

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
JULIO RAMIREZ,)	
)	C.A. No. _____
Petitioner,)	
)	
v.)	PETITION FOR WRIT OF
)	HABEAS CORPUS
STEVEN W. TOMPKINS,)	
Suffolk County Sheriff,)	
YOLANDA SMITH,)	
Superintendent of the South Bay House)	
of Correction,)	
TODD LYONS,)	
Immigration and Customs Enforcement,)	
Enforcement and Removal Operations,)	
Acting Field Office Director,)	
)	
Respondents.)	
_____)	

INTRODUCTION

1. This is a petition for a writ of habeas corpus to counter, among other things, the persistent failure of U.S. Immigration and Customs Enforcement (ICE) to transport immigration detainees to criminal proceedings pending in the Massachusetts courts. ICE has publicly taken the position that it will support such transportation. Both ICE and its contracted state custodians have the capacity to transport prisoners. Yet, for at least a year, ICE has supplied shifting explanations, instructions, and procedures for obtaining such transport, none of which has proved effective in actually getting immigration detainees to court.

2. In this case, Petitioner Julio Ramirez was charged with operating under the influence (OUI) in the Cambridge District Court after a minor car accident. He denies the charge

and intends to exercise his constitutional right to a trial. ICE arrested Mr. Ramirez—like others in Massachusetts—as he departed a pretrial conference at the Massachusetts court.

3. After ICE arrested him, Mr. Ramirez requested that an Immigration Judge release him on bond pending resolution of his removal proceedings. Citing allegations in the OUI police report, the Immigration Judge denied this request at a hearing in which Mr. Ramirez was required to bear the burden to prove that he did not present a flight risk or danger warranting detention. Mr. Ramirez consequently remains detained at the South Bay House of Correction in Suffolk County.

4. Mr. Ramirez's next pretrial conference in Massachusetts court was scheduled to occur on November 13, 2018. That court issued writs of habeas corpus *ad prosequendum* requiring ICE and South Bay to transport Mr. Ramirez to the hearing. The writs incorporated language that ICE claims is sufficient to facilitate transport. But neither ICE nor South Bay actually transported Mr. Ramirez to the hearing.

5. Mr. Ramirez's trial is now scheduled for December 5, 2018. He wishes to exercise his constitutional right be present at his own trial. The Massachusetts court has again issued writs of habeas corpus *ad prosequendum* using the language supplied by ICE.

6. In light of the failure to transport Mr. Ramirez on November 13, 2018, and the persistent difficulties ICE detainees have faced in accessing the Massachusetts courts, judicial intervention is necessary to protect Mr. Ramirez's rights. Mr. Ramirez respectfully requests that this Court enter a temporary restraining order requiring his legal and physical custodians to transport him to his trial, beginning on December 5, 2018.

7. Mr. Ramirez also seeks permanent relief, including an order requiring ICE and its contracted state custodians to identify and adhere to a consistent methodology for complying

with any future state court orders to produce Mr. Ramirez. Additionally, Mr. Ramirez requests that the Court order that Mr. Ramirez receive a constitutionally adequate bond hearing at which the government bears the burden to justify Mr. Ramirez's continued detention.

PARTIES

8. Petitioner Julio Ramirez is detained at the South Bay House of Correction, a component of the Suffolk County Sheriff's Department, and located at 20 Bradston Street, Boston, Massachusetts.

9. Respondent Steven W. Tompkins is Sheriff of Suffolk County and is Mr. Ramirez's immediate custodian. As Sheriff of Suffolk County, Respondent Tompkins directs the activities of the more than 1,000 personnel employed by the Suffolk County Sheriff's Department, as well as the use of the Department's vehicles and other transportation equipment.

10. Respondent Yolanda Smith is the Superintendent of the South Bay House of Correction and is also Mr. Ramirez's immediate custodian. As Superintendent, Respondent Smith directs the activities of more than 500 corrections officers, as well as the use of various vehicles and other transportation equipment.

11. Respondent Todd Lyons is the Acting Field Office Director of ICE, Enforcement and Removal Operation's Boston Field Office. He is Mr. Ramirez's immediate legal custodian.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 28 U.S.C. § 2241.

13. Venue lies in the District of Massachusetts because Mr. Ramirez is currently detained within this District.

FACTS ALLEGED

I. Mr. Ramirez is Not Dangerous and Has Strong Community Ties.

14. Mr. Ramirez was born in Guatemala. He is 34 years old.

15. In late 2003 or early 2004, Mr. Ramirez fled Guatemala to escape persecution. He entered the United States without inspection in 2004.

