

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12597

COMMONWEALTH OF MASSACHUSETTS,
Appellee

v.

ARSIMENDY ESPINAL
Defendant-Appellant

On Appeal from a Judgment of the Lawrence District
Court

**AMICUS BRIEF OF
LAWYERS FOR CIVIL RIGHTS, CENTRO PRESENTE AND THE
BRAZILIAN WORKERS CENTER IN SUPPORT OF APPELLANT**

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November 26, 2018

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STATEMENT OF THE ISSUES

Whether the trial judge wrongly denied the defendant's request for a collective voir dire question regarding the defendant's inability to speak English?

As stated herein, amici Lawyers for Civil Rights ("LCR"),¹ Centro Presente and the Brazilian Workers Center (collectively "Amici"), submit that the trial court erred in denying defense counsel's request that the jury pool be asked a question directed at identifying whether any of the prospective jurors might be biased against the defendant because the he was not a native English speaker and required the help of an interpreter. The risk of bias in such a situation is substantial, and courts have repeatedly recognized the importance of screening juries for biases in criminal proceedings. Here, the trial court denied defendant's reasonable and unopposed request for the proposed question to the panel of potential jurors, without providing any explanation for the denial, and even though the Commonwealth did not object to the proposed *voir dire* question.

¹ Formerly known as "Lawyers' Committee for Civil Rights."

This Court has recognized the importance of guarding against potential discriminatory biases in jury panels based on ethnicity and race. See, e.g., Commonwealth v. Long, 419 Mass. 798, 803-04 (1995). Preventing such discrimination is particularly important in jurisdictions like the Commonwealth, which has a very large majority of persons sitting on juries that are white, while many defendants are persons of color or of non-English speaking origin.² Amici submit that the trial court here erred in not asking the prospective jurors whether they would hold any bias against the defendant due to his lack of facility with the English language and his need to use an interpreter. No harm could have been caused by asking the jurors such a question, and there is significant potential for harm in not asking. Questions of bias against non-English speakers root

² A 2011 United States Census survey indicates that a fourth of all Spanish speaking households did not speak English well or at all. Ryan, C., Language use in the United States: 2011. American community survey, US Census Bureau (2013), available at <https://www.census.gov/library/publications/2013/acs/acs-22.html>. The Bureau of Justice Statistics reports that Hispanics comprise 22% of the prison population, with non-whites comprising only 32% of the prison population. Carson, E., Prisoners in 2013, U.S. Department of Justice (2014), available at <https://www.bjs.gov/content/pub/pdf/p13.pdf>.

out racial, anti-immigrant, and ethnic bias in the jury, and addressing this bias is a natural extension of the same principles this Court has long recognized in ensuring juries fairly evaluate culpability.

STATEMENT OF INTEREST OF AMICUS CURIAE

Lawyers for Civil Rights (LCR) has an interest in this case because LCR's mission is to foster equal opportunity and fight discrimination on behalf of people of color and immigrants. LCR engages in creative and courageous legal action, education, and advocacy, in collaboration with law firms and community partners. LCR has a strong interest in eliminating bias in all judicial proceedings, but particularly criminal proceedings where bias has long been an entrenched problem that has caused harsh disproportional impacts for communities of color. LCR regularly advocates for criminal justice reform to reduce barriers to justice for people of color, immigrants, and low income individuals (See e.g., Commonwealth v. Buckley, 478 Mass. 861 (2017); Commonwealth v. Vallejo, 480 Mass. 1001 (2018)).

Centro Presente also has an interest in this case. Established in 1981, Centro Presente is a member driven, state-wide organization dedicated to the self-

determination and self-sufficiency of the Latin American immigrant community of Massachusetts. Through the integration of community organizing, leadership development and basic services, Centro Presente strives to give its members a voice and to build community power. Centro Presente is committed to ending barriers to justice for its members, primarily, immigrants and non-English speakers.

The Brazilian Worker Center also has an interest in this case. The Brazilian Worker Center is a grassroots, community-based, non-profit worker center that represents, and organizes the Brazilian and wider immigrant community to defend and advocate for their rights. As part of its mission to further social justice for Brazilian and immigrant workers, and in solidarity with other affected communities, the Center opposes potential bias in all judicial proceedings.

