses categorical prohibition on dangerousness grounds. The Commonwealth’s dangerousness narrative, moreover, is disconnected from the basis of the indictment: the features that triggered the charges (a collapsible stock, pistol grip, and muzzle device) improve accuracy and reduce collateral risk, while the ballistic properties the Commonwealth claims make the weapon dangerous are unaffected by the presence or absence of those features. The Commonwealth itself acknowledges that AR-15 variants without these features remain legal.

Neither *Capen v. Campbell*, 134 F.4th 660 (1st Cir. 2025), nor *Commonwealth v. Cassidy*, 479 Mass. 527 (2018), both cited extensively by the Commonwealth in its appeal, compels a different result. *Capen* is not binding on this Court and addressed only the preliminary injunction standard in the context of a facial challenge. *Cassidy* rejected a facial

challenge under a pre-*Bruen* means-ends framework that this Court has since recognized was superseded. *See Commonwealth v. Donnell*, 495 Mass. 471, 477 (2025); *Commonwealth v. Canjura*, 494 Mass. at 511 n.5.

V. DIRECT APPELLATE REVIEW BY THIS COURT IS APPROPRIATE

This case satisfies all three independent criteria for direct appellate review under Mass. R. App. P. 11(a). Any one would suffice; the convergence of all three makes this case a paradigmatic candidate for transfer.

A. The Appeal Squarely Presents a Federal Constitutional Question Warranting this Court's Direct Attention (Rule 11(a)(2)).

The appeal presents a question, raised in a court of the Commonwealth, concerning the United States Constitution: whether the Second Amendment, as interpreted in *Heller*, *Bruen*, and *United States v. Rahimi*, 602 U.S. 680 (2024), prohibit Massachusetts from imposing a categorical possession ban on the AR-15 rifle as applied to a qualified, licensed citizen.

Constitutional challenges to major criminal statutes are the prototypical basis for direct appellate review. The validity of § 131M, which criminalized possession of what is indisputably the most commonly owned rifle in America is precisely the kind of constitutional question the full Court should resolve.

B. The Question is One of First Impression that Only this Court can Resolve (Rule 11(a)(1)).

This Court has never decided an as-applied Second Amendment challenge to the Massachusetts assault weapons ban by a qualified and licensed individual under the *Bruen* framework. *Cassidy*, 479 Mass. 527, addressed only a facial challenge, and was decided under the pre-*Bruen* framework that this Court has since recognized was superseded. *See Commonwealth v. Donnell*, 495 Mass. 471, 477 (2025). The question presented is genuinely novel.

Moreover, the Defendant-Appellee's argument urges this Court to reconsider aspects of its prior precedent in light of *Bruen*'s rejection of means-end scrutiny and its adoption of the text-and-history framework. The Appeals Court is bound by this Court's precedents and cannot undertake that reconsideration. *See Commonwealth v. Canjura*, 494

Mass. 508 (2024) (this Court, not the Appeals Court, applied *Bruen* to strike down the switchblade ban under G.L. c. 269, § 10(b)). Sending this case through the Appeals Court first would be a detour; the constitutional question should promptly reach this Court.

C. The Public Interest in Prompt Resolution is Acute, and the Constitutional Ruling will Govern Beyond this Case (Rule 11(a)(3)).

The constitutionality of Massachusetts's assault weapons ban is a matter of extraordinary public significance. The statute criminalized conduct in which millions of Americans lawfully engage in 41 other states. A Superior Court judge has held the ban unconstitutional as applied to the AR-15. The United States Supreme Court has signaled that the same question is likely to reach it in the near future. *See Snope*, 145 S. Ct. at 1534 (Kavanaugh, J.) (challengers "have a strong argument that AR-15s are in 'common use'"); *id.* at 1535-36 (Thomas, J., dissenting) ("[i]t is difficult to see how . . . [a] categorical prohibition on AR-15s passes muster under this framework").

The public interest is further served by prompt resolution. Mr. Guzman faces the possibility of criminal conviction carrying a

mandatory minimum term of imprisonment. The motion judge observed that "[i]t would be unjust to allow Guzman to suffer such consequences, where it appears likely that, in the not-too-distant future, the Supreme Court is likely to hold an outright ban on the possession of AR-15s unconstitutional."

Precedential Reach Beyond this Case

The motion judge recognized that, despite subsequent amendments to the statute, "[u]nder either version of the statute, assault weapons are prohibited."

The Court's decision will therefore govern every pre- and post-amendment § 131M prosecution in the Commonwealth. Its significance does not end there. The constitutional infirmity the motion judge identified is foundational: it turns on the Commonwealth's failure at *Bruen* Step Two to identify a historical tradition supporting a categorical possession ban on a commonly owned, plainly bearable arm in the hands of a qualified licensee. That failure is a function of the absence of historical tradition, not of statutory wording. Whatever framework the Court articulates will accordingly supply the controlling lens for any challenge to the post-amendment statute as well. A ruling

from the Court at this stage offers coherent, statewide guidance on a recurring question that trial courts are already confronting.

VI. PRAYER FOR RELIEF

WHEREFORE, Joshua Guzman respectfully requests that this Honorable Court grant his request for direct appellate review by the full Supreme Judicial Court.

Dated: May 7, 2026

Respectfully submitted,

JOSHUA GUZMAN
By their Attorney,

Christopher O'Brien

Christopher O'Brien
BBO No. 683048
49 Elmwood Rd., #302
Swampscott, MA 01907
(617) 313-3438
Chris@Attorney-OBrien.com

CERTIFICATION PURSUANT TO MASS. R. APP. P. 16(K)

I, Christopher O'Brien, hereby certify pursuant to Mass. R. App. P. 16(k) that this Application for Direct Appellate Review complies with the rules of court that pertain to the filing of applications for direct appellate review, including, but not limited to, Mass. R. App. P. 11 (form, contents, and length of applications for direct appellate review) and Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents). The brief argument required under Rule 11(b)(5) was produced in a proportionally spaced font, Century Schoolbook 14-point, using Microsoft Word, and contains 640 words.

Dated: May 7, 2026

Christopher O'Brien
Christopher O'Brien
BBO No. 683048

CERTIFICATE OF SERVICE

I do hereby certify under the pains and penalties of perjury that I have on this Date made service on the Commonwealth by sending a true and correct copy of this filing by electronic mail to the assigned Assistant District Attorney at the below address:

David O'Sullivan
Assistant District Attorney
Office of the District Attorney, Essex County
david.osullivan@state.ma.us

Dated: May 7, 2026

Christopher O'Brien

Christopher O'Brien
BBO No. 683048
49 Elmwood Rd., #302
Swampscott, MA 01907
(617) 313-3438
Chris@Attorney-OBrien.com

APPENDIX

Pursuant to Mass. R. App. P. 11(b), the following documents are appended to this application:

1. Docket entries, Essex County Superior Court, No. 2477CR00474
2. Memorandum of Decision and Order on Defendant's Motion to Dismiss (Tabit, J., June 24, 2025)
3. Summary Decision Denying Motion to Reconsider (Tabit, J., August 14, 2025)

2477CR00474 Commonwealth vs. Guzman, Joshua

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 11/14/2024
- DCM Track:
- A - Standard
- Initiating Action:
- FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m)
- Status Date:
- 01/03/2025
- Case Judge:
-
- Next Event:
- 07/28/2026

