UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JULIO RAMIREZ, Petitioner, v. 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.	C.A. No. _____

MEMORANDUM IN SUPPORT OF
EMERGENCY MOTION FOR WRIT OF HABEAS CORPUS *AD PROSEQUENDUM*
OR, IN THE ALTERNATIVE, FOR TEMPORARY RESTRAINING ORDER

Petitioner Julio Ramirez is being detained by U.S. Immigration and Customs Enforcement (ICE) at the South Bay House of Correction in Suffolk County. Although Mr. Ramirez's habeas petition seeks various forms of permanent relief, this emergency motion seeks only limited preliminary relief: a temporary restraining order requiring his legal and physical custodians to transport him to Cambridge District Court on December 5, 2018, so that Mr. Ramirez may exercise his constitutional right to a trial on a criminal charge arising from a minor car accident.

Such an order is necessary because ICE has persistently failed to transport immigration detainees in Massachusetts, including Mr. Ramirez himself, to criminal proceedings in

Massachusetts courts. As explained below, ICE has publicly taken the position that it will support such transportation. And both ICE and its contracted state custodians can carry out such transportation. Yet, for at least a year, this transportation has not reliably happened.

ICE has supplied a pattern of shifting explanations, instructions, and procedures for obtaining such transportation, none of which has proved effective in actually getting immigration detainees to court. Indeed, Mr. Ramirez, his counsel, and state court staff attempted to comply with these procedures as recently as November 13, 2018, but nobody brought Mr. Ramirez to his hearing on that date. Immediate judicial intervention is necessary to protect Mr. Ramirez's right to attend his own trial and defend the pending charge.

I. FACTS AND PROCEDURAL HISTORY

A. ICE Detained Mr. Ramirez at a State Courthouse Where He Faces a Charge Arising from a Minor Car Accident, and ICE Now Seeks to Deport Him.

Mr. Ramirez fled to the United States to escape persecution in Guatemala. Petition for Habeas Corpus ("Petition") ¶ 15. Before being detained, he resided in East Boston and operated his own construction company. *Id.* ¶ 16. He has strong support in the community, in part based on his long history as a volunteer for numerous community organizations. *Id.* ¶ 18. For example, Congressman Michael Capuano, Congresswoman-elect Ayanna Pressly, and City Councilor Andrea Campbell have all submitted letters to the immigration authorities on his behalf. *See* Declaration of Jennifer Velarde ("Velarde Decl."), Ex. C (collected letters). *Id.* Mr. Ramirez's sister and nieces reside here, and two of his nieces are U.S. citizens. Petition ¶ 17. Mr. Ramirez also has a long-term partner in Massachusetts who is a U.S. citizen. *Id.*

On August 3, 2018, the Cambridge police arrested Mr. Ramirez after a minor car accident that did not involve injuries. *Id.* ¶ 20. An Uber vehicle stopped short to pick up a passenger, and when Mr. Ramirez attempted to maneuver around the Uber vehicle, the corner of his bumper

impacted the rear corner of the other vehicle. *Id.* Mr. Ramirez immediately confirmed that nobody was injured, began to exchange information with the other driver, and suggested that they call the police to obtain an accident report. *Id.* 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).[1] Declaration of Lauren Weitzen ("Weitzen Decl.") ¶ 2. Mr. Ramirez denies this charge. *Id.* ¶ 4.

Mr. Ramirez was arraigned on August 3, 2018, and was released on personal recognizance. Petition ¶ 22. ICE arrested him on October 15, 2018, as he departed the Cambridge District Court following a pretrial conference. *Id.* ¶¶ 23-24. ICE subsequently issued a Notice to Appear, alleging that Mr. Ramirez is a removable alien. *Id.* ¶ 26.

On October 29, 2018, the Immigration Judge conducted a hearing on Mr. Ramirez's request for release from immigration detention on bond. Velarde Decl. ¶ 6. The Immigration Judge ruled that Mr. Ramirez had failed to prove that he was not dangerous in light of the pending charge and denied him bond. *Id.* ¶ 7. Mr. Ramirez remains detained at South Bay House of Correction, which has contracted with ICE to house immigration detainees. He cannot return to the Cambridge District Court for trial or any other reason unless transported there by ICE or one of its contracted state custodians.