STATEMENT OF THE CASE

The trial of this case took place in Lawrence District Court, in Essex County, before Judge Michael A. Uhlarik. The defendant in this case, Mr. Arismendy Espinal, a U.S. citizen, is a native Spanish speaker and a resident of Lawrence. He required an interpreter to assist him in understanding the

proceedings and testimony at trial, where he was being tried for indecent assault and battery on a child. He was ultimately found guilty by the jury and was thereafter sentenced to a prison term, with a condition of probation that would require him to register as a sex offender and wear a GPS tracking device. The complaining witness, who was a minor at the time of the alleged assault and at trial, testified in English. The trial was conducted in English.

Before the trial started, defense counsel requested that the Court ask the jury pool a number of *voir dire* questions, including the following question: "Do you have any problem with a defendant that requires the services of a Spanish-speaking interpreter?" Record Appendix for the Defendant, R. 10. At the pre-trial conference on June 28, 2017, the Court did not mention this requested instruction when it listed those questions submitted by the parties that he would read to the pool. R-8.³

Defense counsel then raised the issue about the proposed panel question regarding defendant's use of

³ A copy of the trial transcript is included in the Record Appendix at R-8.

an interpreter, stating to the Court: "I do think that the question about a witness or a defendant that requires the services of the Spanish-speaking interpreter is important because there's going to be various witnesses that will have to use an interpreter. I know one of my witnesses will have to use an interpreter, and I assume that at least one of the Commonwealth's witnesses will have to use an interpreter." R-9, lines 18-25. The Court: "What's the concern?" Defense counsel: "The concern is a racial bias, or some sort of ethnic bias. There's a lot of people that believe that if you're in this country and you don't speak English, that you've done something wrong, period. My client is a naturalized citizen of the United States. I think that is a huge bias." R-10, lines 2-7.

The judge then denied the request without explanation, stating only: "No. I am not going to give it to you." R-10, line 8.

Defense counsel responded: "Your Honor, I would object under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, Articles 12 and 14 of the Massachusetts Declaration of Rights. I think that racial bias is something that should be

explored when the defendant is of a minority race, in this case, Latino."

The court then asked: "Is the complainant a different ethnicity?"

Defense counsel: "No."

The court: "Okay. No. I'm not going to give it [to] you. Anything else you want to argue?" R-10, lines 16-20.

The court never explained what relevance the ethnicity of *the complainant* had to whether the potential *jurors* might have a bias against the defendant.

The Commonwealth's brief specifically acknowledges that "The prosecutor did not object at any time to the defendant's request (TR I/22-24)." Commonwealth Br. at 4.

The court thereafter asked ten questions to the *venire* panel as a whole. The questions did not include the request at issue here. R-11 to R-13. The court asked the jurors generally about potential bias or prejudice in Question Four: "[A]re any of you aware of any bias or prejudice that you have toward either the defendant or the prosecution? If so, please raise your hand." No hands were raised. R-11,

lines 11, 20-23. Subsequently, the court questioned each of the individual jurors separately. The court asked each prospective juror: "[I]s there anything about this charge that would make it difficult for you to be impartial." *E.g.*, R-14, lines 11-13. The jurors who were ultimately seated all answered "no" to this question.

Mr. Espinal was found guilty.

ARGUMENT

I. Courts Across the Country Have Recognized the Importance of Exploring Foreign Language Bias During Jury Selection

Hostile attitudes towards persons who are not proficient in English can come to the fore in the charged environment of the courtroom and infect the ability of some jurors to remain unbiased in their evaluation of the evidence. The United States Supreme Court recognized this power of language in the criminal context over 25 years ago. Hernandez v. New York, 500 U.S. 352, 371 (1991). Although Hernandez presented a different question - namely, whether peremptory challenges of bilingual jurors are permissible on the ground that such jurors might not accept the official interpreter's translations - the Hernandez Court highlighted the special ability of

language differences to serve as a "source of division" in jury proceedings: "Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility". *Id.* at 371. While the Supreme Court declined to find clear error in the state trial court's determination that exclusion of bilingual jurors amounted to ethnic discrimination, the holding in Hernandez makes clear that "[i]t may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis." *Id.* at 354.