All Information | Party | Charge | Event | Tickler | Docket | Disposition

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/14/2024	Attorney appearance On this date Andrew Joseph Camelio, Esq. added as Attorney for the Commonwealth for Prosecutor Essex County District Attorney		
11/14/2024	Indictment(s) returned	1	Image
12/11/2024	Pro Se Defendant 's Motion to Dismiss filed	2	Image
12/11/2024	Attorney appearance On this date Pro Se added as Self Represented for Defendant Joshua Guzman		
01/03/2025	Event Result:: Arraignment scheduled on: 01/03/2025 09:45 AM Has been: Held as Scheduled Comments: FTR K Hearing held on waiver of counsel. Hon. Elizabeth Dunigan, Presiding Staff: Lisa Partelow, Assistant Clerk		
01/03/2025	Defendant arraigned before Court. Judge: Dunigan, Hon. Elizabeth		
01/03/2025	At defendant's request, FULL reading of indictments 001-002. Judge: Dunigan, Hon. Elizabeth		
01/03/2025	Plea of not guilty entered on all charges. Judge: Dunigan, Hon. Elizabeth		
01/03/2025	Released on Personal Recognizance with the following conditions: Other Special Condition 1. Not to possess any firearm, dangerous weapon or other destructive device		
01/03/2025	Bail warnings read Judge: Dunigan, Hon. Elizabeth		
01/03/2025	Joshua Guzman's waiver of Counsel.	3	Image
01/03/2025	Finding and Order on Bail: Judge: Dunigan, Hon. Elizabeth	4	Image
01/03/2025	Case assigned to: DCM Track A - Standard was added on 01/03/2025	5	Image
01/21/2025	Matter taken under advisement: Non-Evidentiary Hearing to Dismiss scheduled on: 01/21/2025 12:00 PM Has been: Held - Under advisement Comments: FTR K Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
03/20/2025	Pro Se Defendant 's Motion to Suppress Evidence	6	Image
03/20/2025	Event Result:: Conference to Review Status scheduled on: 03/20/2025 10:30 AM Has been: Held as Scheduled Comments: ftr k Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
04/02/2025	Opposition to Defendant's Motion to Dismiss filed by the Commonwealth	7	Image
04/02/2025	Matter taken under advisement: Filing of Motions scheduled on: 04/02/2025 09:30 AM Has been: Held - Under advisement Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
04/07/2025	Case sent to Essex Superior - LAWRENCE Location.		
04/28/2025	Event Result:: Conference to Review Status scheduled on: 05/01/2025 10:00 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
05/01/2025	Event Result:: Motion Hearing scheduled on: 05/01/2025 09:30 AM Has been: Held as Scheduled Comments: ADA and defendant in court for continued hearing on defendant's Motion to Dismiss (#2). Both parties to submit exhibits to clerk after the hearing. Matter		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	remains under advisement. FTR "4" (no court monitor). Hon. Salim Tabit, Presiding Appeared: Prosecutor Andrew Joseph Camelio, Esq., Attorney for the Commonwealth Defendant Joshua Guzman Pro Se, Self Represented Staff: Elissa Torto, Assistant Clerk Magistrate		
05/01/2025	List of exhibits admitted at continued hearing on Defendant's Motion to Dismiss (#2)	8	Image
05/27/2025	Event Result:: Conference to Review Status scheduled on: 05/27/2025 09:45 AM Has been: Held as Scheduled Comments: FTR K Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
06/03/2025	Event Result:: Evidentiary Hearing on Suppression scheduled on: 06/12/2025 09:30 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
06/03/2025	Event Result:: Evidentiary Hearing on Suppression scheduled on: 06/12/2025 09:30 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
06/06/2025	Case sent to Essex Superior - SALEM Location.		
06/12/2025	List of exhibits Exhibits 1-4 admitted at MTS hearing in folder in file	9	Image
06/12/2025	Docket Note: EXHIBITS 1-4 AND A FOR ID (ADMITTED 6/12/25) IN FOLDER IN FILE		
06/12/2025	Event Result:: Evidentiary Hearing on Suppression scheduled on: 06/12/2025 10:00 AM Has been: Held as Scheduled Comments: FTR "I" CH; MTS held paper no. 6; Commonwealth to submit discovery to defendant 6/18/25; defendant has until 6/25/25 to submit supplemental memo to Court; will be under advisement as of that date; continued to 7/14/25 status Hon. William F Bloomer, Presiding Staff: Michael Ruane, Assistant Clerk		
06/24/2025	MEMORANDUM & ORDER: Memorandum of Decision and Order on Defendant's Motion to Dismiss * * * For the foregoing reasons, Guzman's Motion to Dismiss is ALLOWED. This order, however, will be stayed for thirty days. (Salim R. Tabit, Justice.) Judge: Tabit, Hon. Salim [Emailed to A. Camelio, J. Guzman]	10	Image
06/25/2025	Findings of Fact and Rulings of Law: FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS (Paper No. 6) ORDER For the aforementioned reasons, it is hereby ORDERED that the Defendant's Motion to Suppress (Paper No. 6) is DENIED. It is further ORDERED that the Commonwealth shall produce to Guzman any written inventory of the contents of the car. The Commonwealth shall memorialize the production of the inventory list to Guzman by means of a Notice of Discovery, or affirmatively state in writing that it does not exist as well as the grounds for the lack of a written inventory. William F. Bloomer, Justice of the Superior Court Date: June 25, 2025 Judge: Bloomer, Hon. William F	11	Image
06/25/2025	Endorsement on Defendant's Motion to Suppress, (#6.0): DENIED 6/25/25 After hearing, DENIED. Separate Decision and Order issued this date. Judge: Bloomer, Hon. William F		
07/14/2025	Event Result:: Conference to Review Status scheduled on: 07/14/2025 09:45 AM Has been: Rescheduled For the following reason: Defendant failed to appear Comments: FTR K Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
07/14/2025	Docket Note: Notice to appear mailed to defendant this date.		
07/24/2025	Commonwealth 's Motion to Reconsider.	12	Image
07/24/2025	Offense Disposition:: Charge #1 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) On: 07/24/2025 Judge: Hon. Salim Tabit By: Other Court Event Dismissed		
07/30/2025	Pro Se Defendant 's Opposition to the Commonwealth's Motion to Reconsider	13	Image
07/31/2025	Case sent to Essex Superior - LAWRENCE Location. to Judge Tabit		
08/14/2025	MEMORANDUM & ORDER: SUMMARY DECISION AND ORDER ON COMMONWEALTH'S MOTION TO RECONSIDER (PAPER NO.12) Judge: Tabit, Hon. Salim For the reasons explained above, it is hereby ORDERED that the Commonwealth's Motion to Reconsider is DENIED.	14	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	(Salim R. Tabit, Justice.) [Decision emailed to defendant, ADA]		
08/14/2025	Case sent to Essex Superior - SALEM Location.		
08/15/2025	Event Result:: Conference to Review Status scheduled on: 08/15/2025 09:45 AM Has been: Held as Scheduled Comments: FTR K Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
08/18/2025	Notice of appeal filed. Applies To: Guzman, Joshua (Defendant); Camelio, Esq., Andrew Joseph (Attorney) on behalf of Essex County District Attorney (Prosecutor)	15	Image
08/18/2025	Attorney appearance On this date David F O'Sullivan, Esq. added for Prosecutor Essex County District Attorney		
08/20/2025	Offense Disposition:: Charge #1 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) On: 07/24/2025 Judge: Hon. Salim Tabit By: Other Court Event Dismissed Charge #2 ASSAULT WEAPON, UNLICEN SELL/POSSESS c140 §131M On: 07/24/2025 Judge: Hon. Salim Tabit By: Other Court Event Dismissed		
09/24/2025	Event Result:: Conference to Review Status scheduled on: 09/24/2025 10:00 AM Has been: Held as Scheduled Comments: FTR K Hon. William F Bloomer, Presiding Staff: Lisa Partelow, Assistant Clerk		
10/15/2025	Notice of assembly of record sent to Counsel	16	Image
10/15/2025	Notice to Clerk of the Appeals Court of Assembly of Record	17	Image
10/15/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	18	Image
10/22/2025	Notice of Entry of appeal received from the Appeals Court RE: No. 2025-P-1254	19	Image
10/27/2025	Docket Note: Received Filing - Defendant-Appellee's Answer to Interlocutory Appeal		
01/05/2026	Event Result:: Conference to Review Status scheduled on: 01/05/2026 09:30 AM Has been: Rescheduled For the following reason: Joint request of parties Comments: FTR K Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
01/05/2026	Attorney appearance On this date Andrew Joseph Camelio, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Essex County District Attorney		
01/05/2026	Attorney appearance On this date Kevin J Hennessey, Esq. added as Attorney for the Commonwealth for Prosecutor Essex County District Attorney		
02/06/2026	Event Result:: Conference to Review Status scheduled on: 02/06/2026 09:30 AM Has been: Held as Scheduled Comments: FTR K Hon. John C Fraser, Presiding Staff: Lisa Partelow, Assistant Clerk		
04/27/2026	Event Result:: Conference to Review Status scheduled on: 04/27/2026 09:30 AM Has been: Held as Scheduled Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. ESCR2024-00474

COMMONWEALTH

vs.

