

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

PLYMOUTH COUNTY SHERIFF'S
DEPARTMENT,

Defendant.

No. 1:26-CV-14149-LTS

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO REMAND**

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A Massachusetts nonprofit organization brought this action in Massachusetts Superior Court against a Massachusetts county sheriff's department under Massachusetts law. It sought records that the department, a state agency, made or received while operating a Massachusetts House of Correction. A Massachusetts court was on the cusp of issuing judgment. The United States has now attempted to remove the case to federal court before judgment issues. The United States is neither a plaintiff nor a defendant in the action. It has not received a subpoena. It has never sought to intervene or to submit an amicus brief or statement of interest. No court has authorized or directed the United States to do anything in connection with this case at all.

Against that backdrop, the United States' attempt at removal is plainly improper. First, no statute gives the federal government roving authority to remove other parties' disputes. The federal officer removal statute, 28 U.S.C. § 1442, cited throughout the United States' notice of removal, provides a basis for removing claims against federal officers and agencies. It is not a vehicle for circumventing state court decisions about records generated by state agencies. Because the federal removal statute does not apply on these facts, the Court lacks subject matter jurisdiction to hear the case and should remand it to state court.

Second, even if the United States had a right to remove the case—and it does not—the notice of removal was untimely. The complaint was filed in February 2026. It was served in March. A motion to dismiss was filed in May. A cross-motion for summary judgment was filed in June. A hearing was held in July. In August, the Superior Court denied the sheriff department's motion to dismiss and indicated that, absent further request from the parties, it anticipated entering judgment against the sheriff's department on or shortly after September 10, 2026. The United States took no action throughout that time, even though it was notified of the complaint less than two weeks after it was filed. It nonetheless filed a notice of removal more than *six months* later

on September 10—the eve of judgment. The removal statute has a strict 30-day limit specifically to prevent this type of wait-and-see gamesmanship. The United States’ belated notice of removal is therefore time barred, providing a second, independent basis for remand. *See Enbridge Energy, LP v. Nessel ex rel. Mich.*, 146 S. Ct. 1074, 1081–82, 1086 (2026) (unanimously holding that filing notice of removal within 30-day time limit is “mandatory” and not subject to equitable tolling).

The United States’ removal is not authorized by law and serves little apparent purpose other than to delay compliance by the defendant, the Plymouth County Sheriff’s Department (“Sheriff’s Department” or “Plymouth”), with a forthcoming judgment. Plaintiff American Civil Liberties Union of Massachusetts, Inc. (“ACLU”) therefore respectfully requests that the Court immediately remand the case to the Massachusetts Superior Court.

FACTS AND PROCEDURAL HISTORY

1. ACLU properly sought public records from the Sheriff’s Department under state law, but the Sheriff’s Department refused to provide them.

The Sheriff’s Department is a Massachusetts state agency. *See* 2009 Mass. Acts ch. 61, § 3. Massachusetts law provides a well-defined procedure for accessing public records from Massachusetts state agencies. The Massachusetts Public Records Law requires all state agencies to provide, upon request, public access to records within their custody. *See* Mass. Gen. L. ch. 4, § 7 (defining “public records” as “all” records “made or received” by “any” state agency or officer or employee thereof); *id.* ch. 66, § 10 (public records access procedures). Massachusetts law also creates various narrow exemptions to this requirement for records which, for various reasons, the Legislature has decided should not be public. *See id.* ch. 4, § 7 (listing exemptions, including for preventing unwarranted invasions of privacy and protecting law enforcement investigations, trade secrets, and public safety).

Records that relate to federal operations are not exempt from these state transparency obligations, so long as a Massachusetts agency “made or received” the records. *See Rahim v. Dist. Att’y*, 486 Mass. 544, 545–48 (2020) (holding that FBI documents “received” by District Attorney were subject to state public records law). State agencies have no authority to modify these transparency obligations by contract or otherwise. *See id.* at 548 (“The public records law does not vest agencies with the authority to determine the statute’s scope by making interagency agreements.”). This is no surprise to the federal government, which participated in the state case that confirmed these principles in 2020. *See id.* at 545 n.2, 546 (noting that U.S. Attorney for the District of Massachusetts filed statement of interest in the Superior Court, and the United States filed an amicus brief in the Supreme Judicial Court on appeal).

Consistent with governing state law, on December 11, 2025, ACLUM sent the Sheriff’s Department a public records request seeking ten categories of records that the Sheriff’s Department creates or maintains related to its medical program for detainees held in Plymouth at the request of federal immigration authorities. *See* Notice of Removal Ex. 1-1, at 1–2, ¶¶ 2–3 (public records request cited in state court complaint), Dkt. No. 1-1; *id.* at 6–7, ¶¶ 21–22 (Requests 3–12). The requested records included the Sheriff’s Department’s itemized invoices to U.S. Immigration and Customs Enforcement (“ICE”) in connection with the Sheriff’s Department’s immigration detention program; documentation from the Sheriff’s Department’s continuous quality improvement (CQI) system; the Sheriff’s Department’s preventative and corrective action plans related to the immigration detention program; and various notifications that the Sheriff’s Department sends to ICE about the operation of its medical program for civil immigration detainees. *See id.* at 6–7, ¶¶ 21–22.