Due to these strong associations with race and ethnicity, numerous courts have recognized that juror attitudes regarding linguistic proficiency are an appropriate and necessary subject of questioning during jury selection. See, e.g., State v. Gomez Garcia, 904 N.W.2d 172, 184 n. 9 (Iowa 2017) (discussing cases which "demonstrate the importance of exploring foreign language bias during jury selection"); Diaz v. State, 743 A.2d 1166, 1173 (Del.

1999) (“... English-only speaking jurors should be asked during *voir dire* if the fact that some testimony would be given in a language other than English would influence them in any way”).

A defendant’s use of an interpreter at trial indicates a defendant’s inability to speak English to the jury even if the defendant never testifies at trial. See State v. Acevedo, 2009 WL 2357163, at *5 (Ariz. Ct. App. July 31, 2009) (potential jurors who indicated that they might be biased against Defendant because of his use of an interpreter excused for cause; remainder of venire questioned about ability to remain impartial while interpreter was present).

Further, because questions about a potential juror’s attitudes towards non-English speakers can be highly probative of racial or ethnic bias, courts, including this Court, have recognized the desirability of a policy of liberal admissibility of questions concerning these attitudes at *voir dire*. See Hernandez v. State, 357 Md. 204, 232 (1999) (“Where a *voir dire* question has been properly requested and directed to bias against the accused’s race, ethnicity, or cultural heritage, the trial court ordinarily will be required to propound such a question”); Commonwealth

v. Ramirez, 407 Mass. 553, 555 (1990) (“a motion to have jurors asked about racial prejudice should usually be granted”). Addressing potential bias against non-English speakers is both consistent with this Court’s jurisprudence by addressing issues of racial and ethnic bias, and a natural outgrowth of the underlying concerns of prejudice against minority outgroups.

II. The Risk of Bias in Jury Panels in This Commonwealth is Significant

The possibility of there being prejudice and bias among the jury pool in the Massachusetts courts against persons who are not native English speakers is undeniable. Social science has long documented the effects of bias stemming from the confluence of “out-group” factors such as low socioeconomic status and immigrant status in disproportionate assessments of culpability. See Espinoza, R. et al., The Impact of Ethnicity, Immigration Status, and Socioeconomic Status on Juror Decision Making, *Journal of Ethnicity in Criminal Justice*, 13:197-216 (2015). It is evident that language barriers also play a role in such biased perceptions. See Stephan, C. and Stephan, W., Habla Ingles? The Effects of Language Translation on

Simulated Juror Decisions, Journal of Applied Social Psychology, 16:577-89 (1986) ("non-Hispanics judged the defendant to be more guilty than did Hispanics when the defendant's testimony was presented in Spanish than when it was presented in English"). And because language and ethnicity are so inextricably intertwined, any bias against non-English speakers is inherently connected to bias against non-whites.

Statistics regarding the ethnicity of jurors in Essex (and other counties) illustrate the risks in this jurisdiction of biased perceptions of culpability. For Essex County, they show that in 2017 a very significant majority of jurors - 86.2% -- who appeared for jury service in 2017 identified themselves as white, with only 9.1% of the potential jurors who appeared identifying themselves as Hispanic/Latino. See R-1.⁴ This disparity exists even though certain portions of Essex County, including cities like Lawrence, where this case arose, have a

⁴ Source: 2018 Data provided by the Office of Jury Commissioner. The data for Essex County is similar for earlier years as well, and is also - with some variability - similar in other counties in the Commonwealth. Only the data for Essex County is provided in the Appendix; the data for the remaining counties can be provided upon request.

significant population of non-English-speaking citizens.

Of course, these statistics do not show or demonstrate that any particular person or potential juror is biased. But diverse juries have been shown to be more likely to deliberate on, for instance, racial bias. Sommers S., On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberation, 90 J. Personality & Soc. Psychology 597, 607-08 (2006). The fact that an accused defendant in Massachusetts who cannot communicate in English will likely be faced by a jury consisting primarily, if not entirely, of white native English speakers will create a significant risk of a biased outcome if there is no judicial oversight. Indeed, in this particular case, judging from the transcript, it appears that each of the jurors who was seated was fluent in English.

Accordingly, the risks facing non-English speakers in jurisdictions such as the Commonwealth is the kind of potential bias properly evaluated during *voir dire*.

III. This Court and Courts Around the Country Have Recognized the Importance of Questions Aimed at Eliminating Bias Even When the Defendant and the Complaining Witness Are of the Same Ethnicity.