B. 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.

Massachusetts Houses of Correction are responsible for routinely, safely, and securely transporting inmates who are not immigration detainees to and from Massachusetts court. For at

[1] Mr. Ramirez was also charged with one civil infraction for failure to yield in violation of G.L. c. 89, § 9.

least five years leading up to 2017, there was a functional procedure for criminal defense attorneys to secure the attendance of immigration detainees at court proceedings. Declaration of Jennifer Klein ("Klein Decl.") ¶ 3. Generally, 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. *Id.* Either defense counsel or the District Attorney's Office would then coordinate the transportation with both ICE and the Sheriff's Department. *Id.* ¶ 4. This procedure did not work perfectly or consistently, but it at least provided a mechanism for ICE detainees to be transported to state court proceedings. *Id.*

However, beginning in early 2017, staff at the Committee for Public Counsel Services (CPCS) in the Immigration Impact Unit (IIU) began hearing reports from defense attorneys that clients in ICE custody were no longer being transported to court proceedings, even when the established procedure had been followed. *Id.* ¶ 5. In October 2017, the IIU observed such a significant breakdown in the transportation process that it issued an advisory to defense counsel warning that the prior practice was no longer reliable. *Id.* ¶ 6. The IIU even received reports of ICE officers refusing to release immigration detainees into the custody of Sheriff's Departments who were attempting to bring the detainees to state court pursuant to a writ of habeas corpus *ad prosequendum*. *Id.* ¶ 7.

On March 2, 2018, ICE publicly acknowledged that it had adopted a policy of refusing to allow ICE detainees in Massachusetts to be transported to Massachusetts court proceedings. *Id.* ¶ 8. On March 12, 2018, during a hearing in *Pensamiento v. McDonald*, ICE indicated that, in the future, it expected that immigration detainees could be transported to Massachusetts proceedings if the courts incorporated certain terms into the state writs. *Id.* ¶ 11. However, since

this hearing, ICE has continued to deny detainees access to court proceedings, despite being issued writs with the language it specifically requested. *Id.* ¶ 13.

Less than two months later, in *Alvarez Figueroa v. McDonald*, an ICE detainee moved for a temporary restraining order requiring that ICE transport him to a state court proceeding. *See* Klein Decl. ¶ 12, Ex. D (May 2, 2018 Order (Docket No. 41), *Alvarez Figueroa v. McDonald*, C.A. No. 18-10097-PBS (D. Mass.)). The Court ruled that the detainee had "a due process right to be present at the state court criminal proceedings against him" and entered the TRO. About a week later, on May 10, 2018, ICE failed to transport yet another detainee to the Chelsea District Court, which ultimately held ICE and the Department of Homeland Security in contempt. *See id.* ¶ 13, Ex. E (Docket Sheet in *Commonwealth v. Figueroa*, 1814CR000790 (Chelsea Dist. Ct.)). And the situation has not improved since then. This month, in *Doe v. Tompkins*, No. 18-12266-PBS (D. Mass.), ICE—despite providing new language for the state writs—once again failed to transport an immigration detainee to state court. *See id.* ¶ 15, Ex. F (Decl. of Alan Greenbaum); Ex. G (new language proposed by ICE); Ex. H (Decl. of David Wesling).

C. As with Other Immigration Detainees, ICE and Its Contracted State Custodians Have Failed to Transport Mr. Ramirez to State Court to Resolve His Pending Charge, Even When the State Court Issued Transportation Orders Using ICE-Approved Language.

Mr. Ramirez is yet another immigration detainee who ICE has refused to transport to his court proceedings despite the issuance of a state writ of habeas corpus. After Mr. Ramirez was detained, a final pretrial conference on his misdemeanor charge was scheduled for November 13, 2018. *See* Weitzen Decl. ¶ 8. On October 31, 2018, upon request by Mr. Ramirez's counsel, the Cambridge District Court clerk issued writs of habeas corpus *ad prosequendum* to ICE and to the

Suffolk County House of Correction ordering Respondents to transport Mr. Ramirez to the court for this pretrial conference. *Id.* ¶ 11.

A week later, ICE called the clerk to say it was denying the writ because the writ did not contain the correct language. *See id.* ¶ 13. ICE then provided modified language for the writ, which ICE indicated was required in order to ensure Mr. Ramirez's transportation. *Id.* The clerk then obtained approval of this language from the General Counsel for the Chief Justice of the Trial Court, who ultimately approved the new language. *Id.* ¶ 14.

