

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FELICIANO GOMEZ LOPEZ)	
)	
Petitioner,)	Civ. No. <u>17-cv-11470</u>
)	
v.)	
)	
ANTONE MONIZ,)	PETITION FOR WRIT OF
Superintendent of Plymouth County)	HABEAS CORPUS PURSUANT TO
Correctional Facility,)	28 U.S.C. § 2241
JOSEPH D. MCDONALD, JR.,)	
Sheriff of Plymouth County,)	
)	ORAL ARGUMENT REQUESTED
Respondents.)	
)	

INTRODUCTION

1. Petitioner Feliciano Gomez Lopez has been unlawfully detained without a bond hearing since May 9, 2017. Unless this Court intervenes, he will remain in custody throughout the pendency of his immigration proceedings without any opportunity to demonstrate that he does not pose a danger or flight risk warranting continued detention.

2. Gomez was removed to Guatemala in 2012. In 2013, he fled that country and rejoined his family in Lynn, Massachusetts. He was detained by Immigration and Customs Enforcement (“ICE”) on May 9, 2017, but was found to have a reasonable fear of persecution in Guatemala. Gomez is currently in proceedings in immigration court to determine whether he is entitled to

withholding of removal, a form of protection that would bar ICE from returning him to Guatemala.

3. The government intends to hold Gomez without a bond hearing throughout these proceedings—which may continue for many months, or even years—because it asserts that his detention is controlled by the post-final-order detention statute, 8 U.S.C. § 1231. That interpretation is incorrect. Because Gomez is detained “pending a decision on whether [he] is to be removed from the United States,” his custody is governed by 8 U.S.C. § 1226(a), and he is entitled to an individual bond hearing. Even if his detention were governed by § 1231, however, it would be unlawful because that statute does not authorize continued confinement where—as here—there is no significant likelihood of removal in the reasonably foreseeable future. Gomez asks this Court to order his immediate release unless he is provided with an individualized bond hearing.

PARTIES

4. Petitioner Feliciano Gomez Lopez was detained by ICE on May 9, 2017. He remains in immigration custody at the Plymouth County Correctional Facility in Plymouth, Massachusetts.

5. Respondent Antone Moniz is the superintendent of the Plymouth County Correctional Facility and is Petitioner’s immediate custodian. He is sued in his official capacity.

6. Respondent Joseph D. McDonald, Jr. is the Sheriff of Plymouth County and is also Petitioner's immediate custodian. He is sued in his official capacity.

JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241 and Article I, Section 9, Clause 2 of the United States Constitution ("Suspension Clause") because Petitioner is currently in custody under color of the authority of the United States in violation of the Constitution, laws, or treaties thereof.

VENUE

8. Venue lies in the District of Massachusetts because Petitioner is detained in Plymouth, Massachusetts and a substantial part of the events giving rise to his claims occurred in Massachusetts. 28 U.S.C. §§ 1391, 2241.

FACTS

9. Gomez fled a longstanding and violent family and land feud in Guatemala and entered the United States unlawfully in 2001.

10. Since moving to the United States, Gomez has lived in Lynn, Massachusetts and has worked as a landscaper and roofer. Since 2006, he has lived with his longtime partner and her U.S. citizen daughter, who is now 12 years old. The couple also live with their 9-year-old U.S. citizen son.

11. Gomez was charged with operating under the influence on three occasions, most recently on November 8, 2011. In 2011, these incidents brought Gomez to the attention of immigration authorities. Gomez was placed in removal

proceedings under 8 U.S.C. §1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. The Immigration Judge denied his applications for cancellation of removal and asylum, and ordered his removal to Guatemala.

12. During his time in state and immigration custody, Gomez reconnected with his Christian faith. He obtained treatment for his alcohol use and has been sober ever since.

13. Gomez was removed in 2012. His wife and children remained in the United States.

14. In Guatemala, Gomez again feared for his life. In February 2013, Gomez was deported after attempting to reenter the United States.

15. Following an attempt on his life, Gomez reentered the United States on or about October of 2013. He travelled to Lynn to reunite with his family.

16. Gomez's removal in 2012 had caused him to default in his state criminal proceedings, and there was an outstanding warrant for his arrest. In May 2017, Gomez was present when police arrived at a co-worker's apartment. He was arrested on the outstanding warrant and ultimately transferred into ICE custody. Since then, Gomez has been detained at the Plymouth County House of Corrections.

17. On the date of his detention, ICE served Gomez with a Form I-871, Notice of Intent/Decision to Reinstate Prior Order of Removal.

18. On May 25, 2017, Gomez requested a reasonable fear interview with an asylum officer, due to his fear of returning to Guatemala based on the persecution he suffered because of his family ties.

19. On June 1, 2017, an asylum officer interviewed Gomez, found his testimony consistent and credible, and determined that Gomez has a reasonable fear of persecution on account of a protected ground.

20. Gomez's case was then referred to the Boston Immigration Court for proceedings to determine whether he qualifies for withholding of removal, a form of immigration relief that would protect him from removal to Guatemala.