JOSHUA GUZMAN

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

INTRODUCTION

The defendant, Joshua Guzman ("Guzman"), stands indicted of unlawful possession of an assault rifle, in violation of G. L. c. 140, § 131M, and unlawful possession of a large capacity feeding device, in violation of G. L. c. 269, § 10(m). The charges arise out of Guzman's arrest on July 10, 2024, and his subsequent surrender of several firearms and large capacity feeding devices to the Haverhill Police Department on July 17, 2024. This matter is now before the court on Guzman's Motion to Dismiss (Paper No. 2). Therein, he argues that the court should dismiss the indictments because the statutes upon which the indictments rest are both facially unconstitutional and unconstitutional as applied to him.[1] After a hearing, for the reasons set forth below, the Motion to Dismiss is **ALLOWED**.

BACKGROUND

On July 10, 2024, officers with the Haverhill Police Department and Massachusetts state troopers were operating in the area of Broadway and Whitcomb Street in Haverhill. At 5:52 p.m.,

[1] Guzman's written motion further claims that the court lacks subject matter jurisdiction. When questioned at the hearing, Guzman conceded the issue and waived argument. Therefore, the court does not address the issue in the body of this decision.

they stopped a motor vehicle being operated by Guzman[2] because the license plates attached to the vehicle were not plates issued by any state or federal agency authorized to issue license plates. At the time of the stop, Guzman refused to identify himself. Thus, he was arrested and charged with failing to identify himself, operating an uninsured/unregistered vehicle, and operating with a suspended license.

At the time of his arrest, Guzman possessed a license to carry firearms ("LTC") issued by the Haverhill Police Department.[3] After his arrest, Guzman's LTC was suspended, and he was required to surrender all his firearms to the Haverhill Police Department. Thus, on July 17, 2024, Guzman appeared at the Haverhill Police Department to surrender his firearms. Among the items he turned over to the police were a Daniel Defense .556 caliber AR-15 style rifle (the "Daniel Defense AR-15")[4] and five large capacity feeding devices or magazines (the "Magazines").[5] Thus, following the surrender of these items, Guzman was charged with the two indictments currently at issue.

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[2] Guzman was not identified as the operator of the motor vehicle until after his arrest.

[3] Guzman's LTC was a "Class A Large Capacity License to Carry Firearms," pursuant to G. L. c. 140, § 131. The date of issue was identified as March 12, 2024, and the expiration date was identified as March 5, 2030. The LTC did not identify what specific weapons, categories of weapons, or weapons-related items it authorized Guzman to keep in his possession.

[4] The record currently before the court does not reflect that the Daniel Defense 5.56 caliber rifle is an "AR-15"; however, the court takes judicial notice of this fact as the weapon is characterized as such on the manufacturer's website, see www.danieldefense.com (last visited Jun. 16, 2025), and it is offered for sale as an AR-15 at various retail locations.

[5] Before the grand jury, Haverhill Police Officer Jospeh Benedetti ("Officer Benedetti") testified that the Daniel Defense AR-15 had a collapsable stock (a telescope stock), pistol grip, and removable muzzle, making it an illegal assault weapon. Officer Benedetti also testified that the Magazines were high capacity feeding devices because they could hold more than ten rounds of ammunition, and thus, the Magazines were also illegal. Guzman does not directly concede that the Daniel Defense AR-15 is an assault weapon or that the Magazines are high capacity feeding devices; however, in the Motion to Dismiss he refers to the weapon as the "Daniel Defense AR-15," and he does not challenge the statutory definitions for "[a]ssault weapon" and "[l]arge capacity feeding device," which are set forth in G. L. c. 140, § 121.

DISCUSSION

As stated above, Guzman argues that the indictments asserted against him should be dismissed because the statutes upon which the indictments rest are unconstitutional, both facially and as applied to him. Below, the court addresses separately the charges related to G. L. c. 140, § 131M, and G. L. c. 269, § 10(m), as they implicate different issues.

I. Indictment Charging Guzman with Illegal Possession of a Large Capacity Feeding Device

General Laws c. 269, § 10(m), prohibits the possession of a large capacity feeding device by anyone who does not have a valid license to carry firearms under section 131 or 131F of G. L. c. 140.[6] Guzman argues that the court should dismiss the indictment charging him with possession of the Magazines in violation of this provision because it is unconstitutional. The court, however, disposes of this indictment without reaching the constitutional issue, see *Dinkins* v. *Massachusetts Parole Bd.*, 486 Mass. 605, 616 (2021) (noting that court "'do[es] not decide constitutional questions unless they must necessarily be reached'") (citation omitted), because it concludes that the Commonwealth has failed to meet its burden to demonstrate that the grand jury heard sufficient evidence to find that there was probable cause to believe Guzman violated G. L. c. 269, § 10(m).[7]

"Although, in general, a court will not inquire into the competency or sufficiency of the evidence before the grand jury, . . . [a]t the very least, the grand jury must hear enough evidence

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[6] General Laws c. 269, § 10(m) was amended by St. 2024, c. 135, § 125, effective October 2, 2024.

[7] Both G. L. c. 269, § 10(m) and G. L. c. 140, § 131M make possession of high capacity feeding devices unlawful. Thus, based on Guzman's possession of the Magazines at issue in this case, the Commonwealth could have charged him under G. L. c. 140, § 131M; however, it chose to charge Guzman under the former provision. Thus, the court's analysis is confined to whether the grand jury heard sufficient evidence to establish probable cause to believe Guzman violated G. L. c. 269, § 10(m).

to establish the identity of the accused and to support a finding of probable cause to arrest the accused for the offense charged." *Commonwealth* v. *Reyes*, 98 Mass. App. Ct. 797, 801 (2020) (quotations and citations omitted). "Probable cause is a 'considerably less exacting' standard than that required to support a conviction at trial." *Commonwealth* v. *Stirlacci*, 483 Mass. 775, 780 (2020), quoting *Commonwealth* v. *O'Dell*, 392 Mass. 445, 451 (1984). Nevertheless, "'[i]t requires "sufficient facts to warrant a person of reasonable caution in believing that [the identified offense] . . . has been committed[.]"'" *Reyes*, 98 Mass. App. Ct. at 801, quoting *Stirlacci*, 483 Mass. at 780, quoting *Commonwealth* v. *Levesque*, 436 Mass. 443, 447 (2002).

The Commonwealth asserts that Guzman violated G. L. c. 269, § 10(m), because he had possession of various large capacity feeding devices, i.e., the Magazines. This alone, however, is insufficient to establish probable cause to believe he violated the statute, especially since section 10(m) provides instances where possession of the Magazines could be deemed lawful.

General Laws c. 296, § 10(m) states, in pertinent part, that "any person . . . who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to carry firearms under section 131 or 131F of chapter 140 . . . shall be punished[.]" It is, however, undisputed that Guzman had a valid LTC, and that, on its face, this LTC was a "Class A Large Capacity License to Carry Firearms" issued pursuant to G. L. c. 140, § 131. In the court's view, under the plain language of the statute, because Guzman had a valid LTC issued in accordance with G. L. c. 140, § 131, the Commonwealth has not demonstrated that the grand jury heard sufficient evidence to conclude that Guzman violated G. L. c. 269, § 10(m).