On November 9, 2018, the clerk issued a second round of writs to ICE and the Suffolk County House of Correction containing the language requested by ICE. *Id.* ¶ 15. The following day, ICE indicated that it had received and approved the writ. *Id.* ¶ 16. The District Attorney's Office at the Cambridge District Court even contacted ICE to ensure that Mr. Ramirez would be transported to court, but was told by ICE—incorrectly—that Mr. Ramirez was not being held at the Suffolk County House of Correction. *Id.* ¶ 17. Then, on November 13, 2018, nobody transported Mr. Ramirez to his pretrial conference. *Id.* ¶ 9.

Mr. Ramirez's trial is scheduled for December 5, 2018. *Id.* ¶ 4. After Mr. Ramirez was not transported to his pretrial conference on November 13, 2018, his attorney began making efforts to obtain new writs of habeas corpus *ad prosequendum* so that Mr. Ramirez could exercise his constitutional right to be present at his trial. *Id.* ¶ 9. But Suffolk County has indicated that only Plymouth and Bristol Counties can transport ICE detainees to state court, and—in turn—Plymouth County has insisted that Middlesex County should be handling Mr. Ramirez's transportation. *Id.* ¶¶ 19-20. However, Middlesex County previously indicated they were not holding Mr. Ramirez and were therefore not the proper recipients of a writ. *See id.* ¶ 12.

Ultimately, on November 21, 2018, the Cambridge District Court Clerk's Office issued new writs of habeas corpus *ad prosequendum* to ICE, Suffolk County, and Plymouth County in a last ditch effort to obtain compliance. *See id.* ¶ 21. Despite these efforts, transportation and compliance with the writ is very unlikely without judicial intervention, given previous failures in this case and others, obvious confusion regarding responsibilities, and ICE's stated policy of refusing to comply with state writs.

II. ARGUMENT

A. The Court Should Issue a Writ of Habeas Corpus *Ad Prosequendum* Requiring That Mr. Ramirez Be Transported to His Hearing.

Under 28 U.S.C. § 2241(c)(5), the Court may issue a writ of habeas corpus whenever "[i]t is necessary to bring [a prisoner] into court to testify or for trial." The Court should issue the writ to preserve Mr. Ramirez's ability to respond to his state charge—and protect the integrity of Massachusetts criminal proceedings—even if it does not resolve the question of whether Respondents' failure to allow him to attend his criminal hearing violates any provision of law or of the Constitution.

In routine circumstances, writs of habeas corpus *ad testificandum* and *ad prosequendum* are issued by the court in which the charges are pending. *See, e.g.*, *United States v. Kelly*, 661 F.3d 682, 686 (1st Cir. 2011). For example, some courts have held that, when a prisoner's attendance is required for a state court proceeding, a writ should issue from the state court. *See Huston v. Kansas*, 390 F.2d 156, 157 (10th Cir. 1968).

Here, however, this Court may issue the writ. Writs already issued—three times—from the Massachusetts state court. *See* Weitzen Decl. ¶¶ 11, 15, 21. A Massachusetts prosecutor unsuccessfully sought the assistance of ICE in the execution of the writ. *See id.* ¶ 17. Nevertheless, it appears that Mr. Ramirez will not be transported. This Court can remedy the

situation by issuing its own writ under federal law in aid of the Massachusetts proceeding. *See Barber v. Page*, 390 U.S. 719, 724 (1968) ("[I]n the case of a prospective witness currently in federal custody, [§ 2241(c)(5)] gives federal courts the power to issue writs of habeas corpus *ad testificandum* at the request of state prosecutorial authorities."). Presumably, ICE and its contracted custodians will not argue that they may ignore federal court orders and, if the Court issues such a writ, there will be no need to reach the remaining issues raised in this motion.

B. In the Alternative, this Court Can and Should Enter a Temporary Restraining Order Requiring that Mr. Ramirez Be Transported to His Hearing.

1. The Court Has Authority to Enter a Temporary Restraining Order When Adjudicating a Habeas Corpus Petition.

The Court has the authority to issue a temporary restraining order in habeas proceedings under 28 U.S.C. § 2241. Specifically, the Court may, in its discretion, apply any of the Rules Governing Section 2254 Cases in the United States District Courts (the "2254 Rules") to a case filed under Section 2241. *See* 2254 Rule 1(b). Those rules, in turn, permit the Court to apply the Federal Rules of Civil Procedure. *See* 2254 Rule 12. Accordingly, the Court is empowered to issue a Temporary Restraining Order ("TRO") pursuant to the ordinary standards of Federal Rule of Civil Procedure 65. *See, e.g., Kim Anh Thi Doan v. Bergeron*, No. 15-11725, 2015 U.S. Dist. LEXIS 180568, at *10-12 (D. Mass. Dec. 3, 2015) (entering TRO releasing alien detainee in habeas proceedings). The Court may also do so pursuant to its inherent equitable habeas powers. *See Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy."); *see also Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (explaining that habeas corpus is, "above all, an adaptable remedy" in which the court's role is "most extensive in cases of pretrial and noncriminal detention, where there had been little or no previous judicial review of the cause for detention").