The Supreme Court has emphasized the crucial role of a voir dire that roots out bias. See e.g., Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 868 (2017) (citing voir dire as an "important mechanism[] for discovering bias" in a case where strong ethnic bias was found after conclusion of the trial). The Court has long held that "it is far more injurious to permit it to be thought that persons entertaining a disqualifying prejudice were allowed to serve as jurors and that inquiries designed to elicit the fact of disqualification were barred. ... No surer way could be devised to bring the processes of justice into disrepute." Rosales-Lopez v. United States, 451 U.S. 182, 191 (1981) (citing Aldridge v. United States, 283 US 308, 314 (1931)).

The trial judge in this case erred in summarily rejecting an opportunity to identify bias against non-English speakers. At trial, the only basis suggested by the trial judge's comments when denying defense counsel's request to ask the jury pool the question at issue here was that the defendant and the complaining

witness were of the same "ethnicity." R-10, lines 16-20. Although the Commonwealth did not object to the proposed voir dire question at the time, on this appeal the Commonwealth now argues, without any supporting evidence, that the fact that both the victim and the defendant were of the same ethnicity means the defendant "cannot reasonably claim there existed a 'substantial risk' of bias here." Comm. Br. at 36. But there is no evidence supporting such a contention.

In fact, this Court has very recently rejected the assumption that there can be no risk of bias when the defendant and the complaining witness are of the same ethnicity. Rather, this Court recognized that the critical bias question arises from *the jurors'* perception of the defendant, not in the ethnic or racial disparity or similarity of the victim and defendant⁵. In Commonwealth v. Robertson, 480 Mass.

⁵ Commonwealth v. Lopes, 440 Mass. 731, 737 (2004) ("This court has concluded that cases involving interracial murder, interracial rape, and sexual offenses against children where the victim and the defendant are of different races present, as a matter of law, a substantial risk that extraneous issues will likely influence prospective jurors, and in such cases, individual questioning with respect to racial prejudice, on request, is mandatory.") (emphasis added)

383, 389-90 (2018), this Court declined to find error in the judge's refusal of a voir dire question on racial bias, but emphasized that:

...a motion to have jurors asked about racial prejudice should usually be granted."
Commonwealth v. Ramirez, 407 Mass. 553, 555 (1990). ***Racial bias can, of course, have an impact on juror impartiality, even where the victim and the defendant are of the same race.***

Robertson, 480 Mass. at 390 (emphasis added).

This Court's statement in Robertson thus specifically teaches that courts in the Commonwealth should "usually" grant a motion to have jurors asked about potential racial prejudice. And this Court basically rejected the trial court's implicit and unsupported conclusion that the fact that both the defendant and the complaining witness were Latino is enough to reject the proposed voir dire question in this case.

While this Court's jurisprudence has identified differences in race between victim and defendant in particular can elicit biased responses from jurors, it cannot be that there is no juror bias if the victim and defendant are of the same race as a matter of law. This Court and the United States Supreme Court have

continued to emphasize the importance of identifying ethnic and racial bias in jurors, and identifying bias against non-English speakers has a nexus to those biases. This Court should not unrealistically cabin acknowledgement of bias to circumstances far narrower than where bias appears in the real world. Even if it was pertinent that victim and defendant were of the same race, prejudice against non-English speakers is an independent bias, and was properly raised by defense counsel here. The trial court gave no legitimate reason for not asking the proposed question, and indeed no reason at all.

IV. There Would Have Been No Prejudice to the Commonwealth or to the Pursuit of Justice If The Trial Court Had Asked the Venire Pool the Question Proposed by Defense Counsel.

Finally, there is no suggestion in the record that any prejudice would have accrued to the Commonwealth or to the public interest if the trial court had asked the venire pool the question proposed by the defendant. This Court has made clear that it "do[es] not consider the time it might take particularly to inquire further to assess bias on the part of prospective jurors who respond positively as persuasive justification to forgo the practice."

Commonwealth v. Lopes, 440 Mass. 731, 737 (2004). And as noted above, the Commonwealth itself did not object to defense counsel's request.