The Commonwealth argues that Guzman violated G. L. c. 269, § 10(m), because nobody can lawfully possess a large capacity feeding device. More precisely, it argues that (with

exceptions for law enforcement and certain gun dealers not applicable here) nobody can obtain a license which permits them to possess or carry a large capacity feeding device; thus, Guzman's possession of the Magazines at issue in this case was unlawful. The Commonwealth's position is contrary to the plain language of the statute, which imposes punishment only on those who do not posses a valid license to carry firearms issued pursuant to G. L. c. 140, § 131 or § 131F, which Guzman clearly possessed. And the Commonwealth references no case law in support of its interpretation.

Even if the court were to agree with the Commonwealth's interpretation of G. L. c. 269, § 10(m), the interpretation creates an ambiguity with regards to legislative intent. And, that ambiguity should not be applied to the detriment of Guzman. Instead, "[t]he rule of lenity requires [the court] . . . to give a defendant 'the benefit of any rational doubt' where [it] conclude[s] that a 'statute is ambiguous or [it is] . . . unable to ascertain the intent of the Legislature.'" See *Commonwealth* v. *Rossetti*, 489 Mass. 589, 590 (2022) quoting *Commonwealth* v. *Montarvo*, 486 Mass. 535, 542 (2020); see also *Commonwealth* v. *Carrion*, 431 Mass. 44, 45-46 (2000). Applying this rule in the present matter, the court concludes that Guzman is entitled to the more favorable interpretation of G. L. c. 269, § 10(m), meaning he cannot be liable for violation of the provision where he had a valid LTC. See *Montarvo*, 486 Mass. at 542 (stating that, where one subsection of statute expressly prohibits one thing and another section does not, statute is ambiguous, and rule of lenity applies).

The Motion to Dismiss is **ALLOWED**, insofar as it seeks dismissal of the indictment charging Guzman with violation of G. L. c. 269, § 10(m).

II. Indictment Charging Guzman with Illegal Possession of an Assault Weapon

Next, Guzman argues that the court should dismiss the indictment charging him with unlawful possession of an assault weapon in violation of G. L. c. 140, § 131M, because this statute is unconstitutional on its face and as applied to the Daniel Defense AR-15.

A. The Massachusetts Ban, the Second Amendment, and the Current Jurisprudential Landscape

General Laws c. 140, § 131M (the "Massachusetts Ban"), prohibits the possession of "an assault weapon . . . that was not otherwise lawfully purchased on September 13, 1994."[8, 9] There is little question that the Daniel Defense AR-15 falls within the scope of the Massachusetts Ban. Guzman has not conceded this fact; however, he does not challenge the assertion that the Daniel Defense AR-15, which forms the basis for the indictment against him, meets the statutory definition for an "[a]ssault weapon," which is set forth in G. L. c. 140, § 121.[10] Thus, the only real question for the court is whether the Massachusetts Ban violates the Second Amendment to the United States Constitution.

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend II. Thus, the Second Amendment "elevates above all other interests the right

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[8] General Laws c. 140, § 131M was amended by St. 2024, c. 135, § 71, effective October 2, 2024. Guzman was arrested and charged before the amendment went into effect. Under either version of the statute, assault weapons are prohibited.

[9] The Daniel Defense AR-15 at issue in this case was not manufactured until 2002.

[10] The definition of "[a]ssault weapon" set forth in G. L. c. 140, § 121 was amended and changed to "[a]ssault-style firearm" by St. 2024, c. 135, § 16, effective October 2, 2024. The definition of "[a]ssault weapon" in use at the time of Guzman's arrest included "any of the weapons, or copies or duplicates of the weapons, of any caliber, known as . . . AR-15[.]"

of law-abiding responsible citizens to use arms in defense of hearth and home."[11] *District of Columbia* v. *Heller*, 554 U.S. 570, 635 (2008). Nevertheless, at least since 2018, the Supreme Judicial Court ("SJC") has held that the Massachusetts Ban does not offend the Second Amendment, and any challenge to its constitutionality has been rejected. See *Commonwealth* v. *Cassidy*, 479 Mass. 527, 540 (2018), and cases cited. Of course, the SJC's rejection of such challenges occurred prior to the United States Supreme Court's ("Supreme Court") decision in *New York Rifle & Pistol Assoc.* v. *Bruen*, 597 U.S. 1, 71 (2022).[12] However, even post-*Bruen* the Second Amendment's right "to keep and bear Arms" has never been without limits.

As the Supreme Court has explained, "[l]ike most rights, the right secured by the Second Amendment is not unlimited . . . . the right [is] not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626 (citation omitted). For example, longstanding laws forbidding the carrying of firearms in sensitive places such as schools and government buildings have been held to be consistent with the Second Amendment. See *Bruen*, 597 U.S. at 30. Thus, to determine whether a firearms regulation violates the Second Amendment, the Supreme Court developed a two-step inquiry. Under this approach, the court must first consider whether the Second Amendment's plain text covers the regulated conduct. *Id.* at 17. Thereafter, if "the Second Amendment's plain text covers

[11] This is an individual right, made applicable to the States via the Fourteenth Amendment. *McDonald* v. *Chicago*, 561 U.S. 742, 766-782 (2010).

[12] In *Bruen*, the Supreme Court held that the Second Amendment protects the rights of "law-abiding citizens" to carry firearms outside the home, and that the New York firearms licensing scheme, which required those seeking a firearms license, to show "particularized need" was unconstitutional. 597 U.S. at 71. This called into question the discretionary "may issue" language that appeared in the Commonwealth's then-existing firearm licensing scheme. *Id.* at 13-15. Thus, to conform with *Bruen*, the Massachusetts Legislature amended G. L. c. 140, § 131, to eliminate language that gave licensing authorities discretion to deny applicants, except in narrow circumstances based on objective and definite criteria. See St. 2022, c. 175, §§ 17B-22; see also *Commonwealth* v. *Donnell*, 495 Mass. 471, 478 (2025) (discussing post-*Bruen* action by the Massachusetts legislature).

an individual's conduct, the Constitution presumptively protects that conduct[,]" and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

The SJC has not considered the validity of the Massachusetts Ban since the Supreme Court announced its two-part inquiry in *Bruen.* However, the Massachusetts Ban and other similar bans on assault weapons have been considered by other courts. Some Federal District Courts are split on whether such bans are constitutional; however, the parties have not cited, and the court has not found, a single case from a Circuit Court of Appeals that has held a ban similar to the Massachusetts Ban unconstitutional. In fact, just recently, in *Capen* v. *Campbell*, the First Circuit Court of Appeals addressed the Massachusetts Ban, holding the Ban was likely both facially, and otherwise, constitutional.[13] 134 F.4th 660, 675-677 (1st Cir. 2025). Nevertheless, in the court's view, the precedential value of the First Circuit's decision in *Capen* is somewhat limited.

First, while decisions issued by the First Circuit are certainly persuasive, they are not binding on this court. See *Commonwealth* v. *Pon*, 469 Mass. 296, 308 (2014) ("[a]lthough [the Massachusetts state courts] . . . give respectful consideration to such lower Federal court decisions as seem persuasive," even on questions of Federal law, "[the state courts] are not bound by decisions of Federal courts except the decisions of the United States Supreme Court") (quotations and citations omitted). For example, in criminal cases, the state courts are mindful of the opinions of the First Circuit on questions of Federal constitutional law because a state court's decision may be reviewed in proceedings before a United States District Court that would be

[13] Most significantly for current purposes, the First Circuit rejected arguments that the Massachusetts Ban was likely unconstitutional as applied to the AR-15. *Capen,* 134 F.4th at 675-677.

bound by authority from the First Circuit. See *Commonwealth* v. *McAfee*, 63 Mass. App. Ct. 467, 477 n.11 (2005), citing *Commonwealth* v. *Montanez*, 388 Mass. 603, 604 (1983). Nevertheless, even if an opinion from the First Circuit addresses an issue of Federal constitutional law, the opinion is not binding precedent for this court. See *Commonwealth* v. *Pearson*, 96 Mass. App. Ct. 299, 304 n. 9 (2019) (stating "[w]e are not bound by the analysis of constitutional principles applied by the United States Court of Appeals for the First Circuit"), *S.C.*, 484 Mass. 1104 (2020) (granting further appellate review on another ground).