In granting preliminary relief, the court considers "first, the likelihood that the party requesting the injunction will succeed on the merits; second, the potential for irreparable harm if the injunction is denied; third, the hardship to the nonmovant if enjoined compared to the hardship to the movant if the injunctive relief is denied; and fourth, the effect of the court's ruling on the public interest." *See Water Keeper Alliance v. United States Dep't of Defense*, 271 F.3d 21, 30 (1st Cir. 2001).

2. Mr. Ramirez Is Likely to Show that Respondents Are Unlawfully Ignoring the Writs of Habeas Corpus Issued by a Massachusetts Court and Depriving Him of His Constitutional Right of Access to the Courts.

Mr. Ramirez is likely to show that Respondents' failure to allow him to attend his criminal proceedings violates his constitutional right of access to the courts and state law.

First, Respondents' refusal to allow Mr. Ramirez to attend court violates his right to be present at criminal proceedings, a fundamental right that "is rooted in both the due process and confrontation clauses of the Constitution." *United States v. Latham*, 874 F.2d 852, 856 (1st Cir. 1989); *see Tennessee v. Lane*, 541 U.S. 509, 523 (2004) ("The Due Process Clause and the Confrontation Clause of the Sixth Amendment, as applied to the states via the Fourteenth Amendment, both guarantee to a criminal defendant . . . the right to be present at all stages of the trial where his absence might frustrate the fairness of proceedings.") (internal citation omitted); *Alvarez Figueroa v. McDonald*, No. 18-10097 (D. Mass. May 2, 2018) (ordering ICE to transport petitioner to Massachusetts state court proceeding). This constitutional right is also recognized by the Massachusetts Supreme Judicial Court. *See Robinson v. Commonwealth*, 445 Mass. 280, 285 (2005) (noting that the Sixth Amendment, the Fourteenth Amendment, and Article 12 of the Massachusetts Declaration of Rights give "criminal defendants . . . the right to be present at all critical stages of court proceedings") (internal citation omitted).

A defendant has a due process right to be present at proceedings "whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge." *Snyder v. Massachusetts*, 291 U.S. 97, 105-06 (1934), *overruled on other grounds by Malloy v. Hogan*, 378 U.S. 1, 2-3 & n.1 (1964). The Supreme Court declared this right applicable to states "to the extent that a fair and just hearing would be thwarted by [the defendant's] absence." *Id.* at 107-08. Accordingly, courts have held that defendants have the right to be present at various stages of criminal proceedings, including suppression hearings, voir dire, and jury instructions. *See, e.g.*, *Blackwell v. Brewer*, 562 F.2d 596 (8th Cir. 1977) (constitutional error was committed against defendant when he was not allowed in the courtroom during voir dire); *United States v. Clark*, 475 F.2d 240 (2nd Cir. 1973) (defendant's constitutional right was violated when he was excluded from suppression hearing); *Bustamante v. Eyman*, 456 F.2d 269 (9th Cir. 1972) (defendant had constitutional right to be present when jury instructions were reread). This is because "[m]atters may be asserted before a factfinder which the defendant alone knows how to answer or to correct" and "[t]actical decisions vital to defendant may have to be made on the spot." *LaChappelle v. Moran*, 699 F.2d 560, 564 (1st Cir. 1983).

Similarly, the confrontation clause of the Sixth Amendment also guarantees the right of an accused to be present not only whenever testimony is taken, but "in the courtroom at every stage of his trial." *Illinois v. Allen*, 397 U.S. 337, 338 (1970) (incorporated into the Fourteenth Amendment and made applicable to the states in *Pointer v. Texas*, 380 U.S. 400 (1965)). The Sixth Amendment also establishes defendants' right to a speedy trial. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ."); *Doggett v. United States*, 505 U.S. 647, 654 (1992) (noting that "unreasonable delay

between formal accusation and trial threatens to produce more than one sort of harm, including oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by dimming memories and loss of exculpatory evidence") (internal citation omitted); *Barker v. Wingo*, 407 U.S. 514, 531 (1972) (discussing the speedy trial factors, including "the reason the government assigns to justify the delay").

