COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **SUPERIOR COURT CIVIL ACTION**
DOCKET NO: 2684CV00477

AMERICAN CIVIL LIBERTIES
UNION OF MASSACHUSETTS, INC.,

Plaintiff,

vs.

PLYMOUTH COUNTY
SHERIFF'S DEPARTMENT

Defendant.

DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

The Defendant, Plymouth County Sheriff's Department ("PCSD") respectfully asks this Court to dismiss the Plaintiff's complaint. As reasons therefore, the Defendant asserts that the Plaintiff's claim is preempted by federal law, the Plaintiff fails to state a claim for which this Court can grant relief. Further, the Defendant properly withheld records pursuant to the Plaintiff's public records request under the applicable state and federal laws.

I. STATEMENT OF THE CASE

Plaintiff, American Civil Liberties Union of Massachusetts ("ACLUM") has filed a Complaint for Declaratory and Injunctive Relief seeking the following:

1. Expedite these proceedings pursuant to G.L. c. 66, § 10A(d)(1)(iii) and order the PCSD to show cause forthwith why the requested relief should not be granted.
2. Declare that the records sought are public records within the meaning of G.L. c. 66, §10 and that their release is required by law.
3. Declare that the PCSD is prohibited from charging any fee for responding to the request.

4. Enter a permanent injunction ordering the PCSD to immediately disclose the requested records to the Plaintiff with redactions.
5. Award Plaintiff attorney fees and costs.
6. Grant such other and further declaratory and equitable relief as the Court deems just and proper.

(Complaint, ¶ 13.)

The Defendant respectfully requests that ACLUM's Verified Complaint for Declaratory and Injunctive Relief be dismissed with prejudice pursuant to Mass.R.Civ.P. 12 (b) (6).

II. STATEMENT OF FACTS

1. On December 11, 2025, PCSD received a public records request from the Plaintiff seeking twelve categories of records created on or after June 1, 2025. (Exhibit A).
2. Within the ten (10) business days provided by G. L. c. 66, § 10(a), PCSD responded to the requests on December 26, 2025. (Exhibit B).
3. In its response, PCSD provided records pursuant to requests #2 and #3[1], indicated that it did not have responsive records to requests #1 and # 12, and was withholding responsive records to the remaining requests under the exemptions cited in the letter. (Id.)
4. The Defendant relied on 8 C.F.R. § 236.6 to preclude disclosure of the Plaintiff's requested records[2].
5. 8 C.F.R. § 236.6 states as follows:

> No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or

[1] PCSD provided some records responsive to request #3 and also withheld records responsive to this request.

[2] The Defendant cited other exemptions to the public records law such as C.O.R.I. (G.L. c. 6 §167), the privacy exemption (G.L. c. 4 § 7 cl. 26(c)), and patient confidentially (G.L. c. 111 § 70E). The Defendants acknowledge that these exemptions, unlike 8 C.F.R. § 236.6, permit the disclosure of records in a redacted form.

> otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

6. Over a month later, the Plaintiff wrote to PCSD on February 5, 2026, objecting to the response and renewing their request for the withheld records in a redacted format. (Exhibit C).
7. The Defendant responded to the Plaintiff's letter on February 17, 2026, explaining why the records could not be provided in a redacted format and attaching a decision in a public records appeal from the Supervisor of Records for the Secretary of the Commonwealth-Public Records Division, reaching the same conclusion. The Defendant additionally suggested that the Plaintiff submit a Freedom of Information Act (FOIA) request to the Department of Homeland Security to obtain the records sought. (Exhibit D).
8. Unbeknownst to the Defendant, the Plaintiff had filed this action on February 13, 2026, disputing the legal basis for the Defendant's withholding of the records.

III. STANDARD OF REVIEW

Under Rule 12 (b)(6) of the Massachusetts Rules of Civil Procedure, a party may seek to dismiss a Plaintiff's complaint where said complaint fails ". . . to state a claim upon which relief can be granted." MRCP 12 (b)(6). Courts when reviewing the merits of a Rule 12 (b)(6) motion

to dismiss ". . . consider whether the factual allegations in the complaint are sufficient, as a matter of law, to state a recognized cause of action or claim, and whether such allegations plausibly suggest an entitlement to relief." Town of Dartmouth v. Greater New Regional Vocational Technical High School District, 461 Mass. 366, 374 (2012) (*citing* Iannachino v. Ford Motor Co., 451 Mass. 623, 636 (2008)). Furthermore, "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . " Id. Finally, such an analysis requires the court to accept as true any allegations contained within the complaint and also accept any reasonable inferences in favor of the Plaintiff. Town of Dartmouth, 461 Mass. at 374.