ACLUM did not ask for any detainee’s medical file or identifying information. The request sought medical program records that the Sheriff’s Department made or received, such as program administration documents (*e.g.*, CQI system records) and documents the Sheriff’s Department sent to ICE (*e.g.*, invoices, requests, and notifications). *See id.* To the extent those records incidentally contain health information connected to specific detainees, ACLUM specifically requested that the Sheriff’s Department anonymize the records by redacting “all Immigration Detainee names, dates of birth, A numbers, and other personally identifying information.”¹ *See id.* at 8, ¶ 23.

The Sheriff’s Department rejected the request. It produced only two pages of records relating to the medical program and otherwise made blanket assertions that every other responsive record is exempted from public disclosure. *See* Notice of Removal Ex. 1-1, at 8, ¶ 26 (complaint citing Sheriff’s Department letter dated Dec. 26, 2025). As grounds for withholding, the Sheriff’s Department asserted several state law exemptions and a federal regulation, 8 C.F.R. § 236.6. *See id.* at 8–10, ¶¶ 27–32. In response, ACLUM filed this lawsuit in Massachusetts Superior Court in February 2026. *See id.* Exs. 1-1, 1-3 (complaint and state court docket); *see also* Mass. Gen. L. ch. 66, § 10A(c) (procedure to initiate public records lawsuit). ACLUM’s lawsuit raises two state law claims: Count I seeks injunctive relief under the Massachusetts Public Records Law, and Count II seeks declaratory relief under the Massachusetts Declaratory Judgment Act. *See id.* Ex. 1-1, at 12–13, ¶¶ 44–50. ACLUM’s lawsuit did not make any claims under federal law.

¹ Plymouth agreed that redacting detainee identifiers would prevent the public from connecting the records with any particular detainees. *See* Decl. of Daniel L. McFadden (Oct. 7, 2026) Ex. A, at 30 (July 7, 2026 Super. Ct. Tr.) (Court: “[I]f [detainee identifiers] are redacted, then there’s no way of connecting that information to a detainee?” Plymouth: “Presumably, no.”).

2. The Sheriff's Department, like other facilities around the country, is holding immigration detainees that may not be receiving adequate medical care.

Detention facilities that house civil immigration detainees reportedly stopped receiving funds to pay for their medical care *roughly a year ago*.² That is a matter of significant public concern. At least 59 people have died in civil immigration detention facilities across the U.S. since 2025, many of whom reportedly suffered from medical neglect.³ One Boston resident detained in Arizona reportedly died in March from an untreated tooth infection.⁴

Civil immigration detainees in Massachusetts are not immune. The Sheriff's Department has a contract with the federal government called an Intergovernmental Services Agreement ("IGSA"). Notice of Removal Ex. 1-1, at 16. Under the IGSA, the Sheriff's Department houses

² See, e.g., Zachary Bynum, ICE Stopped Paying for Detainee Medical Care as Population Surged, Ossoff Investigation Finds Widespread Neglect, CBS News (Jan. 21, 2026), <https://www.cbsnews.com/atlanta/news/ice-stopped-paying-for-detainee-medical-care-as-population-surged/>; Judd Legum, ICE Has Not Paid for Detainee Medical Care for 7 Months, Popular Information (May 4, 2026), <https://popular.info/p/ice-has-not-paid-for-detainee-medical>; St. John Barned-Smith & Ko Lyn Cheang, ICE Hasn't Paid for Detainee Medical Care Since October, Advocates Call It the "Death Policy", San Francisco Chronicle (Sep. 2, 2026), <https://www.sfchronicle.com/politics/article/ice-detainee-medical-care-22384190.php>.

³ Detainee Death Reporting, U.S. Immigration & Customs Enforcement <https://www.ice.gov/detain/detainee-death-reporting> (reporting that 57 detainees died between Jan. 23, 2025 and Aug. 23, 2026); Criminal Illegal Alien in ICE Custody Passes Away at Winnfield Correctional Center in Louisiana, U.S. Immigration & Customs Enforcement (Sep. 21, 2026), <https://www.ice.gov/news/releases/criminal-illegal-alien-ice-custody-passes-away-winnfield-correctional-center> (reporting that a detainee died on Sep. 18, 2026); Illegal Alien from Peru Passes Away in ICE Custody in Louisiana, U.S. Immigration & Customs Enforcement (Oct. 1, 2026), <https://www.ice.gov/news/releases/illegal-alien-peru-passes-away-ice-custody-louisiana> (reporting that a detainee died on Sep. 29, 2026).

