

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JULIO RAMIREZ,		)
		)
Petitioner,		)
		)
v.		)
		)
STEVEN TOMPKINS, Suffolk County Sheriff;		)
YOLANDA SMITH, Superintendent of the		)
South Bay House of Correction; and		)
TODD LYONS, Immigration and Customs		)
Enforcement and Removal Operations, Acting		)
Field Office Director,		)
		)
Respondents.		)
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C.A. No. 18-12452-PBS

RESPONDENT TODD LYONS’ RESPONSE TO THE COURT’S  
NOVEMBER 28, 2018 ORDER TO SHOW CAUSE AND  
MOTION TO DISMISS COUNTS I AND II

Respondent, Todd Lyons (“Respondent Lyons”), by and through his attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, herein files this response to the Court’s Order to Show Cause why Petitioner, Julio Ramirez’s Motion for Writ of Habeas Corpus and Prosequendum or, in the Alternative, for Temporary Restraining Order (“TRO”), should not be allowed. Based on an agreement reached with the Suffolk County Sheriff’s Department (“SCSD”), Petitioner’s TRO should be denied. Respondent Lyons also moves this Court to dismiss Counts I and II as they are now moot.

I. BACKGROUND

Petitioner, Julio Ramirez, filed an emergency motion on November 28, 2018, in the United States District Court for the District of Massachusetts, seeking “a Temporary Restraining Order requiring his legal and physical custodian to transport him to Cambridge District Court on

December 5, 2018 . . .” Petitioner states in his TRO that he was scheduled to be in Cambridge District Court on November 13, 1028, but he was not transported to court. Previously, in the case of *Pensamiento v. McDonald*, C.A. No 18-10475-PBS, the parties entered into an agreement regarding transportation to a criminal proceeding in Chelsea District Court (Docket No. 4, p.2 ¶ 10.) This agreement was also supposed to assist in resolving other instances where Immigration and Customs Enforcement (“ICE”) detainees needed to be transported to State Court. Due to the Cambridge District Court’s failure to adhere to the agreed upon standardized language between ICE and the Executive Office of the Massachusetts Trial Court, coupled with a long holiday weekend, Petitioner was not transported to state court on November 13, 2018, (see Exhibit 1, Declaration of David Wesling, Supervisory Detention and Deportation Officer).

Since the filing of this TRO, counsel for Respondent Lyons has spoken with Chief Counsel for the SCSD, and an agreement has been reached for SCSD to transport Petitioner to Cambridge District Court on December 5, 2018, and for any subsequent state court hearing (*see* Ex. 1 and Ex. 2, Affidavit of Allen H. Forbes, Attorney SCSD). This agreement between ICE and SCSD should moot Counts I and II of Petitioner’s TRO (Docket No. 2).<sup>1</sup>

## II. ARGUMENT

Article III of the Constitution limits the judicial power of the United States to the resolution of “cases” or “controversies.” U.S. Const. art. III, § 2. In this regard, the Constitution requires that an actual controversy must exist at all stages of review, not merely at the time the complaint is filed. *Steffel v. Thompson*, 415 U.S. 452, 459 n.10 (1974). Once a case or controversy is moot, a federal court no longer retains jurisdiction to adjudicate the merits of the

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<sup>1</sup> Count III of Petitioner’s Writ of Habeas Corpus involving detention based on improper burden of proof.

case. U.S. Const. art. III, § 2; *see also* *U.S. Bancorp Mortgage Co. V. Bonner Mall P'ship*, 513 U.S. 18, 21-22 (1994); *Ashcroft v. Mattis*, 431 U.S. 171, 172-3 (1977)(an action that has become moot fails to present a justiciable case or controversy within the meaning of Article III); *Overseas Military Sales Corp., Ltd v. Giralt-Armada*, 503 F.3d 12, 17 (1st Cir. 2007)(under mootness doctrine, when issues presented are no longer live, or when parties lack a cognizable interest in the outcome, dismissal of the case is compulsory). Thus, the question of mootness is a federal one, which a federal court must resolve before it assumes jurisdiction. *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974).