However, "[t]he relative specificity of the pleadings under State law is irrelevant if constitutional principles preclude the assertion of State law claims in light of existing Federal regulation [i.e., preemption]." Dunn v. Genzyme Corporation, 486 Mass. 713, 718 (2021) citing, Gade v. National Solid Wastes Mgt. Ass'n, 505 U.S. 88, 108, (1992) ("under the Supremacy Clause, from which our pre-emption doctrine is derived, any State law, however clearly within a State's acknowledged power, which interferes with or is contrary to Federal law, must yield"). When preemption is involved, "claims that survive a preemption analysis [must then] also satisfy the Massachusetts pleading requirements." Dunn, 486 Mass at 718 ("claims must satisfy both requirements") (emphasis added). Accordingly, the Plaintiff's Verified Complaint presents "purely legal questions, where the matter can be resolved solely on the basis of the state and federal statutes at issue." Capron v. Office of the Attorney General of Massachusetts, 944 F. 3d 9, 20 (1st Cir. 2019) (citations omitted) (deciding preemption question, of the same kind at issue here, at the motion to dismiss stage).

IV. ARGUMENT

A. The Federal Preemption Doctrine Requires That 8 C.F.R. 236.6 Prevents Disclosure of the Plaintiff's Requested Records

The Supremacy Clause of the United States Constitution provides that federal laws are supreme, U.S. Const. art. VI, cl. 2, thus requiring that federal laws preempt any conflicting state or local regulations, see Maryland v. Louisiana, 451 U.S. 725, 746 (1981). Whether evaluated for "field preemption" or "conflict preemption," Plaintiff's Complaint is preempted by federal law. Arizona v. United States, 567 U.S. 387, 399, (2012); Capron, 944 F. 3d at 21 & 26, n. 10; See also, Curtis v. Herb Chambers I-95, Inc., 458 Mass 674, 676 (2022). ("[p]reemption … determines whether a court has subject matter jurisdiction over the claim under Mass. R. Civ. P. 12 (b) (1) … and whether the allegations state a claim on which relief can be granted under Mass. R. Civ. P. 12 (b) (6)").

Field preemption "can be inferred from [1] a framework of regulation so pervasive . . . that it leaves no room for the States to supplement it or [2] where there is a federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." Capron, 944 F. 3d at 21-22 (internal quotation marks omitted) quoting Arizona, 567 U.S. at 399 quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). When so inferred, states, even where otherwise permitted to regulate, "cannot do so in a field (like the field of alien registration) that has been occupied by federal law." Id. at 402 (parentheses in original) citing California v. Zook, 336 U.S. 725, 730-731, 733 (1949); and In re Loney, 134 U.S. 372, 375-376 (1890). This is so because "field preemption ousts state law measures even if no evidence shows that they would conflict with the federal regulatory scheme either by frustrating its purposes and objectives … or by imposing obligations that it would be impossible for the regulated party to comply with and also comply with the obligations that the federal regulatory scheme imposes." Capron at 21 (citations omitted).

Here, "Federal law [unquestionably] makes a single sovereign [the United States government] responsible for maintaining a comprehensive and unified system to keep track of aliens within the Nation's borders." Arizona, 567 U.S. at 401-402. As noted by the SJC in Lunn v. Commonwealth, 477 Mass. 517, 533 (2017), the authority granted to the U.S. government has "severely curtailed, on Federal preemption grounds, the power of State and local [governments] to act in Federal immigration matters." Pursuant to that authority, the federal government has, including through 8 C.F.R. § 236.6, established "a framework of regulation so pervasive" and "so dominant" in the field of alien registration and tracking, that such federal laws and regulations must "be assumed to preclude enforcement of [any] state laws on the same subject." Capron, 944 F. 3d at 21-22 (internal quotation marks omitted) quoting Arizona, 567 U.S. at 399 quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947); See also, Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153–154 (1982). (federal regulation can preempt state law where the agency shows a clear intention to preempt, and the regulation is within the agency's delegated authority).

Plaintiff's claims are, consequently, plainly (field) preempted and must, pursuant to Mass. R. Civ. P. 12(b)(1) and Mass. R. Civ. P. 12 (b) (6), be dismissed for lack of jurisdiction and failure to state a claim upon which relief may be granted. Arizona, 567 U.S. at 399 and Capron, 944 F. 3d at 21 & 26, n. 10; see also Curtis, 458 Mass at 676.