⁴ Ross Cristantiello, Haitian Man Living in Boston Dies in ICE Custody, Heightening Concerns About Detention Centers, Boston.com (Mar. 6, 2026), https://www.boston.com/news/local-news/2026/03/06/haitian-man-living-in-boston-dies-in-ice-custody-heightening-concerns-about-detention-centers/?p1=article_recirc_inline_feed; Suzanne Gamboa, Tooth Infection and Dental Disease Cited as Cause of Death for Haitian Man in ICE Custody, NBC News (May 15, 2026), <https://www.nbcnews.com/news/us-news/tooth-infection-dental-disease-cited-cause-death-haitian-man-ice-custo-rcna345404>.

and purportedly provides certain services—including medical care—to civil immigration detainees at the Plymouth facility. *See id.* (IGSA Art. 1(B)). The Sheriff’s Department—a state agency—is, of course, also independently obligated under the Eighth and Fourteenth amendments to the U.S. Constitution, as well as the corresponding provisions of the Massachusetts Declaration of Rights, to provide adequate medical care to all people incarcerated in its facility, regardless of the reason for their detention. *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 102–04 (1976); *Johnson v. Summers*, 411 Mass. 82, 86 (1991). The Sheriff’s Department creates records about its medical program, including for civil immigration detainees. *See, e.g.,* Notice of Removal Ex. 1-1, at 7, ¶ 22 (identifying various categories of records related to the immigration detention medical program made or received by the Sheriff’s Department).

Public officials and other advocates have repeatedly raised concerns that the Sheriff’s Department may not be providing adequate medical care to civil immigration detainees housed at Plymouth.⁵ Access to records related to Plymouth’s medical program is essential to helping advocates, public officials, and members of the public better understand how the Sheriff’s Department’s healthcare program for civil immigration detainees operates, whether it is providing adequate care, and whether any improvements or reforms would be appropriate. Providing access to records related to such matters of public concern is a core function of the Massachusetts Public

⁵ Letter from Edward J. Markey and Elizabeth Warren, U.S. Senators, to Alejandro Mayorkas, Secretary of Homeland Security, Patrick J. Lechleitner, Director of U.S. Immigration and Customs Enforcement, Shoba Sivaprasad Wadhia, Officer for Civil Rights and Civil Liberties of U.S. Department of Homeland Security, and Joseph V. Cuffari, Inspector General of U.S. Department of Homeland Security, 3 (Aug. 8, 2024), https://www.warren.senate.gov/imo/media/doc/warren_markey_pccf_follow-up_letter.pdf; Letter from Immigration Advocates to Andrea Campbell, Massachusetts Attorney General, Re: Supplemental Information Regarding Review of Civil Rights Violations as to Individuals Detained at Plymouth County Correctional Facility, 16 (Aug. 8, 2024), https://www.harvardimmigrationclinic.org/files/2024/08/MA-AG-Complaint-Summer-2024_FINAL.pdf.

Records Law. *See Att’y Gen. vs. Collector of Lynn*, 377 Mass. 151, 158 (Mass. 1979) (“The public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner.”).

3. The United States has long been aware of this lawsuit and the underlying records request, but took no action until the eve of judgment.

For over six months, this lawsuit has been proceeding in the ordinary course in state court. Service was completed in March 2026. *See* Notice of Removal Ex. 1-3, at 2 (state court docket). In May, the Sheriff’s Department filed a motion to dismiss, which argued that the Massachusetts Public Records Law is preempted by 8 C.F.R. § 236.6 or, alternatively, that the Massachusetts Public Records Law exempts records covered by 8 C.F.R. § 236.6. *See id.* Ex. 1-2, at 4 (state court decision denying motion to dismiss). In June, ACLUM opposed the Sheriff’s Department’s motion and filed a cross-motion for summary judgment, which challenged all of the Sheriff’s Department’s asserted exemptions. *See id.* Ex. 1-3, at 3. The Superior Court held a hearing on the Sheriff’s Department’s motion to dismiss in July. *See id.*; *see also* Decl. of Daniel L. McFadden (Oct. 7, 2026) (“McFadden Decl.”), Ex. A (July 7, 2026 Super. Ct. Tr.). On August 11, 2026, the Superior Court entered an Order denying the Sheriff’s Department’s motion to dismiss. *See* Notice of Removal Ex. 1-2. The Order further stated that the Court intended to enter judgment for ACLUM within 30 days “unless either party requests a hearing on the motions for summary judgment before that date.” *Id.* at 7–8. No party requested a further hearing, and the Superior Court was set to enter judgment on or around September 10.

Throughout this process, the United States was fully aware of ACLUM’s records request and the resulting lawsuit. Under the IGSA, the Sheriff’s Department is required to “promptly” notify the United States of state law public records requests for “[i]nformation obtained or developed because of” the IGSA. *See* Notice of Removal Ex. 1-1, at 38–39 (IGSA Art. 21(A)).