21. Gomez applied for withholding of removal on July 14, 2017.

22. A hearing on his application will be held on September 28, 2017. If his application is denied, Gomez may appeal that denial to the Board of Immigration Appeals ("BIA"). If that entity dismisses Gomez's appeal, he may petition for review to the United States Court of Appeals for the First Circuit. Conversely, if the Immigration Judge grants Gomez's application for withholding of removal, DHS may appeal that determination to the BIA.

23. Gomez requested a bond hearing on July 14, 2017. The Immigration Judge denied the motion after holding that he lacked jurisdiction to consider bond.

24. In the government's view, Gomez will be ineligible for a bond hearing throughout his entire immigration proceeding. He will thus have no opportunity to argue to an Immigration Judge that he does not pose a danger or flight risk warranting continued detention while his immigration case is being resolved.

25. Gomez is his family's primary breadwinner. Since his detention, his family has fallen behind on rent payments and is facing eviction.

DETENTION DURING WITHHOLDING-ONLY PROCEEDINGS

26. The Immigration Judge's conclusion that Gomez is not eligible for a bond hearing relies on an erroneous interpretation of the Immigration and Nationality Act's two main detention provisions—8 U.S.C. §§ 1226 and 1231—as they relate to Gomez's proceedings and application for withholding of removal in immigration court.

Detention under 8 U.S.C. §§ 1226 and 1231

27. The Immigration and Nationality Act generally provides two sources of detention authority: The detention of individuals whose immigration proceedings are pending is governed by 8 U.S.C. § 1226, while that of noncitizens whose legal process has concluded in a final order of removal that merely awaits execution is governed by 8 U.S.C. § 1231.

28. Section 1226 authorizes the detention of a noncitizen "pending a decision on whether [the noncitizen] is to be removed from the United States."

29. Unless subject to mandatory detention provisions not at issue here, a noncitizen subject to § 1226 may be released on bond or on conditions, and is entitled to a bond hearing before an Immigration Judge.

30. By contrast, § 1231(a) applies to the detention of noncitizens whose immigration proceedings have concluded. The statute establishes a 90-day period during which a noncitizen with a final order of removal "shall" be removed, and

provides that the executive “shall” detain the noncitizen during that “removal period.” Id. § 1231(a)(1) and (2).

31. The removal period begins at the time that the government may first act to execute the order of removal, that is, when an order of removal “becomes administratively final,” or upon the completion of judicial review, or—if a noncitizen is imprisoned when his order of removal becomes final—upon his release from that custody. Id. § 1231(a)(1)(B).¹

32. With certain exceptions, noncitizens “may” be detained beyond the removal period. Id. § 1231(a)(6). But the government interprets § 1231(a)(6) and applicable regulations to deny immigration judges jurisdiction to set bond or order release on conditions. 8 C.F.R. § 1236.1. Instead, the custody of individuals detained under § 1231(a)(6) is subject only to limited review by DHS officials.

33. In Zadvydas v. Davis, 533 U.S. 678, 689 (2001), the Supreme Court interpreted § 1231(a)(6) to authorize detention only when removal is “reasonably foreseeable.” As a guide, the Court established that six months of detention while

¹ Specifically, 8 U.S.C. § 1231(a)(1)(B) provides that the removal period begins “on the latest of the following:”

“(i) The date the order of removal becomes administratively final.

“(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.

“(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.”

the government attempts a noncitizen's removal is presumptively reasonable under the statute. Id. at 701.

Reinstatement of removal and withholding-only proceedings

34. Title 8, § 1231(a)(5) instructs the executive to “reinstate” the removal order of anyone who is found to have reentered the country illegally after being removed. Persons subject to reinstatement of removal cannot appear before an Immigration Judge; instead, they are removed summarily upon their previous removal order, which is “reinstated from its original date.” Id.; 8 C.F.R. § 241.8(a).

35. But there is an exception: a noncitizen who expresses fear of being persecuted or tortured if returned to his home country must be interviewed by an asylum officer to determine if he has a “reasonable fear” of persecution or torture in that country. Id. at § 241.8(e). If the officer finds a reasonable fear, the noncitizen is referred to an Immigration Judge for proceedings to determine whether he qualifies for “withholding of removal”—a form of protection from removal to a specific country in which an individual will suffer persecution or torture. See 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16, 208.31(e); see also 8 C.F.R. § 1208.2(c)(3)(i). The proceedings are limited in scope to applications for withholding of removal, but are otherwise conducted following the same procedures that apply in removal proceedings. 8 C.F.R. § 208.31(e).

36. Following these “withholding-only” proceedings, an Immigration Judge's decision on a noncitizen's application for withholding of removal may be appealed to the BIA by the noncitizen or by DHS.