Additionally, Massachusetts laws cannot be "an obstacle to the accomplishment and execution of the full purposes and objectives' of [a] federal measure" or be interpreted to impose any "obligations" that would make a defendant's compliance with both Massachusetts and federal law an impossibility. Arizona, 567 U.S. at 399 and Capron, 944 F. 3d at 21 & 26, n. 10. Where Plaintiff's Complaint plainly contends that Massachusetts law is either in direct conflict

with 8 C.F.R. § 236.6 or should be interpreted in a manner compelling noncompliance with that federal regulation, the doctrine of (conflict, both obstacle and impossibility) preemption also demands that Plaintiff's claims to be promptly dismissed, pursuant to Mass. R. Civ. P. 12(b)(1) and Mass. R. Civ. P. 12(b)(6), for lack of jurisdiction and the failure to state a claim upon which relief may be granted. Capron, 944 F. 3d at 21-22; see also Curtis, 458 Mass at 676.

The critical question in preemption analysis is whether Congress intended Federal law to supersede state law, see Bay Colony R.R. Corp. v. Yarmouth, 470 Mass. 515, 518 (2015), but unless Congress's intent to do so is clearly manifested, courts do not presume that Congress intended to displace state law on a particular subject. City of Bos. v. Commonwealth Emp. Rels. Bd., 453 Mass. 389, 396 (2009). Here, the federal law clearly states its intent to displace the state public records law by the direct reference to it. "Insofar as any documents or other records contain such information, such documents s*hall not be public records*." 8 C.F.R. § 236.6 (emphasis added)

B. Deference to Supervisor of Records' Opinion

In addition, to support the conclusion that 8 C.F.R. § 236.6 precludes the release of the records sought, the Court should give deference to the Secretary of the Commonwealth Public Records Division's Supervisor of Records' (SPR) repeated determination, that the Defendant relied on when responding to the records request, that the records are not public. The SPR's has issued at least three (3) decisions that the Defendant is aware of, consistently interpreting 8 C.F.R. § 236.6 to preclude Sheriff's Departments in Massachusetts from disclosing immigration information about detainees under the public records law. (Exhibits E, F, G). The SPR's multiple decisions are correct because the SPR properly interpreted the exemption language of G. L. c. 4, § 7(26)(a) applies to 8 C.F.R. § 236.6.

While the "duty of statutory interpretation is for the courts … an administrative agency's

interpretation of a statute within its charge is accorded weight and deference.... Where the [agency's] statutory interpretation is reasonable ... the court should not supplant [its] judgment" (citations omitted). Dowling v. Registrar of Motor Vehicles, 425 Mass. 523, 525 (1997), quoting Massachusetts Med. Soc'y v. Commissioner of Ins., 402 Mass. 44, 62 (1988). "Our deference is especially appropriate where, as here, the statutes in question involve an explicit, broad grant of rule-making authority." Goldberg v. Board of Health of Granby, 444 Mass. 627, 634 (2005), citing Dowell v. Commissioner of Transitional Assistance, 424 Mass. 610, 613-614 (1997). *See* G.L. c. 66, § 1 (public records law grants Supervisor of Records authority to "adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter"); 950 C.M.R. § 35.01 *et seq.* (Supervisor's regulations implementing the public records law).

The main purpose of the Public Records Division is to determine what constitutes a public record. As the very agency to do just that, they have ruled in every similar public records request (Exhibit E, F, G) that the records sought are exempted from the Massachusetts Public Records Law because of 8 C.F.R. § 236.6. In doing so, it is reasonable to presume that providing the records sought would violate federal law. Respectfully, this Court should give due deference to their decisions and dismiss this Complaint.

C. Statute v. Federal Regulation

The Plaintiff concedes that the Defendant is an entity that is subject to this regulation by virtue of its intergovernmental service agreement ("IGSA") with the Department of Homeland Security ("DHS")/U.S. Immigrations and Customs Enforcement ("ICE"). (Complaint ¶ 16-17). The Plaintiff erroneously argues that the exemption does not apply because 8 C.F.R. § 236.6 is not a "statute" as defined by G.L. c. 4 § 7(26)(a). (Complaint ¶ 37). The Plaintiff further insists that

the records can be provided in a redacted format. (Complaint ¶ 35). The Defendant maintains that it is prohibited from releasing the records sought by the Plaintiff because of the federal regulation and further, that the Defendant has met its burden to withhold the *entire* responsive record pursuant to 8 C.F.R. § 236.6 as it operates through Exemption (a) of the Massachusetts Public Records Law. See G.L. c. 4 § 7 (26) (a). This position is supported by the prior rulings of the SPR. (Exhibit E, F, G).