The Sheriff's Department is also required to provide the United States with notice of "all litigation pertaining to" the IGSA and to provide "copies of any pleadings filed" within "five working days." *See id.* at 39 (IGSA Art. 21(B)). The Sheriff's Department confirmed on the record that ACLUM's request and lawsuit implicated these provisions and that it did, in fact, provide notice to the United States. *See* McFadden Decl. Ex. A at 28:19–28:21 (counsel for Plymouth confirming the Sheriff's Department's understanding that "[t]he contract . . . contemplates when this occurs that I have to provide notice to ICE right away," and confirming that the Sheriff's Department "provided notice to ICE" and provided ICE with "all the records that are responsive"). Indeed, the Sheriff's Department provided copies of the complaint to ICE on February 25, 2026 and to the U.S. Department of Justice ("DOJ") on February 26, 2026, less than two weeks after the complaint was filed. McFadden Decl. ¶¶ 8–9 & Exs. C, D. The Sheriff's Department also confirmed that ICE communicated the position that "the CFR applies and that [the Sheriff's Department] cannot provide any of the records." *See id.* Ex. A at 28:19–29:06.

Although the United States was fully aware of the case since nearly its inception, it made no attempt to participate. It did not file a motion to intervene. It did not file a statement of interest or amicus brief. No counsel ever filed a notice of appearance. It allowed the case to play out as any other case in which it was not a plaintiff, defendant, third-party subpoena recipient, or even an interested party. It was not until September 10—quite literally the eve of an adverse judgment—that the United States abruptly filed a notice of removal.

As described below, the law does not authorize the United States to lie dormant throughout the entire six-month lifespan of a state court litigation, then suddenly file a notice of removal when the state court reached a decision that displeased the United States. The removal was not authorized by law, and, even if it were, it would be time-barred.

LEGAL STANDARD

Under the federal officer removal statute, a party may remove “[a] civil action . . . that is commenced in a State court and that is against or directed to . . . [t]he United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for or relating to any act under color of such office[.]” 28 U.S.C. § 1442(a)(1). Although the statute is “liberally construed to give full effect” to the purpose of “protect[ing] federal officers,” *Karfunkel v. Blue Cross & Blue Shield of Mass., Inc.*, No. 25-13532-LTS, 2026 WL 751990, at *4 (D. Mass. Mar. 12, 2026) (cleaned up), the Supreme Court has made clear that this “broad language is not limitless,” *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007). In addition, removal is improper—and remand is “required”—when the removing party fails to abide by the “mandatory” 30-day notice requirements set forth in 28 U.S.C. § 1446. *Enbridge Energy, LP*, 146 S. Ct. at 1079, 1082. The United States “bear[s] the burden of showing federal officer jurisdiction.” *Czerono v. Gen. Elec. Co.*, 182 F.4th 15, 19 (1st Cir. 2026) (alteration in original) (quoting *Gov’t of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 184 (1st Cir. 2024)).

ARGUMENT

To avoid remand, the United States must show that this case can be removed under § 1442(a)(1) and that removal was timely. It can do neither.

I. This Case Is Not Removable Under § 1442(a)(1).

Removal under § 1442(a) is limited to actions “against or directed to” the United States and certain officers and individuals. In such an action, “the removing defendant must be the United States, a federal agency, a federal officer, or a person ‘acting under’ a federal officer”; “the suit must be ‘for or relating to any act under color of such office’”; and “the removing defendant must assert a ‘colorable federal defense.’” *Chevron USA Inc. v. Plaquemines Parrish*, 608 U.S. 1, 6 (2026) (first quoting 28 U.S.C. § 1442(a)(1); then quoting *Mesa v. California*, 489 U.S. 121, 129

(1989)). Here, removal is improper because this action is not “against or directed to” the United States at all, and any effort to remove the case on behalf of the Sheriff’s Department fails as a matter of both procedure and substance.

A. This case is not “against or directed to” the United States.

This case was brought against the Sheriff’s Department—a state agency—not the United States. The pleadings make that clear. Nor is this case “directed to” the United States. ACLUM seeks an order directing a state agency to produce documents the state agency created or received.