Second, the authoritative value of the *Capen* decision is complicated by the fact that, technically, the First Circuit did not hold that the Massachusetts Ban is constitutional. *Capen* was decided in the context of a motion for preliminary injunction on a civil complaint seeking a declaratory judgment that the Massachusetts Ban was unconstitutional. As such, the First Circuit was not required to make a final determination as to the constitutionality of the Massachusetts Ban. Instead, the First Circuit held only that the appellants failed to show that they were likely to succeed in proving that the Massachusetts Ban was unconstitutional, i.e., the showing necessary for them to prevail on their declaratory judgment claim. In doing so, the First Circuit went through the *Heller/Bruen* analysis and concluded that, insofar as it applied to AR-15 assault rifles, the Massachusetts Ban was likely to be deemed "consistent with the Nation's historical tradition of firearm regulation." *Capen*, 134 F.4th at 675-676 (quotations and citation omitted).

Perhaps, this is a distinction without a difference, as it is quite clear from the First Circuit's decision in *Capen*, that it believes complete bans of AR-15s are constitutional. This court, however, cannot ignore the complicated jurisprudential landscape on this issue. Nor can it ignore the clear signals from the Supreme Court that the issue of complete bans on the possession of AR-15s is likely to come to a head sooner rather than later, and that the First

Circuit's opinion on the issue, as set forth in *Capen*, may be at odds with the Second Amendment. See *Snope* v. *Brown*, U.S., No. 24-00203, 2025 WL1550126, at *1 (Jun. 2, 2025) (Kavanaugh, J.) (denying petition for writ of certiorari, but noting that because "millions of Americans own AR-15s and . . . a significant majority of the States allow possession of those rifles," those who seek to challenge bans prohibiting possession of AR-15s "have a strong argument that AR-15s are in 'common use' by law-abiding citizens and therefore are protected by the Second Amendment"); *id.* at *2 (Thomas, J., dissenting) (referencing the test announced in *Bruen*, and stating that "[i]t is difficult to see how . . . [a] categorical prohibition on AR-15s passes muster under this framework").

In *Snope,* the Supreme Court denied a petition for a writ of certiorari on the very question with which this court is now grappling; namely, whether a state statute that completely bans the possession of AR-15s runs afoul of the Second Amendment. And while the Supreme Court denied the petition, three of the nine justices voted to hear the petition, and a fourth, Justice Kavanaugh, made it quite clear that he is likely to be the fourth vote required for a full court hearing should a similar petition come before the court in the near future. This, of course, is an inevitability as the matter is currently percolating through various circuit courts and will not be ignored by the Supreme Court for long. See *Capen*, 134 F.4th at 675-677; see also *Association of N. J. Rifle & Pistol Clubs, Inc.* v. *Platkin*, 742 F. Supp. 3d 421 (D. N.J. 2024), appeal docketed, No. 24-02415 (3rd Cir. Aug. 9, 2024); *Viramontes* v. *County of Cook*, No. 21–CV–4595, 2024 WL 897455 (N.D. Ill., Mar. 1, 2024), affirmed by *Viramontes* v. *Cook County*, No. 24-CV-01437, 2025 WL 1553896 (7th Cir. Jun. 2, 2025); *National Assn. for Gun Rights* v. *Lamont*, 685 F. Supp.3d 63 (D. Conn. 2023), appeal docketed, No. 23-01162 (2d Cir. Aug. 16, 2023); *Miller*

v. *Bonta*, 699 F. Supp. 3d 956 (S.D. Cal. 2023), appeal docketed, No. 23–02979 (9th Cir. Oct. 23, 2023).

This court is fully aware that the SJC previously held the Massachusetts Ban constitutional in *Cassidy,* and that given the First Circuit's reasoning in *Capen*, it is likely to adopt, or feel obliged to defer to, the First Circuit's opinion on this issue of Federal constitutional law. This court is also cognizant that, although several justices of the Supreme Court have made it clear (without an official ruling of course) that an outright ban on AR-15s is unconstitutional, that does not mean that a majority of the justices will agree with that outcome when the issue is finally before the Court for a formal decision. Nevertheless, in the circumstances of this case, it would be improper to simply defer to the First Circuit. Unlike civil plaintiffs seeking a declaratory judgment, Guzman faces the possibility of being convicted of a criminal offense that carries, among other things, a punishment of imprisonment for not less than one year nor more than ten years. The consequences for Guzman are real, and serious. It would be unjust to allow Guzman to suffer such consequences, where it appears likely that, in the not-too-distance future, the Supreme Court is likely to hold an outright ban on the possession of AR-15s unconstitutional. Thus, the court feels compelled to consider the issue independent of the First Circuit's opinion on the matter.

B. Guzman's Facial Challenge to the Massachusetts Ban

As mentioned, Guzman challenges the Massachusetts Ban both facially and as-applied to the Daniel Defense AR-15 at issue in this case. Before addressing the latter, the court rejects his facial challenge with minimal analysis.

A facial constitutional challenge is a claim that a law "is unconstitutional in all its applications." *Bucklew* v. *Precythe*, 587 U.S. 119, 138 (2019). "This is the 'most difficult

challenge to mount successfully,' because it requires . . . [the challenger] to 'establish that no set of circumstances exists under which the . . . [law] would be valid.'" *United States* v. *Rahimi*, 602 U.S. 680, 693 (2024), quoting *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). Put differently, it is "the weakest form of challenge, and the one that is the least likely to succeed," because a court "may interpret a statute to set forth considerations to clarify and specify, and, where necessary, to narrow, the statute's terms in order that it may be held constitutional." *Blixt* v. *Blixt*, 437 Mass. 649, 652 (2002) (citations omitted).

In the present matter, while Guzman asserts that the Massachusetts Ban is unconstitutional on its face, he focuses his entire argument on the constitutionality of the Ban solely in relation to his possession of the Daniel Defense AR-15 that forms the basis of the indictment against him in this case. He has not addressed any other firearms or devices that are prohibited under the Massachusetts Ban. Such a narrowly focused argument is not sufficient to mount a successful facial challenge of the Massachusetts Ban.

In *Capen*, the First Circuit explained that, "[i]f the Massachusetts Ban validly restricts at least one type of weapon, [challengers] . . . cannot make th[e] [required] no-set-of-circumstances showing [necessary for a successful facial challenge]." 134 F.4th at 669. Thereafter, because the Court found that the Massachusetts Ban's prohibition against possession of AR-15s was likely constitutional, i.e., because it found that circumstances existed where the Massachusetts Ban was likely valid, it rejected the appellants' facial challenge. This does not, however, mean that the inverse is true. The fact that a ban on AR-15s may be unconstitutional does not necessarily mean that the Massachusetts Ban's prohibition against other weapons or firearms-related devices is likewise unconstitutional. See, e.g., *Bianchi* v. *Brown*, 111 F.4th 438, 452-453 (4th Cir. 2024)

(rejecting facial challenge of analogous Maryland assault weapons ban because ban prohibited many "dangerous and unusual" weapons not "in common use," as permissible under *Bruen*).

Based on the record currently before the court, Guzman's facial challenge of the Massachusetts Ban must be rejected. He has not demonstrated that there are no circumstances under which the Massachusetts Ban is valid. In fact, in the court's view, there are likely provisions of the Massachusetts Ban that apply to dangerous and unusual weapons or devices the possession of which may be validly restricted.[14]

C. Guzman's As-Applied Challenge to the Ban on AR-15s

Now, the court turns to Guzman's as-applied constitutional challenge, pursuant to which he argues that the Massachusetts Ban is unconstitutional as applied to his possession of the Daniel Defense AR-15 at issue in this case.