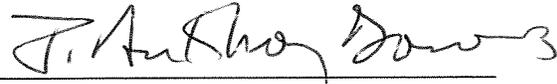
Identifying and dealing with racial and ethnic bias in a jury pool is essential. Addressing bias against non-English speakers is consistent with addressing racial and ethnic bias and a natural outgrowth of this Court's and the Supreme Court's central role in ensuring the jury remains "a criminal defendant's fundamental 'protection of life and liberty against race or color prejudice.'" Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 868 (2017) (quoting McCleskey v. Kemp, 481 U.S. 279, 310 (1987)).

CONCLUSION

Therefore, amici ask this Court to hold that when a defendant requests a collective *voir dire* question directed to bias against non-English speakers, it is an abuse of discretion to deny that request.

Dated: November 26, 2018

Respectfully Submitted,



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COMPLIANCE

I, J. Anthony Downs, hereby certify that the foregoing Brief complies with the rules of the Court that pertain to the filing of amicus briefs, including, but not limited to, Mass. R. A. P. 16(a) (contents of briefs); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 17 (amicus briefs); Mass. R. A. P. 18 (appendix to briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).


J. Anthony Downs

November 26, 2018

CERTIFICATE OF SERVICE

I, J. Anthony Downs, hereby certify that on November 26, 2018, I caused one copy of the foregoing Amicus Brief of Lawyers for Civil Rights, Centro Presente and The Brazilian Workers Center in Support of Appellant to be delivered via first-class U.S. Mail, postage prepaid, to counsel for each of the parties identified below:

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J. Anthony Downs

November 26, 2018

RECORD APPENDIX

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OFFICE OF JURY COMMISSIONER
for the Commonwealth

SEP 17 2018

September 12, 2018

Mona Igram, Esq.
Attorney in Charge
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Re: Request for Demographic Information

Dear Attorney Igram:

I have reviewed your request for demographic information for jurors called and selected for jury service in each county in Massachusetts for the years 2012 – 2017.

The Office of Jury Commissioner (OJC) is only required by statute to maintain its records for a period of three years after the calendar year to which they apply. Notwithstanding, we still have demographic data for 2012-2014, and I have enclosed that information, together with the demographic data you requested for each county for 2015-2017.

With respect to the demographic survey information, per *Commonwealth v. Arriaga*, 438 Mass. 556 (2003), the OJC is required to seek demographic information from all those summoned for juror service, using the survey form designed for the federal court system. The form contains two questions. The first asks jurors to report how they identify themselves and offers the following possible responses: Black/African American, White, Native Hawaiian/Pacific Islander, Asian, American Indian/Alaskan Native and Other (specify). The second question asks jurors to report whether they consider themselves Hispanic or Latino. The two questions and their responses are reported independently of each other.

I have included a sample copy of a Summons for Juror Service showing the demographic survey included on the Juror Confirmation Form.

Although the demographic survey is deemed to be mandatory, in our experience, a number of jurors fail to respond to one or both questions. As a result, we have instituted a variety of procedures designed to maximize the likelihood of obtaining the demographic information, including the following:

- Jurors are repeatedly instructed to provide the data (e.g., on the summons and second summons, if applicable, and when contacting the OJC Call Center);
- The jury management system generates an additional survey card for all jurors who have not responded before appearing on their service date, and the jury pool officer personally hands the survey card to the juror with the juror number card and requests an immediate response; and
- Prospective jurors cannot make use of the Massachusetts Juror Service interactive website without providing their demographic data.

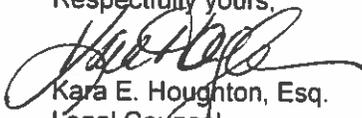
Mona Igram, Esq.
September 12, 2018
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Despite these procedures, there are jurors who fail to respond, in whole or in part, to the survey. This office has no authority to preclude jurors from service for failure to respond to the survey.

In our normal course of business, we do not maintain demographic information for jurors disqualified due to a pending felony or felony conviction within the last seven years.

I hope this information has been helpful to you.