While the First Circuit does not appear to have considered the scope of “directed to,” courts in other circuits have rejected the very construction that the United States advances. For example, in *Alabama One Credit Union v. Toppins*, the United States sought to remove a state action as a non-party and then moved to quash a state court order directing a credit union, Alabama One, to produce information purportedly belonging to the National Credit Union Administration (“NCUA”). No. 7:16-CV-01382-LSC, 2017 WL 2306448, at *1 (N.D. Ala. May 26, 2017). The Court held that removal was improper because the order “d[id] not command the NCUA to take any action; rather it directs *Alabama One* to produce documents to the court.” *Id.* at *2 (emphasis in original). The Court acknowledged that NCUA regulations asserted a property interest in records “in the possession of a credit union like Alabama One,” and broadly “prohibit[ed] the disclosure of NCUA records,” but nonetheless concluded that, under § 1446, “[t]he proper procedure in this situation is for the NCUA to first present its arguments to the state court.” *Id.* at *2–3. The Court further noted that the plain meaning of “against or directed to” the United States “does not independently authorize the federal government to remove an action to assert the defense on behalf of a party to the action.” *Id.* at *3; *see also Adams v. Administar Def. Servs., Inc.*, 901 F. Supp. 78, 79 (D. Conn. 1995) (rejecting the United States’ attempt to remove, because “[i]t is

axiomatic that in the usual case removal can be achieved only by a defendant, who is by implication a party to the state-court action”).⁶

The same is true here. ACLUM did not direct its civil action at the United States. ACLUM did not name the United States as a defendant. It did not serve the United States with a subpoena. It sued a state agency—the Sheriff’s Department—in state court, pursuant to state public records law. No one haled the United States into Massachusetts Superior Court for any purpose.

The cases cited by the United States in support of removal do not suggest a different conclusion. Two of the cases are inapposite because they involved lawsuits in which the United States intervened in state court. *See Amancio v. DePerry*, 654 F. Supp. 3d 145, 150 (D. Conn. 2023); *Cowlitz Cnty. v. Univ. of Wash.*, No. 3:19-CV-06250-RBL, 2020 WL 1890616, at *2 (W.D. Wash. Apr. 16, 2020). The rest were removed by the original defendant, not the United States. *See Express Scripts, Inc.*, 119 F.4th at 179; *Roe v. CoreCivic, Inc.*, 823 F. Supp. 3d 1137, 1147 (S.D. Cal. 2026); *Castillo v. Snyders*, 497 F. Supp. 3d 299, 301 (N.D. Ill. 2020).

To the extent the United States contends that this suit is directed at it because the Sheriff’s Department entered into a contract with the United States, that theory also fails. The United States appears to argue that, by agreeing to the IGSA, the Sheriff’s Department exempted certain records made or received by that state agency from the Massachusetts Public Records Law and adopted various federal restrictions on disclosure instead. *See Notice of Removal* ¶¶ 2–4. But the Sheriff’s

⁶ Although some courts have found a subpoena to be “directed to” (but not “against”) a federal officer for purposes of removal, *see, e.g., Stauffer v. Miller*, Misc. Action No. 14-MC-454 (ABJ-AK), 2014 WL 12539886, at *3 (D.D.C. July 16, 2014), the United States has received no subpoena here. *See also Alabama One Credit Union v. Toppins*, No. 7:16-CV-1382-LSC, 2017 WL 2313012, at *3 (N.D. Ala. Apr. 18, 2017) (“Nothing in § 1442 allows the United States to remove an action in which it is neither a party nor subject to any order or subpoena.”), *report and recommendation adopted*, No. 7:16-CV-01382-LSC, 2017 WL 2306448 (N.D. Ala. May 26, 2017).

Department has no authority to make such an agreement, and those terms—even if they purported to cover the records at issue—would be void under state law and under the IGSA itself.

It is black-letter law that Massachusetts state agencies like the Sheriff’s Department have no authority to contract their way out of the obligations imposed by the Massachusetts Public Records Law. *See Rahim*, 486 Mass. at 548; *Champa v. Weston Public Schools*, 473 Mass. 86, 98 (2015). This is true even when the records were received from the federal government or created in connection with federal activities. In *Rahim*, for example, the FBI delivered certain records to a district attorney “accompanied by a letter asserting that the materials remained FBI property, were being loaned temporarily to the district attorney, and were not to be disclosed upon a Massachusetts public records law request.” *See id.* at 545. The Supreme Judicial Court (“SJC”) held that all records “made or received” by Massachusetts agencies are “public records” subject to disclosure under Massachusetts law, and further that “[t]he public records law does not vest agencies with the authority to determine the statute’s scope by making interagency agreements.” *Id.* at 547–48. The SJC therefore rejected “[t]he FBI’s assertion that the materials are Federal property and outside the purview of the public records law” and held that the district attorney’s office was required to release the records under the Massachusetts Public Records Law to the extent the records did not fall with any of the various state law exemptions.⁷ *See id.* at 547–49, 555–56.