Any statute that aims to regulate firearms must be analyzed under the framework established by the Supreme Court in *Heller/Bruen*. Under this framework, Guzman is required to make an initial showing that the "Second Amendment's plain text covers the conduct" at issue; namely, in this case, that the Second Amendment covers his possession of the Daniel Defense AR-15. *Bruen*, 597 U.S. at 17. If he makes that showing, the Constitution "presumptively protects" his possession of the Daniel Defense AR-15, and the burden shifts to the Commonwealth to justify its ban on AR-15s by demonstrating that the prohibition is consistent with the Nation's historical tradition of firearms regulation. *Id.* at 24. If the Commonwealth fails

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[14] For example, although the court has declined to consider the constitutionality of the Massachusetts Ban's prohibition against high capacity feeding devices, it is unlikely it would hold such a ban unconstitutional, as such devices are not covered by the plain text of the Second Amendment, see *Bruen*, 597 U.S., at 17, which protects an individual's right to keep and bear arms, which have long-been defined as "[w]eapons of offence, or armour of defence" and "thing[s] that a man wears for his defence, or takes into his hands, or useth in wrath to cast or strike another." *Heller*, 554 U.S. at 581; see also *Ocean State Tactical, LLC* v. *Rhode Island*, 95 F.4th 38, 52 (1st Cir. 2024) (holding similar Rhode Island ban on large capacity feeding devices constitutional under test announced in *Bruen*).

to make this showing, the Massachusetts Ban is unconstitutional, insofar as it applies to AR-15s. Below, the court addresses both inquiries.

1. Does the Plain Text of the Second Amendment Cover Guzman's Possession of the Daniel Defense AR-15?

The court concludes that Guzman has met his burden, at the first stage of the *Heller/Bruen* test, to show that his possession of the Daniel Defense AR-15 is presumptively protected by the Second Amendment.

In *Capen*, when the First Circuit found that the Massachusetts Ban was likely constitutional, it assumed, without deciding, that possessing an AR-15 fell within the scope of the Second Amendment's plain text. 134 F.4th at 668 (noting that it needed to consider only whether the Massachusetts Ban's prohibition against AR-15s was consistent with the country's historical tradition of firearms regulation, because the Commonwealth's success on this point would mean that those challenging the Massachusetts Ban would be unlikely to succeed on the merits, "whether or not the Second Amendment's plain text covers the use of assault weapons") (quotations and citations omitted). Here, the Commonwealth argues that the Daniel Defense AR-15 at issue in this case falls outside the scope of the protection afforded by the Second Amendment's plain text because AR-15s are not in common use for self-defense. Therefore, according to the Commonwealth, Guzman's possession of the Daniel Defense AR-15 is not within the historical understanding of a citizen's Second Amendment rights.

The court rejects the Commonwealth's assertion, as it conflates the two parts of the test established in *Heller/Bruen*, and it imposes on Guzman a burden at the first step of the analysis that he is not required to bear. More specifically, the Commonwealth's approach requires Guzman to establish that the Daniel Defense AR-15 is in common use for self-defense, but this is not required under the case law. Under *Heller/Bruen*, Guzman's only burden is to show that the

Daniel Defense AR-15 falls within the Second Amendment's definition of what constitutes "[a]rms. See *Bruen*, 597 U.S. at 17 (stating that, at first stage of analysis, challenger's burden is limited to showing that Second Amendment's plain text covers conduct at issue).[15] *Id.* at 343-370; see also *Heller*, 554 U.S. at 626-635; and *Rahimi*, 602 U.S. at 693-700.

In *Heller*, the Supreme Court held that, for purposes of the Second Amendment, the term "[a]rms" covers all "[w]eapons of offence, or armour of defence" and "thing[s] that a man wears for his defence, or takes into his hands, or useth in wrath to cast or strike another." *Heller*, 554 U.S. at 581. Further, the Court stated that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Id.* at 582; see also *Rahimi*, 602 U.S. at 691 ("the reach of the Second Amendment is not limited only to those arms that were existence at the founding") (citation omitted). As Justice Thomas recently stated, "AR-15s fall squarely within this category." *Snope*, 2025 WL 1550126 at *2 (Thomas, J., dissenting). Thus, Guzman's possession of the Daniel Defense AR-15 falls within the scope of conduct protected by the plain text of the Second Amendment.

2. Has the Commonwealth Shown That the Massachusetts Ban's Prohibition Against Possession of AR-15s is Consistent with the Nation's Historical Tradition of Firearms Regulation?

Having determined that Guzman's conduct is covered by the plain text of the Second Amendment, the court now turns to the more challenging consideration of whether the Commonwealth has demonstrated that a ban on AR-15s, such as the Daniel Defense AR-15, is

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[15] In fact, neither *Heller* nor *Bruen* (or, later, *Rahimi*) were decided based on an individual's failure to establish that the conduct at issue fell outside the scope of the Second Amendment. Rather, those cases were decided after the Supreme Court considered whether the State had met its burden to prove that the regulations at issue were historically justified. *Bruen*, 597 U.S. at 343-370; see also *Heller*, 554 U.S. at 626-635; and *Rahimi*, 602 U.S. at 693-700. Admittedly, *Heller*, *Bruen*, and *Rahimi*, considered various regulations applicable to handguns, and not assault weapons, but the distinction matters not for purposes of the plain text analysis required under the first part of the analysis outlined by the Supreme Court.

consistent with the nation's historical tradition of firearms regulation. See *Rahimi*, 602 U.S. at 692 ("[in accord with established precedent, the] appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin the Nation's regulatory tradition"), citing *Bruen*, 597 U.S. at 26-31.

The above inquiry requires the court to consider whether the Massachusetts Ban's prohibition against AR-15s "is 'relatively similar' to laws that our tradition [of firearms regulation] is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.*, quoting *Bruen*, 597 U.S. at 29. Determining "how and why" a law that regulates firearms burdens a citizen's right to armed self-defense is critical to determining the law's constitutionality. *Id.* "For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* The Massachusetts Ban's prohibition against AR-15s is obviously not one of those founding generation regulations. Nevertheless, the prohibition may still be deemed constitutional if it is sufficiently analogous to a historical precursor. *Id.* at 692-693 ("[t]he law must comport with the principles underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin'"), quoting *Bruen*, 597 U.S. at 30.

How, then, does the Massachusetts Ban's prohibition against AR-15s, like the Daniel Defense AR-15, burden a citizen's right to armed self-defense? The answer to this question seems obvious. The Massachusetts Ban includes a complete prohibition against an entire category of firearms. And, unlike other outright bans, such as longstanding prohibitions against the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of

firearms in sensitive places, see *Heller*, 554 U.S. at 627-627, the Massachusetts Ban prohibits all citizens from possessing an AR-15 under any circumstances.

The above conclusion is not to suggest that entire categories of weapons have never been banned. As the Supreme Court explained in *Heller*, the Nation has a long-standing "historic tradition of prohibiting the carrying of 'dangerous *and* unusual weapons.'" 554 U.S. at 570 (emphasis added) (citations omitted). However, "this is a conjunctive test[,]" *Caetano* v. *Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring), and while AR-15s may be classified as dangerous, they are certainly not unusual. "Americans today possess an estimated 20 to 30 million AR-15s[,]"and "AR-15s are legal in 41 of the 50 States[.]" *Snope*, 2025 WL 1550126 at *1 (Kavanaugh, J.).[16] Given the fact that AR-15-style assault rifles are in common use throughout the country, irrespective of the dangerousness question, the court questions whether any total ban on their possession can be constitutional. See *Caetano*, 577 U.S. at 417 (2016) (Alito, J., concurring) (declining to consider lower court's conclusion that stun guns are dangerous, since it already concluded stun guns were not unusual and "[a] weapon may not be banned unless it is *both* dangerous *and* unusual") (emphasis in original).