The right of a defendant to be present at criminal proceedings is not limited to U.S. citizens. *See, e.g.*, *Mathews v. Diaz*, 426 U.S. 67, 77-78 (1976) ("The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of [the aliens within the United States] from deprivation of life, liberty, or property without due process of law . . . even one whose presence in this country is unlawful, involuntary, or transitory.") (internal citation omitted); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("[I]t must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fourteenth, Fifth and Sixth Amendments]."); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment is not confined to the protection of citizens.").

Mr. Ramirez has a constitutional right to be present at his December 5, 2018 trial at the Cambridge District Court. This right gives rise to an affirmative obligation for both ICE and the Commonwealth of Massachusetts: they have a duty to transport Mr. Ramirez to the trial.

States have affirmative obligations that "flow from [the] principle" that they must afford litigants, and in particular criminal defendants, a meaningful opportunity to be heard in court.[2] *Lane*, 541 U.S., at 523 ("The Due Process Clause also requires the States to afford certain civil

[2] Courts have held that custodians have a Fourteenth Amendment obligation to facilitate other essential services for their prisoners, such as medical care. *See Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 245 (1983); *Miranda-Rivera v. Toledo-Dávila*, 813 F.3d 64, 75 (1st. Cir. 2016); *Estate of Carter v. City of Detroit*, 408 F.3d 305, 310 (6th Cir. 2005); *Fitzke v. Shappell*, 468 F.2d 1072, 1076 (6th Cir. 1972).

litigants a meaningful opportunity to be heard by removing obstacles to their full participation in judicial proceedings.") (internal citation omitted). *See, e.g.*, *Lewis v. Casey*, 518 U.S. 343, 349-55 (1996) (prison authorities required to provide inmates with tools needed to directly or collaterally attack their sentences and challenge the conditions of their confinement); *Burns v. Ohio*, 360 U.S. 252, 257-258 (1959) (state may not prevent indigent defendants from accessing Ohio Supreme Court to pursue appeals); *Griffin v. Illinois*, 351 U.S. 12, 19-20 (1956) (noting that "destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts"); *Ex parte Hull*, 312 U.S. 546 (1941) (striking down as unconstitutional a prison regulation requiring that habeas petitions pass an internal review procedure in order to be filed). And under the Sixth Amendment speedy trial clause, states have a constitutional duty to "make a diligent, good-faith effort" to bring prisoners to trial when they are being charged in another jurisdiction. *Smith v. Hooey*, 393 U.S. 374, 383 (1969).

Second, Mr. Ramirez is in the physical custody of a Massachusetts Sheriff's Department, which is a Massachusetts state agency. *See Kim Anh Thi Doan v. Bergeron*, No. 15-cv-11725-IT, 2016 U.S. Dist. LEXIS 130608, at *21 (D. Mass. Sep. 23, 2016) (citing St. 2009 ch. 61, §§ 6, 9). Regardless of ICE's position on Mr. Ramirez's transportation, a Massachusetts custodian has no authority to ignore a writ of habeas corpus *ad prosequendum* issued by a Massachusetts court, particularly where ignoring such an order denies a criminal defendant his constitutional rights to defend himself against pending criminal charges. Massachusetts courts can undoubtedly compel a prisoner's attendance in such circumstances by issuing such a writ. *See Commonwealth v. Wilson*, 399 Mass. 455, 462 (1987).

Indeed, in Massachusetts, state agencies (like the Sheriff's Departments) have only the authority the law gives them. As a "general rule," their "powers, duties, rights, and

responsibilities," including as jailers, "are prescribed by statute" and are thus "circumscribed by the legislative enactments of" the Commonwealth. *Souza v. Sheriff of Bristol County*, 455 Mass. 573, 580 (2010). Thus, in *Souza*, when the Sheriff of Bristol County imposed a daily fee on inmates for their incarceration, as well as other fees for haircuts, medical care, and GED testing—for the purpose of "encourag[ing] inmates to be financially responsible"—the program was invalidated because the Massachusetts Supreme Judicial Court found no authority for it under either statutory or common law. *Id.* at 574, 579-81, 586; *see also Lunn v. Commonwealth*, 477 Mass. 517 (2017) (stating a similar principle for the authority of state officers to make arrests). Here, similarly, no law gives state agencies the authority to disobey the validly issued orders of a state court, particularly where such disobedience deprives the prisoner of his constitutional rights.[3] *See* G.L. c. 37, § 24 (establishing that Massachusetts sheriffs and their deputies "shall be responsible . . . for the transportation of prisoners or other persons in their custody").