16. Before being detained, Mr. Ramirez resided in East Boston. He has worked in construction for many years and recently opened his own construction company.

17. Mr. Ramirez has strong family ties to the United States. His sister and nieces reside here, and two of his nieces are U.S. citizens. Mr. Ramirez also has a long-term partner in the United States. On information and belief, she is a U.S. citizen.

18. Mr. Ramirez has substantial support in the community, in part based on his long history as a volunteer for numerous community organizations. Congressman Michael Capuano, Congresswoman-elect Ayanna Pressley, and City Councilor Andrea Campbell have all submitted letters to immigration authorities on his behalf. Letters of support were also submitted by representatives of community organizations such as the Community Economic Development Center, Massachusetts Jobs with Justice, the Brazilian Worker Center, and Justice at Work.

19. Mr. Ramirez has no criminal history except for minor motor vehicle violations from nearly a decade ago.

II. ICE Detained Mr. Ramirez at the Cambridge District Court When He Traveled There to Defend Himself against a Pending Charge Arising from a Minor Car Accident.

20. On August 3, 2018, the Cambridge police arrested Mr. Ramirez after a minor car accident that did not involve any injuries. An Uber vehicle driving in front of Mr. Ramirez pulled over to pick up a passenger. When Mr. Ramirez attempted to avoid the Uber vehicle, the

corner of his bumper impacted the rear of the Uber vehicle. Mr. Ramirez stopped to exchange information with the other driver. Mr. Ramirez suggested that they call the police to do an accident report. When the police arrived, they interrogated Mr. Ramirez and then charged him with one criminal count of operating under the influence of liquor in violation of G.L. c. 90, § 24(1)(a)(1), as well as one civil infraction for failure to yield in violation of G.L. c. 89, § 9.

21. Mr. Ramirez denies the charge against him and wishes to exercise his right to a trial. The Commonwealth is not expected to present any breathalyzer or blood test evidence that Mr. Ramirez was intoxicated. Multiple witnesses are expected to testify that they interacted with Mr. Ramirez immediately before and after the accident and did not observe him to be intoxicated.

22. On August 3, 2018, Mr. Ramirez was arraigned and released on personal recognizance.

23. On September 7, 2018, Mr. Ramirez appeared at the Cambridge District Court for a pretrial conference.

24. On October 15, 2018, Mr. Ramirez appeared at the Cambridge District Court for another pretrial conference. Two ICE agents were tasked with arresting him at this appearance.

25. The two ICE agents established surveillance in the parking lot and observed him enter the courthouse. One of the ICE agents followed Mr. Ramirez into the courtroom and observed him respond when the clerk called his name. After the hearing concluded, the two ICE agents arrested Mr. Ramirez in the courthouse parking lot.

26. At or around the time of this arrest, ICE issued a Notice to Appear alleging that Mr. Ramirez is a removable alien. The resulting removal proceeding is now pending in the Boston Immigration Court. A master calendar hearing was held on November 14, 2018. A

hearing for submission of pleadings was held on November 26, 2018. Mr. Ramirez expects to apply for asylum, relief under the Convention Against Torture (CAT), withholding of removal, and cancellation of removal.

27. On October 29, 2018, the Immigration Judge conducted a hearing on Mr. Ramirez's request for release from immigration detention on bond. The Immigration Judge required that Mr. Ramirez bear the burden of proving his lack of dangerousness and risk of flight by clear and convincing evidence. The Immigration Judge ruled that Mr. Ramirez had failed to prove that he was not dangerous in light of the pending OUI charges, and therefore denied bond.

28. Meanwhile, as explained below, ICE and its contracted state custodians will not transport Mr. Ramirez to state court to defend against or resolve the pending OUI charges.

29. Consequently, ICE is detaining Mr. Ramirez based on a pending state charge that he cannot defend or resolve because ICE itself, together with its contracted state custodians, is making it impossible for Mr. Ramirez to go to state court.

III. For at Least a Year, ICE and Its Contracted State Custodians Have Consistently Failed to Transport Detained Noncitizens to Massachusetts Court Proceedings, and Have Offered a Series of Shifting Explanations and Procedures for Securing Such Transport.

30. The Massachusetts Houses of Correction routinely, safely, and securely transport inmates who are not immigration detainees to and from proceedings in the Massachusetts courts.

31. Before 2017, immigration detainees held under contract at the Houses of Correction received comparable treatment. ICE and state officials largely complied with a procedure for securing the attendance of immigration detainees at Massachusetts court proceedings. The Massachusetts court would issue two writs of habeas corpus *ad prosequendum*, one to ICE and the other to the Sheriff's Department for the county in which the

state court was located. Defense counsel and/or District Attorneys would then coordinate with both. This procedure was generally effective.