Any agreement that records made or received by the Sheriff’s Department would be “under the control of ICE” or would be “subject to public disclosure only pursuant to the provisions of

⁷ The United States has long been aware that Massachusetts state agencies have no authority to modify their public records obligations by contract with the federal government. In fact, the U.S. Attorney for the District of Massachusetts filed a statement of interest in the Superior Court and a brief as *amicus curiae* at the SJC in *Rahim*, which was decided years before the IGSA was signed. *See Rahim*, 486 Mass. at 545 n.2 & 546.

applicable federal laws (such as FOIA),” Notice of Removal Ex. 1-1, at 38 (IGSA Art. 21(A)), was therefore null and void. That is true both by operation of law, *see Rahim*, 486 Mass. at 547–49; *Champa*, 473 Mass. at 98; *Armstrong v. Sec’y of Energy & Env’t Affs.*, 490 Mass. 243, 247 (2022) (“When an agency acts beyond the scope of authority conferred to it by statute, its actions are invalid and ultra vires.”), and by the terms of the IGSA itself, *see* Notice of Removal Ex. 1-1, at 34 (IGSA Art. 14(G)) (“Any provision of this agreement contrary to applicable statutes, regulations, policies or judicial mandates is null and void . . .”).

Moreover, the release of records pursuant to a Court order is *expressly permitted by the IGSA*—so no federal property interest created by the IGSA could possibly be infringed by the Superior Court’s orders. IGSA Article 21(A) provides that records covered by the agreement may be “subject to public disclosure . . . as ordered by a Court.” Notice of Removal Ex. 1-1, at 38. Here, the Superior Court carefully considered whether disclosure of these records was required (or prohibited) by state and federal law and indicated it would enter judgment ordering disclosure. *See* Notice of Removal Ex. 1-2, at 7–8. To the extent its forthcoming judgment requires the production of records, the IGSA specifically authorizes the Sheriff’s Department to produce them. *See* Notice of Removal Ex. 1-1, at 38 (IGSA Art. 21(A)) (ICE and DHS agree records are “subject to public disclosure . . . as ordered by a Court”). Accordingly, the United States retains no contractually created federal interest in preventing the Sheriff’s Department from disclosing records that “a Court” “order[s]” disclosed. *Id.*

Finally, although the United States cites 8 C.F.R. § 236.6 in its notice of removal, that regulation does not change this analysis. As the Superior Court recognized, § 236.6 does not preempt the Massachusetts Public Records Law in these circumstances for all the reasons discussed in the briefing and order below. *See* Notice of Removal Ex. 1-2, at 7–8; State Court

Record Ex. A, Dkt. No. 9-1 at 158–83 (ACLUM’s memorandum of law). Indeed, DHS points to no statute authorizing it to convert by regulation records that are public records under Massachusetts law into federal records blocked from public view. When DHS promulgated § 236.6, it listed eighteen statutory provisions that “authorize” the regulation, none of which authorize preemption of state public records law.⁸ The very first statute that DHS cited as authority, 5 U.S.C. § 301, states that an executive department “may prescribe regulations for the government of his department,” but provides “[t]his section does not authorize withholding information from the public or limiting the availability of records to the public.” DHS is entitled to no deference to the extent it construes that statute or any other to preempt the Massachusetts Public Records Law. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024); *Jacinto v. Trump*, 796 F. Supp. 3d 584 (D. Neb. 2025) (invalidating immigration regulation as *ultra vires*). And regardless, the United States’s opinion about the scope of § 236.6 is simply beside the point: the United States is not a party to the case. The removal statute does not grant the United States a roving license to remove disputes between third parties any time it disagrees with a state court’s interpretation of federal law.

B. Because this action is not against or directed to the United States, the United States has no basis to remove it in its own name.

Although the United States may assert an interest in the case, an “interest” does not make one a defendant in a legal action. And it is defendants, not non-parties, who remove a case. Indeed, “[i]t is axiomatic that in the usual case removal can be achieved only by a defendant.” *Adams*, 901 F. Supp. at 78 (rejecting the United States’ attempt to remove); *see also Plaquemines Parrish*, 608

⁸ According to DHS, the statutory provisions that purportedly “authorize” DHS to create the regulation are: 5 U.S.C. §§ 301, 552, 552a; 8 U.S.C. §§ 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. §§ 4002, 4013(c)(4). Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, 67 Fed. Reg. 19508-012002, 19511, 2002 WL 602768 (Apr. 22, 2002).

U.S. at 6 (noting that “the removing *defendant* must be the United States” (emphasis added)). If the United States wished to remove this case under § 1442(a)(1), it should have first sought to intervene in the case to become a party. *See United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 933 (2009) (explaining that “intervention is the requisite method for a nonparty to become a party to a lawsuit”).

The cases the United States relies upon in its notice of removal confirm as much. *See Cowlitz Cnty.*, 2020 WL 1890616, at *2 (allowing United States to remove where it intervened in the state action); *Amancio*, 654 F. Supp. 3d at 150 (same). But that is not what the United States did. The United States made no attempt to participate in the case until the eve of judgment and then filed a notice of removal. Moreover, even if the United States *had* moved to intervene, it is not clear that intervention would have been allowed—or, if it were, that removal would have been any more appropriate. *See Stephen L. LaFrance Holdings, Inc. v. Sorensen*, 278 F.R.D. 429, 440 (E.D. Ark. 2011) (rejecting United States’ “novel argument that, because it intervened, the civil action is now against the U.S. Government”). Finally, to the extent that the “directed to” language of § 1442(a)(1) created a de facto exception to the general rule that non-parties have no standing to remove an action—for example, by allowing third-party subpoena recipients to remove related proceedings to federal court—for all the reasons discussed in Section I.A. above, the United States does not meet any such exception.