37. A noncitizen whose application for withholding of removal is denied by the BIA may then petition for review of the decision to the relevant U.S. Court of Appeals. A petition for review must always be filed within 30 days of “the date of the final order of removal.” 8 U.S.C. § 1252(b)(1). In the case of a noncitizen in “withholding-only” proceedings whose application for withholding of removal is denied by the BIA, Courts to have examined the question agree that the removal order becomes final on the date that the BIA renders its decision denying the application for withholding of removal, and a petition for review is timely if filed within 30 days of that date. See, e.g., Ortiz-Alfaro v. Holder, 694 F.3d 955, 960 (9th Cir. 2012); see also Garcia v. Sessions, 856 F.3d 27, 35 (1st Cir. 2017). A non-citizen pending withholding-only proceedings, therefore, does not yet have a final order of removal that can be judicially reviewed.

Gomez’s detention

38. Gomez’s detention during his withholding-only proceedings is governed by 8 U.S.C. § 1226, not § 1231, and he is entitled to an individualized bond hearing. Guerra v. Shanahan, 831 F.3d 59 (2d Cir. Jul. 29, 2016) (holding a noncitizen in withholding-only proceedings was entitled to a bond hearing because his detention is governed by § 1226); see also, e.g., Guerrero v. Aviles, No. 14-4367, 2014 WL 5502931 (D.N.J. Oct. 30, 2014); Uttecht v. Napolitano, No. 8:12-CV-347, 2012 WL 5386618 (D. Neb. Nov. 1, 2012); but see Padilla-Ramirez v. Bible, 862 F.3d 881 (9th Cir. July 6, 2017) (acknowledging noncitizen in withholding-only proceedings did

not have final order of removal for purposes of time-limit to seek judicial review, but holding 8 U.S.C. § 1231 nevertheless governed detention).

39. Although DHS notified Gomez of its intent to reinstate his prior order of removal to Guatemala, Gomez is now in proceedings to determine whether he may in fact be removed under that order. Gomez is thus detained “pending a decision on whether [he] is to be removed from the United States,” under § 1226(a), not pursuant to an “administratively final” order of removal, under § 1231(a). See 8 U.S.C. § 1101(a)(47)(B) (removal order is not final until both the Immigration Judge and the BIA complete review).

CLAIMS FOR RELIEF

COUNT 1 - VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

40. The foregoing allegations are realleged and incorporated herein.

41. Noncitizens detained under 8 U.S.C. § 1226(a) are entitled to an individualized bond hearing to determine whether they pose a flight risk or danger warranting further detention.

42. Because Gomez is detained under § 1226(a) and he has been denied an individual bond hearing, his detention violates § 1226(a).

43. Even if Gomez’s detention were governed by 8 U.S.C. § 1231, his detention would violate that provision because § 1231 does not authorize detention where there is “no significant likelihood of removal in the reasonably foreseeable future.” Zadvydas, 533 U.S. at 701 (interpreting statute in light of Constitution).

COUNT 2 - VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

44. The foregoing allegations are realleged and incorporated herein.

45. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. See Zadvydas, 533 U.S. at 690-92, 699-700; Jackson v. Indiana, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. See Zadvydas, 533 U.S. at 699-700.

46. Gomez's removal is not reasonably foreseeable, and his detention by DHS during the pendency of his withholding-only proceedings violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

REQUEST FOR ORAL ARGUMENT

Petitioner respectfully requests oral argument on this Petition.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

1. Order Petitioner's release from DHS custody unless he receives and immediate bond hearing in front of an Immigration Judge;
2. Declare that Petitioner's detention during his withholding-only proceedings is governed by 8 U.S.C. § 1226(a), and he is entitled to a bond hearing.

3. Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and,

4. Order any further relief this Court deems just and proper.

Respectfully submitted this 9th day of August, 2017.

/s/ Julio Cortes del Olmo

BBO # 685135

Del Olmo Law

251 Harvard Street, Suite #4

Brookline, Massachusetts 02446

(617) 391-0110

/s/ Adriana Lafaille

Matthew R. Segal (BBO # 654489)

Adriana Lafaille (BBO # 680210)

American Civil Liberties Union

Foundation of Massachusetts, Inc.

211 Congress Street

Boston, Massachusetts 02110

(617) 482-3170

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Feliciano Gomez Lopez

(b) County of Residence of First Listed Plaintiff Plymouth
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Julio Cortes del Olmo; Del Olmo Law; 251 Harvard Street, suite 4,
Brookline, MA 02446; (617) 391-0110// Adriana Lafaille and Matthew
Segal; American Civil Liberties Union Foundation of Massachusetts;

DEFENDANTS

Superintendent of Plymouth County Correctional Facility Antone
Moniz; Sheriff of Plymouth County Joseph D. McDonald, Jr.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input checked="" type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. s. 2241

Brief description of cause:
Petition for writ of habeas corpus from unlawful immigration custody

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 08/09/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Julio Cortes del Olmo

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Feliciano Gomez Lopez v. Antone Moniz

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 835*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Julio Cortes del Olmo

ADDRESS Del Olmo Law; 251 Harvard Street, Suite 4, Brookline, MA 02446

TELEPHONE NO. (617) 391-0110