32. Starting in early 2017, staff at the Immigration Impact Unit (IIU) at the Massachusetts Committee for Public Counsel Services (CPCS) began hearing reports from defense attorneys that clients in ICE custody were no longer being transported to Massachusetts court proceedings, even when the established procedure had been followed.

33. By October 2017, the transportation procedure had broken down so significantly that the IIU issued an advisory to defense counsel that the prior practice was no longer reliable.

34. On March 2, 2018, ICE acknowledged publicly that it had adopted a policy of refusing to allow ICE detainees in Massachusetts to be transported to Massachusetts court proceedings. In the majority of such cases, the criminal case would remain open and a default warrant would issue.

35. On March 12, 2018, in *Pensamiento v. McDonald*, an ICE detainee at Plymouth County Correctional Facility moved for a federal temporary restraining order requiring his transport to a criminal proceeding in the Chelsea District Court. Judge Burroughs, sitting as emergency judge, held a hearing on the motion on March 15, 2018. At that hearing, ICE and the other respondents consented to the entry of such an order, which Judge Burroughs entered shortly thereafter. *See* March 15, 2018 Temporary Restraining Order (Docket No. 17), *Pensamiento v. McDonald*, C.A. No. 18-10475-PBS (D. Mass.).

36. During that hearing, ICE indicated that, in the future, it expected that immigration detainees could be transported to Massachusetts proceedings if the Massachusetts court incorporated certain terms into the state writs of habeas corpus *ad prosequendum*. *See* March 15, 2018 Tr. at 10, *Pensamiento v. McDonald*, C.A. No. 18-10475-PBS (D. Mass.).

37. However, on information and belief, ICE continued to deny immigration detainees access to Massachusetts court proceedings, even when the Massachusetts court issued writs of habeas corpus *ad prosequendum* containing the language ICE had proposed, or language that was substantially similar.

38. By May 2018, a second ICE detainee had moved for a federal temporary restraining order requiring transportation to state proceeding, this time in *Alvarez Figueroa v. McDonald*. Following a hearing, the Court ruled on May 2, 2018, that the detainee had “a due process right to be present at the state court criminal proceedings against him,” and entered the requested order. *See* May 2, 2018 Order (Docket No. 41), *Alvarez Figueroa v. McDonald*, C.A. No. 18-10097-PBS (D. Mass.).

39. However, on information and belief, even after this ruling, ICE continued to deny immigration detainees access to Massachusetts court proceedings.

40. ICE now claims that ICE and the Massachusetts Executive Office of the Trial Court “agreed in September 2018 to standardized language for a Massachusetts state court to use to order the transfer of a detainee to appear in state court.” *See* Decl. of Alan Greenbaum (Docket No. 19-2), *Doe v. Smith*, C.A. No. 18-12266-PBS (D. Mass.).

41. However, this new “standardized language” has not worked either. For example, in the pending case *Doe v. Smith*, an immigration detainee sought transportation from South Bay to the Boston Municipal Court for an appearance on November 15, 2018. The trial court issued writs of habeas corpus *ad prosequendum*, which, on information and belief, contained language supplied by ICE. ICE claims that it approved transportation pursuant to the writs. Yet nobody actually transported the detainee to court. *See* Decl. of David Wesling (Docket No. 19-1), *Doe v. Smith*, C.A. No. 18-12266-PBS (D. Mass.).

IV. ICE and Its Contracted State Custodians Have Failed to Transport Mr. Ramirez to His State Court Proceedings, Even When the State Court Issued Orders Using Language Approved by ICE, And Even When ICE Specifically Approved the Orders Themselves.

42. Mr. Ramirez's case continues the pattern described above.

43. After Mr. Ramirez was detained by ICE, his next scheduled appearance in Cambridge District Court was a pretrial conference scheduled for November 13, 2018.

44. On October 31, 2018, the Cambridge District Court issued writs of habeas corpus *ad prosequendum* to ICE and South Bay, requiring that Mr. Ramirez be transported to court on November 13th.

45. On information and belief, ICE rejected those writs and asked that the Clerk of the Cambridge District Court issue new writs containing language supplied by ICE. On information and belief, the Clerk then contacted the Trial Court's Office of General Counsel and confirmed the legality of ICE's proposed language.

46. On November 9, 2018, the Cambridge District Court issued new writs of habeas corpus *ad prosequendum* to ICE and South Bay, incorporating ICE's requested language, and again requiring that Mr. Ramirez be transported to court on November 13th. On information and belief, ICE approved these writs.