C. Any effort to remove the case on behalf of the Sheriff’s Department fails.

Although the United States (improperly) purports to remove the case in its own name, the Notice of Removal notes that §1442(a) “also permits ‘any officer (or any person acting under that officer) of the United States or of any agency thereof’” to remove a case. Notice of Removal ¶ 7. To the extent that reference is an attempt to assert a substantive basis for removal by the Sheriff’s Department—and then to exercise that option on behalf of the state agency—that effort fails.

To remove a case under § 1442(a), “the removing defendant must be the United States, a federal agency, a federal officer, or a person acting under a federal officer; “the suit must be for or relating to any act under color of such office”; and “the removing defendant must assert a colorable federal defense.” *Plaquemines Parrish*, 608 U.S. at 6 (internal quotation marks and citations omitted). The Sheriff’s Department did not remove this case: it may be a “defendant,” but it is not a “removing defendant.” Indeed, it is not clear if the Sheriff’s Department wants this case to be removed at all. In any event, if the Sheriff’s Department *did* wish to remove the case (thus becoming a “removing defendant”), it should have done so before the mandatory 30-day deadline expired. *Enbridge Energy, LP*, 146 S. Ct. at 1081–82, 1086. It may not avoid the statute’s mandatory deadline by having the United States file a notice of removal in its stead. *Id.* That is enough to end the inquiry.

Any removal on behalf of the Sheriff’s Department also fails on substantive grounds. As an initial matter, it is not even clear that the Sheriff’s Department is a “person” for purposes of the federal officer removal statute. For instance, the Supreme Court has held, in the context of federal officer removal, that “the term ‘person’ does not include the sovereign, [and] statutes employing the [word] are ordinarily construed to exclude it.” *Int’l Primate Prot. League v. Adm’rs of Tulane Educ. Fund*, 500 U.S. 72, 83 (1991) (modification in original) (quoting *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 64 (1989)). Here, the defendant is not any individual sheriff or officer, but the Sheriff’s Department—a state agency and, therefore, an arm of the sovereign. *Harrison v. Plymouth Cnty. Sheriff’s Dep’t*, No. 24-CV-11347-DJC, 2024 WL 3888745, at *1 (D. Mass. Aug. 20, 2024) (explaining that “[t]he Plymouth County Sheriff’s Office has been an arm of the Commonwealth since 2010”).

Moreover, under Supreme Court precedent, “acting under” within the context of § 1442(a) means “a relationship that involves ‘acting in a certain capacity, considered in relation to one holding a superior position or office.’” *Watson*, 551 U.S. at 151 (quoting 18 Oxford English Dictionary 948 (2d ed.1989)). The required relationship involves “subjection, guidance, or control.” *Id.* (quoting Webster’s New International Dictionary 2765 (2d ed. 1953)). It is not enough for the restrictions imposed by the United States to be “highly detailed” or for the regulated conduct to be “highly supervised and monitored.” *Id.* at 153. The non-federal entity’s “assistance” must “go[] beyond simple compliance with the law,” “rules,” and “orders.” *Id.* at 154.

The bar is particularly high when dealing with state agencies, given the grave federalism concerns raised by federal attempts to command state agencies. While many cases addressing the “acting under” element of § 1442(a) involve removals by private government contractors, removals involving state agencies are less frequent and heavily scrutinized. As courts have recognized, states, by their nature, generally engage in “cooperative federalism” with the federal government, rather than subservience. *See Mays v. City of Flint, Mich.*, 871 F.3d 437, 445, 447, 449 (6th Cir. 2017) (holding that “government-contractor cases” did not apply to case involving “state officers who have been sued for actions and inactions related to their enforcement of state law”). For example, in *Maine Association of Interdependent Neighborhoods v. Commissioner, Maine Department of Human Services*, a neighborhood association sued the Maine Commissioner of Human Services in Maine state court challenging the Maine Department of Human Services’ rules that “were enacted to conform to federal regulations.” 876 F.2d 1051, 1054 (1st Cir. 1989). The Commissioner removed under § 1442(a), and the First Circuit remanded the case, reasoning that “federal courts should show ‘a proper respect for state functions,’ and should let states ‘perform their separate functions in their separate ways.’” *Id.* at 1055–56 (quoting *Younger v.*

Harris, 401 U.S. 37, 44 (1971)). More recently, in the § 1983 context, the First Circuit held that “the mere fact of a contract to house federal detainees does not transform a municipally owned and operated facility into a federal one, or a municipal employee into a federal actor.” *Wright v. Martin*, 158 F.4th 286, 293 (1st Cir. 2025).