The SPR has consistently held that these records "are the type of record contemplated under 8 C.F.R § 236.6" and that the custodian "has met its burden to withhold responsive records pursuant to 8 C.F.R. § 236.6, as it operates through Exemption (a) of the Massachusetts Public Records Law." (Exhibit E, pg. 4; Exhibit F, pg. 4; Exhibit, pg. 5-6).

Therefore, both the Defendant and the SPR were correct in applying 8 C.F.R. § 236.6 to M.G.L. c. 4, § 7(26)(a), because where a record is exempt from disclosure under federal law, it is exempt from disclosure under state law. Voces De La Frontera, Inc. v. Clarke, 373 Wis. 2d 348, 373 (Supreme Ct. Wis. 2017) (8 C.F.R. § 236.6 precludes release of any information pertaining to individuals detained in a state or local facility).

Further, Plaintiff's argument that 8 C.F.R. § 236.6 does not apply because it is a regulation rather than a statute is misplaced. A statute is a formal, written law passed by a legislative body. At the federal level, these are created by the U.S. Congress. Most general and permanent federal statutes are organized by subject into the United States Code.

Regulations are simply manifestations of a statute, a specific directive created by a government agency to help implement and enforce statutes. 8 C.F.R. § 236.6 is a regulation designed to enforce the following statutes: 5 U.S.C. 301, 552, 552a; 6 U.S.C.112(a)(2), 112(a)(3), 112(b)(1), 112(e), 202, 251, 279, 291; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1232,

1324a , 1357, 1362, 1611; 18 U.S.C. 4002, 4012(c)(4). In support of its claim, the Plaintiff cites to one, non-binding, Michigan Supreme Court decision that supports its position. ACLUM v. Calhoun County Sheriff's Office, 509 Mich. 1, 4 (2022)[3]. To the contrary, our own SJC has previously considered federal and state regulations in determining the applicability and scope of the statutory exemption from the Public Records Law. Champa v. Weston Public Schools, 473 Mass. 86, 91-96 (2016) (assuming without deciding that student record regulations fit within the meaning of "statute" for purposes of exemption (*a*) when considering both federal and state regulations implementing educational privacy statutes in concluding that documents were subject to statutory exemption). The Defendant properly invoked 8 C.F.R. § 236.6 when determining it must withhold the records sought by the Plaintiff in their entirety.

D. Public Records Fee

In addition to asking this Court to order the Defendant to produce the records sought, the Plaintiff seeks an order that the Defendant be prohibited from charging a fee for the records. (Complaint ¶ 13). A records custodian may charge a reasonable fee to recover the costs of complying with a public records request. G. L. c. 66, § 10(a); see also 950 C.M.R. 32.07. The only

[3] Other jurisdictions addressing whether 8 C.F.R. § 236.6 prohibits the disclosure of immigration detainer records possessed by state and local entities are generally in accord with the SPR. See e.g. Voces, Supra ("I-247 forms are statutorily exempt from disclosure according to the terms of Wisconsin public records law, and … . [s]tated more fully, … any record specifically exempted from disclosure pursuant to federal law also is exempt from disclosure under Wisconsin law"); Commissioner of Correction v. Freedom of Info. Comm'n, 307 Conn. 53, 80 (2012) (Supreme Ct. Conn.) ("Although we recognize that 8 C.F.R. § 236.6 may have an incidental effect on the operation of state laws and policies governing the disclosure of documents in the possession of state and local government officials, that effect is limited to cases in which the operation of state law would undermine laws and policies that are clearly federal in scope and within the authority of the promulgating agency to implement"); and ACLU of N.J. v, Cty. Of Hudson, 352 NJ Super. 44, 89 (2002) (Sup. Ct. NJ App Div) ("[i]f federal regulations restricting the release of information compiled by state motor vehicle departments pass constitutional muster, then regulations restricting the release of information compiled by state correctional facilities about INS detainees certainly do");

exception to collecting the fee occurs if the custodian fails to respond to a public records request within ten business days. G. L. c. 66, § 10(e). The Plaintiff offers no basis for this request. Here, the Defendant responded to the Plaintiff's request for records within the statutorily permitted period and therefore the Defendant may charge a fee for any records produced.

V. Conclusion

For the reasons stated above, the Defendant respectfully asks this Court to dismiss the Plaintiff's complaint.

Respectfully submitted,
Plymouth County Sheriff's Department

/s/ Jessica L. Kenny

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May 1, 2026

CERTIFICATE OF SERVICE

I, Jessica L. Kenny, certify that I have caused the attached papers to be served on the parties below via First Class mail with a courtesy copy via email:

Mackenzie R. Saunders
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Signed under the pains and penalties of perjury this 1st day of May 2026,

/s/ Jessica L. Kenny
Jessica L. Kenny