Nevertheless, several courts, including the First Circuit, have decided otherwise, concluding that a total ban on the possession of AR-15s is no burden on a citizen's right to self-defense, because there is no evidence that AR-15s are appropriate for use in self-defense. See, e.g., *Capen*, 134 F.4th at 670 (noting that Commonwealth submitted expert evidence "indicat[ing] that the AR-15 and other banned rifles offer limited self-defense utility). The

[16] See also, e.g., *Platkin*, 742 F. Supp. 3d at 433 (noting that, "[i]n 2018, an estimated five to ten million AR-15s were in civilian hands in the United States[,]" and that, "[a]s of 2022, it was estimated that there were around 24 million AR-15s and similar sports weapons in circulation"); *Bevis* v. *Naperville, Illinois*, 85 F.4th 1175, 1198 (7th Cir. 2023) (stating that one party's brief asserted "that at least 20 million AR-15s and similar rifles are owned by some 16 million citizens"); *Lamont*, 685 F. Supp. 3d at 95 (stating "24.6 million Americans have owned AR-15 or similar rifles").

Commonwealth relies strongly on this notion—that only those firearms that are in common use for self-defense are protected by the Second Amendment. And, while during its above discussion the court has already concluded that utility for purposes of self-defense is not a proper consideration at the first step of the *Heller/Bruen* analysis, it is certainly a relevant consideration when addressing the second part of the analysis.[17] Even then, however, the burden remains with the government. Thus, in this case, it rests with the Commonwealth to prove that AR-15s, such as the Daniel Defense AR-15 at issue in this case, are not in common use by citizens for purposes of self-defense. The Commonwealth has wholly failed to meet this burden.[18]

Certainly, the Commonwealth cites to *Bianchi* and *Capan*, to support its assertion that AR-15s have limited utility for self-defense, as those courts have found. See *Bianchi*, 111 F.4th at 459 (stating that AR-15s have little utility for self-defense because "[i]t is significantly less concealable than a handgun and much more difficult to carry while conducting daily activities), and *Capan*, 134 F.4th at 670 (acknowledging Commonwealth's firearms expert's assertion that "the AR-15 and other banned rifles offer limited self-defense utility" because "[t]he need for the rifle to be aimed and fired with two hands, [and] the ability of the ammunition to easily penetrate common household construction materials negates any perceived advantage over a handgun"). However, in this court's view, finding that a specific firearm is not particularly useful for self-

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[17] As the Supreme Court explained in *Bruen*, when examining "how and why" a regulation might burden a citizen's rights, "whether [the] modern [regulation] . . . impose[s] a comparable burden on the right of armed self-defense [as that imposed by a historical regulation] and whether that burden is comparably justified . . . [is the] 'central' consideration[][.]" 597 U.S. at 29; see also *Bianchi*, 111 F.4th at 502 (Richardson, J., dissenting) (explaining that "the 'common use' inquiry best fits at *Bruen*'s second step" because "that step concerns limitations drawn from historical regulations," and it is at that step where "the burden . . . fall[s] on the government to prove that the challenged regulation is relevantly analogous to our Nation's historical tradition of firearm regulation").

[18] See *supra* note 16, discussing statistics from cases from other jurisdictions addressing the prevalence of AR-15 ownership among Americans; see also *Snope*, 2025 WL 1550126 at *1 (Kavanaugh, J.) (stating "Americans today possess an estimated 20 to 30 million AR-15s").

defense purposes, is not the same as finding that citizens do not actually use that weapon for self-defense. And, as established by many other courts, the AR-15 is owned by millions of law-abiding Americans for self-defense, and other lawful purposes. See, e.g., *Snope*, 2025 WL 1550126 at *1 (Kavanaugh, J.) ("Americans today possess an estimated 20 to 30 million AR-15s[,]").[19] Moreover, in totally banning the possess of AR-15s, Massachusetts is an outlier, as the vast majority of States allow for the lawful possession of AR-15s. See *id.* ("AR-15s are legal in 41 of the 50 States"). Lastly, the First Circuit's emphasis on the AR-15s utility for self-defense interprets the Second Amendment, as well as the Supreme Court's precedents, too narrowly. Many firearms exist that are more suited for lawful purposes other than self-defense, such as target shooting or hunting; nonetheless, these weapons are protected by the Second Amendment.

This court certainly appreciates why the legislature passed the Massachusetts Ban and why Governor Mitt Romney signed it into law in 2004. It was intended "to protect the public from the danger caused by weapons that create a particular public safety threat." *Capen*, 134 F.4th at 671 (referencing press release that issued when the Massachusetts Ban was signed into law in 2004). The court is also mindful of "the contemporary and growing societal concern of mass shootings." *Id.* at 668. There is no question that protecting the public against such threats is an admirable goal. However, to uphold the Massachusetts Ban's outright prohibition against possession of an AR-15, the Second Amendment, and binding Supreme Court precedent, requires the Commonwealth to provide reference to an appropriate historical analogue. They have not done so.

As Justice Kavanaugh explained in *Snope*, very little distinguishes the AR-15-style weapons at issue in this case, from the handguns at issue in *Heller*:

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[19] See *supra* note 16, discussing statistics from cases from other jurisdictions addressing the prevalence of AR-15 ownership among Americans.

> [I]t . . . [is] analytically difficult to distinguish the AR–15s at issue here from the handguns at issue in Heller. AR–15s are semi-automatic, but so too are most handguns. (Semi-automatic handguns and rifles are distinct from automatic firearms such as the M-16 automatic rifle used by the military.) Law-abiding citizens use both AR–15s and handguns for a variety of lawful purposes, including self-defense in the home. For their part, criminals use both AR-15s and handguns, as well as a variety of other lawful weapons and products, in unlawful ways that threaten public safety. But handguns can be more easily carried and concealed than rifles, and handguns—not rifles—are used in the vast majority of murders and other violent crimes that individuals commit with guns in America.

Snope, 2025 WL 1550126 at *2 (Kavanaugh, J.).

Under the circumstances at issue in this case, the court fails to see how the Massachusetts Ban's outright prohibition on possession of an AR-15 is consistent with our Nation's tradition of firearms regulations. It simply cannot pass constitutional muster. Id. at *2 (Thomas, J., dissenting) ("[i]t is difficult to see how Maryland's categorical prohibition on AR-15s passes muster under th[e] [framework announced in *Bruen*]").

ORDER

For the foregoing reasons, Guzman's Motion to Dismiss is **ALLOWED**. This order, however, will be stayed for thirty days.

SO ORDERED.

Salim Rodriguez Tabit
Associate Justice of the Superior Court

Dated: June 24, 2025

14

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. ESCR2024-00474

COMMONWEALTH

vs.

JOSHUA GUZMAN

SUMMARY DECISION AND ORDER ON COMMONWEALTH'S MOTION TO RECONSIDER (PAPER NO. 12)

On November 14, 2024, the defendant, Joshua Guzman ("Guzman"), was indicted for unlawful possession of an assault rifle, in violation of G. L. c. 140, § 131M, and unlawful possession of a large capacity feeding device, in violation of G. L. c. 269, § 10(m). Shortly thereafter, on December 11, 2024, Guzman filed the Defendant's Motion to Dismiss (Paper No. 2), arguing that G. L. c. 140, § 131M and G. L. c. 269, § 10(m) were unconstitutional. After hearing and consideration, on June 24, 2025, the court (Tabit, J.) issued the Memorandum of Decision and Order on Defendant's Motion to Dismiss (the "Memorandum of Decision") (Paper No. 10). Therein, the court concluded that G. L. c. 140, § 131M and G. L. c. 140, § 121, i.e., the "Massachusetts Assault Weapons Ban," violates the Second Amendment to the United States Constitution as applied to the Daniel Defense AR-15 rifle (the "AR-15"), which formed the basis of the indictment against Guzman.[1] This matter is now before the court on the Commonwealth's Motion to Reconsider (the "Motion") (Paper No. 12), which seeks reconsideration of this ruling.