That is all United States has proffered here: “a contract to house federal detainees.” Consistent with *Watson* and its progeny, the fact of a contract alone—even one that includes “highly detailed” requirements—does not come close to establishing that Plymouth officials, at all relevant times, were “strictly and solely” at the “behest” of ICE officials or otherwise “acting under” the United States. *See Camacho v. Autoridad de Telefonos de Puerto Rico*, 868 F.2d 482, 486 (1st Cir. 1989). The IGSA is a “service[s]” contract pursuant to 8 U.S.C. § 1103(a)(11)(A). *See* IGSA Art. 1(A). It does not satisfy the First Circuit’s standards for the “acting under” element of § 1442(a). Thus, even if the Sheriff’s Department had removed the case—and it did not—the case would be subject to remand. That result is doubly appropriate here, where the United States purports to be advancing the state agency’s *potential* arguments for removal—without any indication that the state agency *actually* endorses those arguments—to support removal in the name of the United States.

II. Removal Was Untimely Under 28 U.S.C. § 1446(b)(1).

Even if the United States were able to remove the case under § 1442(a), the Court should still remand the case because the United States missed any applicable 30-day deadline under 28 U.S.C. § 1446(b) or § 1446(g). The Supreme Court has unanimously ruled that these deadlines are “mandatory” and that remand is “required.” *Enbridge Energy, LP*, 146 S. Ct. at 1081–82, 1086.

A. The United States missed any applicable deadlines under § 1446(b).

Section 1446(b)(1) provides that “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” In addition, section 1446(b)(3) provides that “if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” *Romulus v. CVS Pharmacy, Inc.*, 770 F.3d 67, 72 (1st Cir. 2014) (quoting 28 U.S.C. § 1446(b)(3)).

Here, every fact alleged in the notice of removal was readily apparent from the face of the complaint. ACLUM even attached to the complaint a copy of the IGSA, the document upon which the United States largely bases its request for removal. Notably, that document undercuts, rather than supports, any argument that removal is timely.

The IGSA included specific provisions that laid out a formal mechanism by which any pleadings like the one filed by ACLUM would be provided to ICE within “five working days.” *See* Notice of Removal Ex. 1-1, at 39 (IGSA Art. 21(B)). Putting aside the United States’ own argument that the Sheriff’s Department was effectively acting as its agent (thus making notification to the department tantamount to notice on the United States), Plymouth’s counsel confirmed on the record that “[t]he contract contemplates when this occurs that I have to provide notice to ICE right away” and that Plymouth “provided notice to ICE” and provided ICE with “all the records that are responsive.” *See* McFadden Decl., Ex. A at 28:19–28:21. Indeed, Plymouth provided copies of the complaint to ICE and the DOJ in February 2026, less than two weeks after the complaint was filed. McFadden Decl. ¶¶ 8–9 & Exs. C, D. Plymouth also confirmed that ICE had communicated to Plymouth its position that “the CFR applies and the [Sheriff’s Department]

cannot provide any of the records.” *See id.* Ex. A at 28:19–29:06. The United States did not file its notice of removal until September 10, 2026—meaning that, despite an apparent date of transmittal of the suit to ICE and DOJ as early as February 2026, it took more than *six months* for the United States to attempt to remove the case. That is far too late. The statute imposes a mandatory deadline of 30 days, and remand is required.

B. The United States missed any applicable deadlines under § 1446(g).

The United States also cites § 1446(g), presumably because it understands that it is not a “defendant” and so arguably falls outside the scope of § 1446(b). But the result is the same. Subsection (g) states, “Where the civil action . . . that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.” 28 U.S.C. § 1446(g). As addressed above, the United States was served with notice of the proceeding by Plymouth some six months before the United States decided to file a notice of removal, and subsection (g)—like subsection (b)—includes a 30-day clock from the date of service. Here, that time expired, and under *Enbridge Energy, LP*, 146 S. Ct. at 1081–82, 1086, a remand is required because removal is untimely—regardless of whether removal is or is not proper.

CONCLUSION

For all the foregoing reasons, ACLUM respectfully requests that the Court immediately remand the case to the Massachusetts Superior Court.

Respectfully submitted,

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Dated: October 7, 2026

LOCAL RULE 7.1(a)(2) CERTIFICATE

I hereby certify pursuant to Local Rule 7.1(a)(2) that plaintiff has conferred with the United States in a good faith attempt to narrow or resolve the issues presented by this motion, but the parties were unable to reach an agreement.

Dated: October 7, 2026

/s/ Andrew J. O'Connor

Andrew J. O'Connor

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2026, this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: October 7, 2026

/s/ Andrew J. O'Connor

Andrew J. O'Connor