Respectfully yours,



Kara E. Houghton, Esq.
Legal Counsel



Office of Jury Commissioner
for the Commonwealth

ESSEX

Demographic Survey Results - Calendar Year 2012

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Black/African American	19,802	3.5%	1,824	2.0%	502	1.8%	106	2.3%
White	480,036	84.1%	79,651	87.7%	24,390	89.7%	4,106	89.4%
Native Hawaiian/Pacific Islander	219	0.0%	76	0.1%	28	0.1%	8	0.2%
Asian	16,780	2.9%	2,344	2.6%	527	1.9%	95	2.1%
American Indian/Alaskan Native	1,877	0.3%	164	0.2%	38	0.1%	4	0.1%
Other	52,356	9.2%	6,758	7.4%	1,712	6.3%	274	6.0%
TOTALS	571,070	100.0%	90,817	100.0%	27,197	100.0%	4,593	100.0%

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino	80,364	14.1%	8,824	9.4%	1,932	7.0%	278	6.0%
No, Not Hispanic/Latino	490,706	85.9%	78,688	84.0%	24,448	88.6%	4,182	90.4%
No Response His./Lat.	0	0.0%	6,147	6.6%	1,210	4.4%	167	3.6%



Office of Jury Commissioner
for the Commonwealth

ESSEX

Demographic Survey Results - Calendar Year 2013

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Black/African American	19,802	3.5%	2,048	2.2%	568	2.1%	113	2.3%
White	480,036	84.1%	79,942	87.2%	24,683	89.1%	4,356	88.2%
Native Hawaiian/Pacific Islander	219	0.0%	71	0.1%	17	0.1%	2	0.0%
Asian	16,780	2.9%	2,457	2.7%	569	2.1%	100	2.0%
American Indian/Alaskan Native	1,877	0.3%	137	0.1%	35	0.1%	6	0.1%
Other	52,356	9.2%	7,058	7.7%	1,824	6.6%	359	7.3%
TOTALS	571,070	100.0%	91,713	100.0%	27,696	100.0%	4,936	100.0%

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino	80,364	14.1%	9,029	9.6%	2,071	7.4%	392	7.9%
No, Not Hispanic/Latino	490,706	85.9%	79,976	84.7%	24,931	88.8%	4,450	89.3%
No Response His./Lat.	0	0.0%	5,430	5.7%	1,074	3.8%	142	2.8%



Demographic Survey Results - Calendar Year 2014

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Black/African American	19,802	3.5%	2,271	2.5%	650	2.4%	127	2.7%
White	480,036	84.1%	78,322	86.1%	23,885	87.9%	4,151	87.9%
Native Hawaiian/Pacific Islander	219	0.0%	71	0.1%	26	0.1%	7	0.1%
Asian	16,780	2.9%	2,513	2.8%	617	2.3%	92	1.9%
American Indian/Alaskan Native	1,877	0.3%	121	0.1%	31	0.1%	5	0.1%
Other	52,356	9.2%	7,667	8.4%	1,971	7.3%	343	7.3%
TOTALS	571,070	100.0%	90,965	100.0%	27,180	100.0%	4,725	100.0%

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino	80,364	14.1%	9,672	10.3%	2,225	8.1%	405	8.5%
No, Not Hispanic/Latino	490,706	85.9%	79,331	84.8%	24,506	89.0%	4,250	89.2%
No Response His./Lat.	0	0.0%	4,592	4.9%	815	3.0%	112	2.3%



Office of Jury Commissioner
for the Commonwealth

ESSEX

Demographic Survey Results - Calendar Year 2015

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Black/African American	19,802	3.5%	2,160	2.5%	576	2.3%	95	2.4%
White	480,036	84.1%	75,540	85.8%	21,751	88.0%	3,470	87.4%
Native Hawaiian/Pacific Islander	219	0.0%	91	0.1%	19	0.1%	5	0.1%
Asian	16,780	2.9%	2,491	2.8%	564	2.3%	95	2.4%
American Indian/Alaskan Native	1,877	0.3%	128	0.1%	37	0.1%	4	0.1%
Other	52,356	9.2%	7,625	8.7%	1,778	7.2%	299	7.5%
TOTALS	571,070	100.0%	88,035	100.0%	24,725	100.0%	3,968	100.0%

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino	80,364	14.1%	9,731	10.7%	2,046	8.2%	354	8.8%
No, Not Hispanic/Latino	490,706	85.9%	76,172	84.1%	22,198	88.7%	3,549	88.6%
No Response His/Lat.	0	0.0%	4,651	5.1%	769	3.1%	102	2.5%