47. Nevertheless, on November 13, 2018, Mr. Ramirez was not transported to court, and he missed his hearing.

48. It appears that Mr. Ramirez, like other immigration detainees, is caught in an untenable position where his transportation to state court will purportedly be "approved," but neither ICE nor the Houses of Correction actually takes responsibility for transporting him.

49. In response to the writ of habeas corpus *ad prosequendum*, General Counsel for Suffolk County Sheriff's Department indicated to the Clerk of Cambridge District Court that only Plymouth and Bristol counties were able to transport ICE detainees to state court.

50. Mr. Ramirez's criminal defense counsel is attempting to accommodate this restriction. On November 21st, the Cambridge District Court issued writs of habeas corpus *ad prosequendum* to ICE, Suffolk County House of Correction, and Plymouth County House of Correction, incorporating the language supplied by ICE, and requiring that Mr. Ramirez be transported to court on December 5, 2018 for his trial.

51. However, it is not clear why directing the writ to Plymouth County will somehow improve the odds of Mr. Ramirez being transported from the detention facility at South Bay (located in Suffolk County) to the Cambridge District Court (located in Middlesex County). Additionally, it is unclear why Suffolk County will now comply with the writ given their previous contention that they cannot transport ICE detainees.

52. Given the experiences of the other detainees described above, and of Mr. Ramirez to date, it appears highly probable that Mr. Ramirez will not be transported to his trial, unless this Court enters an order mandating that such transport occur.

CLAIMS FOR RELIEF

Count I – Writ of Habeas Corpus *Ad Prosequendum*

53. The forgoing allegations are re-alleged and incorporated herein.

54. The Cambridge District Court requires Mr. Ramirez's appearance on December 5, 2018, for trial.

55. The Cambridge District Court has issued writs of habeas corpus *ad prosequendum* requiring that Mr. Ramirez be transported to court on December 5, 2018.

56. On information and belief, ICE and its contracted state custodians will not transport Mr. Ramirez to court on December 5, 2018, unless this Court orders that such transportation occur by issuing a complementary writ of habeas corpus *ad prosequendum*, or other order, in aid of the Massachusetts court's existing writs, including pursuant to 28 U.S.C. § 2241(c)(5). This Court may and should issue the writ even if it does not conclude that Respondents' failure to allow Mr. Ramirez to attend his state court proceedings violates any provisions of law or of the U.S. Constitution.

**Count II – Writ of Habeas Corpus
(Detention without opportunity to respond to pending state charges)**

57. The forgoing allegations are re-alleged and incorporated herein.

58. Mr. Ramirez's detention at a state facility without the opportunity to respond to pending charges, in violation of state court order, is unauthorized and unlawful, notwithstanding any purported agreements to the contrary that the state facility may have made with federal authorities.

59. Mr. Ramirez's detention without an opportunity to respond to the pending charges is an unlawful deprivation of his constitutional rights, including his right to due process and confrontation.

**Count III – Writ of Habeas Corpus
(Detention based on improper burden of proof)**

60. The forgoing allegations are re-alleged and incorporated herein.

61. Mr. Ramirez's detention is unlawful and violates his right to due process because he has not received a detention hearing at which the government was required to prove by clear and convincing evidence that Mr. Ramirez is a danger to others or a flight risk, and, even if so,

that no condition or combination of conditions will reasonably assure Mr. Ramirez's future appearance and the safety of the community.

PRAYER FOR RELIEF

Wherefore, Petitioner asks this Court to GRANT the following relief:

1. An order prohibiting Mr. Ramirez's transfer from this District pending resolution of this petition;
2. A writ of habeas corpus *ad prosequendum*, or other order, requiring that Mr. Ramirez be transported to the Cambridge District Court, in accordance with the writs issued by that court, on December 5, 2018;
3. An order requiring that Mr. Ramirez be transported to the Cambridge District Court for each and every hearing, trial, or other court date calendared by that court, and requiring ICE and its contracted state custodians to identify and adhere to a consistent methodology for complying with any future state court orders to produce Mr. Ramirez;
4. A writ of habeas corpus ordering that Mr. Ramirez be released, or, alternatively, ordering a detention hearing before this Court at which the government bears the burden to justify any further detention by proving by clear and convincing evidence that Mr. Ramirez is a danger to others or a flight risk, and, even if he is, that no condition or combination of conditions will reasonably assure his future appearance and the safety of the community;
5. Attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*, if applicable; and
6. Any further relief this Court deems just and proper.

November 27, 2018

Respectfully submitted,

/s/ Jonathan E. Bard

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