[1] The court did not reach the constitutionality of G. L. c. 269, § 10(m) because it concluded that the Commonwealth had not met its burden to demonstrate that the grand jury heard sufficient evidence to find that there was probable cause to believe Guzman violated the statute.

After consideration of the parties' arguments and review of the applicable legal authorities, for the reasons set forth below, the Motion is **DENIED**.

Massachusetts R. Crim. P. 13(a)(5) empowers a judge to reconsider a motion which has been heard and denied upon a showing of "substantial justice." In this case, the Motion expands upon the arguments that the Commonwealth originally made in opposition to Guzman's request for dismissal, and there is nothing in the Motion that was not known when this matter was initially before the court. However, Rule 13(a)(5) "is not limited to instances where there are allegations of new or additional grounds that could not have been reasonably known when the original motion was filed." *Commonwealth* v. *Lugo*, 64 Mass. App. Ct. 12, 14 (2005), citing *Commonwealth* v. *Haskell*, 438 Mass. 790, 792 (2003). Instead, a judge always has the power to reconsider his or her own decisions during the pendency of a case. *Haskell*, 438 Mass. at 792; see also *Commonwealth* v. *Downs*, 31 Mass. App. Ct. 467, 469 (1991) ("[j]udges are not condemned to abstain from entertaining second thoughts that may be better ones"). Ultimately, whether to do so or not is a matter of judicial discretion, and a reviewing court will disturb a judge's decision on a motion pursuant to Rule 13(a)(5) only where there has been an abuse of discretion. See *Commonwealth* v. *Mitchell*, No. 24-P-302, 105 Mass. App. Ct. 1130, 2025 WL 1502180, at *3 (May 27, 2025) (Unpublished M.A.C. Rule 23.0).

Here, given the nature of the issues raised, along with the well-taken point that the considered judgment of the Massachusetts citizenry though its elected representatives should not be easily dismissed, the court has taken a second look at the Commonwealth's arguments. Such consideration, however, does not require a point-by-point rebuttal, as the court has already addressed many of the issues the Commonwealth raises in the Memorandum of Decision. Further, the court is cognizant that:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

West Virginia State Bd. of Educ. v. *Barnette*, 319 U.S. 624, 638 (1943). With these principles in mind, below, the court briefly addresses the Commonwealth's primary arguments.

First, the Commonwealth argues that, in *Commonwealth* v. *Cassidy*, 479 Mass. 527, 540 (2018), the Supreme Judicial Court ("SJC") held that the Massachusetts Assault Weapons Ban is constitutional because assault weapons are beyond the scope of Second Amendment protection.[2] And that this holding is binding on this court, regardless of decisions by the United States Supreme Court, which might call into question such a holding. Of course, this is axiomatic, and if *Cassidy* had actually held that the Massachusetts Assault Weapons Ban was unconstitutional as-applied to Guzman's possession of the AR-15, the Memorandum of Decision would have been drafted in short order. See *Commonwealth* v. *Vasquez*, 456 Mass. 350, 356 (2010) (stating that SJC is highest appellate authority in Commonwealth and thus, its decisions are conclusive on all trial and appellate courts in Massachusetts). *Cassidy*, however, did no such thing. In fact, in the court's view, the Commonwealth's interpretation of the SJC's holding in *Cassidy* is entirely too broad.

Cassidy held only that G. L. c. 140, § 131M was not unconstitutionally vague, and that the Massachusetts Assault Weapons Ban, as a whole, did not violate the Second Amendment, stating only that "[t]he assaults weapon statute under which the defendant was convicted . . . is

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[2] Put differently, the Commonwealth appears to argue that, in *Cassidy*, the SJC determined that *all* assault weapons fall outside the scope of the protections afforded by the Second Amendment.

not prohibited by the Second Amendment, because the right 'does not protect weapons typically possessed by law-abiding citizens for lawful purposes.'' *Cassidy*, 479 Mass. at 540, quoting *District of Columbia* v. *Heller*, 554 U.S. 570, 625 (2008). Essentially, in *Cassidy*, the SJC rejected a facial challenge to the constitutionality of the Massachusetts Assault Weapons Ban. *Cassidy*, however, did not address an as-applied challenge to the constitutionality of banning law abiding citizens from possessing AR-15s, which is the issue in this case.[3] In fact, the SJC specifically pointed out that the defendant in *Cassidy* was not entitled to make an as-applied challenge and thus, such a challenge was not before it. *Id.* at 539 n.10. Thus, the *Cassidy* decision is not binding on this court's resolution of Guzman's as-applied challenge.

Second, as the Commonwealth did in its original opposition to Guzman's request for dismissal, it urges this court to adopt the reasoning of the Fourth Circuit Court of Appeals in *Bianchi* v. *Brown*, 111 F.4th 438, 452-453 (4th Cir. 2024). In fact, much of the substantive argument set forth in the Motion is based on the Commonwealth's whole cloth adoption of the Fourth Circuit's reasoning.

In *Bianchi*, the Fourth Circuit determined that AR-15s are beyond the scope of the protections afforded by the Second Amendment, and that a ban on such weapons falls squarely within our country's historical tradition of firearms regulation. This court addressed these arguments in the Memorandum of Decision, and while the Motion further elucidates the Commonwealth's position, nothing in the Motion convinces the court that its original analysis of the *Bianchi* case was erroneous.

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[3] The Commonwealth correctly points out that, in the Memorandum of Decision, the court stated that this case involves whether a "complete prohibition against an entire category of firearms" is constitutional.

In particular, the court takes issue with the Fourth Circuit's conclusion that the AR-15 falls outside the scope of the Second Amendment. As addressed in the Memorandum of Decision, at the first stage of the two-part *Heller/Bruen* test, Guzman's only burden is to show that the AR-15 falls within the Second Amendment's definition of what constitutes "[a]rms." See *New York Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1, 17 (2022) (stating that, at first stage of analysis, challenger's burden is limited to showing that Second Amendment's plain text covers conduct at issue). The notion that, at the first stage of the analysis, the court should look beyond the plain text of the Second Amendment to determine whether possession of the AR-15 is protected by the constitution is antithetical to well-established principles of constitutional interpretation. See *United Sates* v. *Rahimi*, 602 U.S. 680, 715 (2024) (Kavanaugh, J., concurring) ("[t]he first and most important rule in constitutional interpretation is to heed the text").

Third, the Commonwealth argues that the court erred in determining that only firearms that are both "dangerous *and* unusual" may be banned. More precisely, according to the Commonwealth, it is not settled that that the phrase "dangerous and unusual" represents a conjunctive test. While somewhat compelling, ultimately, the court finds the Commonwealth's assertion unpersuasive. As the court stated in the Memorandum of Decision, in his concurrence in *Caetano* v. *Massachusetts*, Justice Alito took pains to point out that "this is a conjunctive test[,]" and "[a] weapon may not be banned unless it is both dangerous and unusual." 577 U.S. 411, 417 (2016) (Alito, J., concurring). This assertion is consistent with the language used in *Heller*, wherein the United States Supreme Court stated that the Second Amendment protects firearms that are not "dangerous *and* unusual," *Heller*, 554 U.S. at 627 (emphasis added), and on this point, the court "assumes that the Supreme Court does not use language frivolously" and

that, "it says what it means and it means what it says." *Miller* v. *Bonta*, 699 F. Supp. 3d 956, 970 (S.D. Cal. 2023) (discussing Supreme Court's use of phrase "dangerous and unusual").

ORDER

For the reasons explained above, it is hereby **ORDERED** that the Commonwealth's Motion to Reconsider (Paper No. 12) is **DENIED**.

SO ORDERED.

Dated: August 14, 2025

Salim Rodriguez Tabit
Justice of the Superior Court