Office of Jury Commissioner
for the Commonwealth

ESSEX

Demographic Survey Results - Calendar Year 2016

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Black/African American	19,802	3.5%	2,433	2.6%	636	2.5%	81	2.2%
White	480,036	84.1%	78,903	84.4%	21,889	86.6%	3,179	87.8%
Native Hawaiian/Pacific Islander	219	0.0%	94	0.1%	15	0.1%	4	0.1%
Asian	16,780	2.9%	2,634	2.8%	569	2.3%	77	2.1%
American Indian/Alaskan Native	1,877	0.3%	137	0.1%	33	0.1%	5	0.1%
Other	52,356	9.2%	9,237	9.9%	2,127	8.4%	273	7.5%
TOTALS	571,070	100.0%	93,438	100.0%	25,269	100.0%	3,619	100.0%

Demographic Category	Federal Census 2010		Jurors Who Responded to Demographic Survey		Jurors Who Appeared for Juror Service		Jurors Who Appeared & Were Impaneled	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino	80,364	14.1%	10,902	11.4%	2,221	8.7%	279	7.7%
No, Not Hispanic/Latino	490,706	85.9%	80,612	84.0%	22,612	88.2%	3,266	89.6%
No Response His./Lat.	0	0.0%	4,483	4.7%	790	3.1%	102	2.8%

1 THE COURT: Yeah. I'll get that when I come back.

2 MS. MINTON: Okay. I did submit some request to
3 voir dire, which is pretty much the standard voir
4 dire. The only thing that I added to it that was a
5 little bit different --

6 THE COURT: I don't think I have that.

7 MS. MINTON: If you do not have a copy of that,
8 which I think I filed last time, I've got a copy for
9 you.

10 THE CLERK: I don't know if you've got -- these
11 ones were filed.

12 MS. MINTON: Those are mostly standard questions,
13 Your Honor. The only thing that's a little bit
14 different is I would like for the jury to be asked if
15 they have a problem with a witness or a defendant that
16 requires the services of a Spanish-speaking
17 interpreter.

18 THE COURT: So the clerk just handed me some more
19 motions. Motion for list of persons present.

20 MS. MINTON: Oh, those were addressed at a motions
21 hearing quite a while ago. There was four motions,
22 and Attorney Nasson and I came to an agreement on all
23 four of them. We wrote up an -- actually, she wrote
24 the agreement, and we signed it and submitted it to
25 the court, at the request of Your Honor, actually.

1 individual voir dire, have each juror come up to the
2 sidebar, and I would ask these two questions. One is
3 question number two, which you have. "Have you or any
4 close family member or friends been a victim of sexual
5 abuse?" Then I would also ask, "This case involves a
6 charge of indecent assault and battery on a child
7 under 14. Is there anything about this charge that
8 would make it difficult for you to be impartial?"
9 Commonwealth, any objection to those two?

10 MS. NASSON: No.

11 THE COURT: Counsel, do you want to be heard on
12 any of the other ones that I'm not inclined to give
13 you?

14 MS. MINTON: Your Honor, are you telling me that
15 you're not inclined to ask about --

16 THE COURT: I'm not inclined to ask any others
17 that I just did not say anything on.

18 MS. MINTON: I do think that the question about a
19 witness or a defendant that requires the services of
20 the Spanish-speaking interpreter is important because
21 there's going to be various witnesses that will have
22 to use an interpreter. I know one of my witnesses
23 will have to use an interpreter, and I assume that at
24 least one of the Commonwealth's witnesses will have to
25 use an interpreter.

1 THE COURT: What's the concern?

2 MS. MINTON: The concern is a racial bias, or some
3 sort of ethnic bias. There's a lot of people that
4 believe that if you're in this country and you don't
5 speak English, that you've done something wrong,
6 period. My client is a naturalized citizen of the
7 United States. I think that that is a huge bias.

8 THE COURT: No. I'm not going to give it to you.

9 MS. MINTON: Your Honor, I would object under the
10 Fifth, Sixth, and Fourteenth Amendments of the United
11 States Constitution, Articles 12 and 14 of the
12 Massachusetts Declaration of Rights. I think that
13 racial bias is something that should be explored when
14 the defendant is of a minority race, in this case,
15 Latino.

16 THE COURT: Is the complainant a different
17 ethnicity?

18 MS. NASSON: No.

19 THE COURT: Okay. No. I'm not going to give it
20 you. Anything else that you want to argue?

21 MS. MINTON: I do believe that it's important that
22 we find out if they have any relatives that's serving
23 as a police officer, DA, or law enforcement.