Respondents must not be allowed to deflect and diffuse responsibility, hiding behind contractual arrangements and red tape while Mr. Ramirez is deprived of his constitutional right to defend himself against the criminal charge. The Court should intervene.

[3] Nor can the Sheriff's Department use its contractual arrangement with ICE to justify ignoring state court orders. That arrangement is governed by an intergovernmental services agreement ("IGSA") under which the Sheriff's Office has agreed to house ICE detainees for a fee. The Supreme Court has ruled that state and local governments do not possess federal authority by virtue of their contracts with the federal government. *See Logue v. United States*, 412 U.S. 521, 529 (1973). Nor does the statute authorizing such IGSAs purport to imbue local authorities with federal powers. 8 U.S.C. § 1103(a)(11)(B). The Sheriff's Department is therefore acting unlawfully by failing to comply with the Cambridge District Court's writs requiring that Mr. Ramirez be brought to court.

3. Unless a TRO Is Granted, Mr. Ramirez Is Likely to Suffer Irreparable Harm.

If Mr. Ramirez cannot go to court, he will continue to suffer an unjustified loss of liberty every single day he spends in custody. *See Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455, 463 (D. Mass 2010) ("A loss of liberty may be an irreparable harm.") (citing *Bois v. Marsh*, 801 F.2d 462 (1986) (D.C. Cir. 1986)).

As explained above, the Immigration Court found Mr. Ramirez dangerous and denied bond based on the allegations in the police report relating to the car accident. *See* Velarde Decl. ¶ 9. If Mr. Ramirez is allowed to go to court, he can defend this charge or, alternatively, the Commonwealth may agree to abandon or reduce them. That disposition would be relevant to the Immigration Court's consideration of any motion by Mr. Ramirez for a redetermination of his bond. Presently, however, Respondents are preventing him from resolving the charge that forms the predicate of his detention. Consequently, he will remain detained and separated from his family and community. *See Calderon Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) ("Any unjustified loss of liberty for even one more day would be a particularly painful form of irreparable harm to them and to the United States citizens who love them.").

Further, Mr. Ramirez will be irreparably harmed if he is not permitted to vindicate his constitutional right to present himself before a court and stand trial on his charge. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). And his failure to appear at his trial may cause the Cambridge District Court to enter a default, costing Mr. Ramirez further loss of liberty and/or substantial financial harm. *See* G.L. c. 276, § 82A (providing that failure to appear at court after being released on personal recognizance will result in "a fine of not more

than ten thousand dollars or by imprisonment in a house of correction for not more than one year, or both, in the case of a misdemeanor"); Klein Decl. ¶ 17.

Finally, ICE continues to pursue Mr. Ramirez's removal. If Mr. Ramirez is removed without an opportunity to resolve the charge against him, the Department of Homeland Security may later assert that such charge poses a permanent impediment to his return to the United States.

4. The Balance of Harms And Public Interest Favor Granting a TRO.

As described above, Mr. Ramirez will likely suffer severe harm if he is unable to attend his trial. In contrast, Respondents will suffer no harm by transporting Mr. Ramirez to Cambridge for his trial. *See Lane*, 541 U.S., at 532-33 (noting that "ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts"). In fact, the Sheriff's Departments routinely and securely move prisoners throughout the Commonwealth for exactly this purpose, and Mr. Ramirez will be returned to the South Bay House of Correction as soon as his trial is over. Respondents' refusal to allow ICE detainees to attend court hearings senselessly interferes with both the rights of defendants and the integrity of Massachusetts courts.

Conversely, allowing Mr. Ramirez to attend will advance the public interest in the efficient function of the criminal justice system and the protection of the rights of criminal defendants. *See Standefer v. United States*, 447 U.S. 10, 25 (1980) ("The purpose of a criminal court is . . . to vindicate the public interest in the enforcement of the criminal law while at that same time safeguarding the rights of the individual defendant.") (internal citation omitted).

III. CONCLUSION

For all the foregoing reasons, Mr. Ramirez respectfully requests that this Court issue a writ of habeas corpus *ad prosequendum* or, alternatively, a temporary restraining order, requiring that he be transported to the Cambridge District Court on December 5, 2018.

November 27, 2018

Respectfully submitted,

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