24 THE COURT: That's on the questionnaire, I think.

25 MS. MINTON: Thank you, Your Honor. Additionally,

1 need to do is raise your hand nice and high so the
2 court officers can see you, and also have that number
3 card readily available, all right? If at any time,
4 you cannot hear me, raise your hand. I'll make the
5 necessary adjustments. Again, I'm going to ask you
6 some questions. If your answer is yes, just simply
7 raise your hand.

8 Question number one, are any of you related to the
9 defendant? Do any of you know the defendant, either
10 of the lawyers, or any of the witnesses in this case?
11 If so, please raise your hand. No hands have been
12 raised.

13 Question two, do any of you have an interest or
14 stake of any kind in this case? If so, please raise
15 your hand. No hands have been raised.

16 Question three, to the extent that you have heard
17 anything about this case, have any of you expressed or
18 formed any opinions about it? If so, please raise
19 your hand. No hands have been raised.

20 Question four, are any of you aware of any bias or
21 prejudice that you have toward either the defendant or
22 the prosecution? If so, please raise your hand. No
23 hands have been raised.

24 Question five, do any of you not understand that
25 in a criminal case the defendant is presumed innocent

1 until proven guilty? If so, please raise your hand.

2 No hands have been raised.

3 Question six, do any of you not understand that
4 the prosecution has the burden of proving that the
5 defendant is guilty beyond a reasonable doubt, and
6 that the defendant does not have to present any
7 evidence in his behalf. If so, please raise your
8 hand. No hands have been raised.

9 Question seven, do any of you know of any reason
10 why you would not be impartial in this case and be
11 able to render a true and just verdict based solely on
12 the evidence and the law? If so, please raise your
13 hand. No hands have been raised.

14 Question number eight, have you ever been, or are
15 you now, a member of any group or organizations
16 concerned with crime or crime prevention? If so,
17 please raise your hand. No hands have been raised.

18 Question number nine, would you tend to believe
19 the testimony of a police officer over the testimony
20 of a civilian witness simply because he or she is a
21 police officer? If so, please raise your hand. No
22 hands have been raised.

23 Question ten, which sounds very similar to the
24 last question, but there is an important difference,
25 so listen carefully. Would you tend to not believe

1 the testimony of a police officer over the testimony
2 of a civilian witness simply because he or she is a
3 police officer? If so, please raise your hand. No
4 hands have been raised.

5 That concludes the questions that the Court is
6 asking in open court. No hands have been raised thus
7 far. At this point, the clerk is going to be having
8 each juror come up individually. Your number will be
9 called. Once you hear it, please announce that you're
10 present. Bring all of your personal effects with you,
11 and the court officers will direct you up to the
12 judge's bench, at which point I will be asking you
13 some questions with the two attorneys. Okay?

14 THE CLERK: Bring them up to sidebar, Your Honor?

15 THE COURT: Yes.

16 THE CLERK: Okay. Again, members of the jury
17 panel, please answer 'present' or 'here' as your
18 number is called, and you will be brought up to the
19 judge's bench.

20 Juror number one.

21 THE JUROR: Here.

22 THE CLERK: Just come between the two attorneys.

23 (Sidebar conference commences.)

24 THE COURT: Good morning, Mr. Ofur (phonetic)?

25 THE JUROR: That's correct.

1 THE COURT: All right, sir. As you heard, this
2 case involves the charge of indecent assault and
3 battery on a child under the age of 14. I have to ask
4 you three questions. First, were you a victim of
5 sexual abuse?

6 THE JUROR: No.

7 THE COURT: Number two, do you know of any family
8 members or close friends who were victims of sexual
9 abuse?

10 THE JUROR: No.

11 THE COURT: Question three, is there anything
12 about this charge that would make it difficult for you
13 to be impartial?

14 THE JUROR: No.

15 THE COURT: Okay. Thank you, sir. You may take a
16 seat on row one.

17 (Sidebar conference concludes.)

18 THE CLERK: Juror number three.

19 THE JUROR: Here.

20 THE CLERK: Come between the attorneys at the
21 judge's bench.

22 (Sidebar conference commences.)

23 THE COURT: Good morning, Mr. Draper.

24 THE JUROR: How are you doing?

25 THE COURT: Thank you, sir. I'm going to give you