III. Petitioner's Appearance, if Necessary, at any Subsequent State Court Hearings.

To the extent that Petitioner is concerned with any further need for transportation to state court beyond December 5, 2018, this agreement between the SCSD and ICE will ensure that Petitioner will be transported. Although not the subject of this limited TRO focused on relief for Petitioner, counsel for Respondent Lyons has been informed that counsel for the SCSD will expeditiously seek to enlist the support of the ACLU, CPCS and ICE to meet with and to persuade the Massachusetts Trial Court to universally accept and make standard the habeas language that the SCDC has advocated for. Counsel for Respondent Lyons has personally communicated with counsel for SCSD, Jennifer Klein, Staff Attorney, Immigration Import Unit, and ICE and all have agreed that meeting again with the Executive Office of the Massachusetts Trial Courts is necessary to ensure compliance.

IV. CONCLUSION

Wherefore, based on both the SCSD and ICE agreeing to have Petitioner transported to Cambridge District Court on December 5, 2018, and any other subsequent dates, the Petitioner's

Petition for a TRO should be denied, and Counts I and II of the Petitioner's Habeas Petition should be dismissed.

Respectfully submitted,

ANDREW E. LELLING,  
United States Attorney

By: /s/ Rayford A. Farquhar  
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: November 30, 2018

/s/ Rayford A. Farquhar  
Rayford A. Farquhar  
Assistant U.S. Attorney

LOCAL RULE 7.1 CERTIFICATION

I, Rayford A. Farquhar, Assistant U.S. Attorney, herein certify that I spoke with counsel for Petitioner, and we could not reach a resolution of the issue raised in this Response.

Dated: November 30, 2018

/s/ Rayford A. Farquhar  
Rayford A. Farquhar  
Assistant U.S. Attorney

DECLARATION OF SUPERVISORY DETENTION & DEPORTATION OFFICER

DAVID WESLING

Pursuant to the authority of 28 U.S.C. § 1746, I, David Wesling, a Supervisory Detention & Deportation Officer for U.S. Department of Homeland Security, United States Immigration and Customs Enforcement, Enforcement and Removal Operations, Burlington, Massachusetts declare as follows:

1. I am a Supervisory Detention & Deportation Officer (“SDDO”) for U.S. Department of Homeland Security, United States Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE”).
2. Included in my official duties as a SDDO in Burlington, Massachusetts is the responsibility for managing and monitoring detained aliens in ICE custody. I am familiar with ICE policies and procedures for detaining individuals and have experience utilizing ICE record systems to obtain information regarding specific aliens.
3. ICE maintains electronic and paper records on aliens in the course of its regularly conducted business activity. These records are made in the course of regularly conducted business activity at or near the time of relevant events by a person with knowledge of these events.
4. I have examined the official records available to me regarding the immigration history and custody status of Julio Ramirez, Administrative File No. 215-557-473. I have also discussed this case with and reviewed electronic communication between with Deportation Officers, Supervisory Detention and Deportation Officers, and ICE’s Office of Chief Counsel as appropriate. Unless otherwise stated, this declaration is based on that review and discussions.

5. I am aware that the ICE Office of Chief Counsel, my office, and the 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. I am aware that the standardized language was circulated to the Massachusetts state courts.
6. Pursuant to this standardized language, the following must occur in order for an ICE detainee to be transferred to state court.
7. A state District Court will send the writ of habeas corpus *ad prosequendum* utilizing the standard language to ICE. If the standard language is used, ICE will approve the habeas corpus writ and fax the approved writ and a detainer back to the applicable District Court.
8. Such District Court is responsible for appointing a Sheriff's Department to provide transportation for the detainee to and from the District Court.
9. ICE is responsible for making the detainee available for pick-up by the Sheriff's Department who is then responsible for transporting the detainee to the state court hearing and returning the detainee to ICE's custody immediately after the conclusion of the hearing.
10. Pursuant to the agreed upon standard language, the state court is responsible for ordering the appropriate Sheriff's Department to transport the detainee to and from the state court hearing.
11. On or about October 31, 2018, ICE received a state court habeas corpus for prosecution request from the Trial Court of Massachusetts, Cambridge District Court. However, this habeas corpus did not comply with the agreed upon standard language in that it directed ICE, not the Sheriff's Department, to transfer the detainee to and from state court.

12. As such, ICE contacted the state court on Wednesday, November 7, 2018, and provided the agreed upon standardized language and asked that they resubmit the habeas corpus.
13. The Cambridge District Court sent a new state court habeas corpus to ICE on Friday November 9, 2018 utilizing the correct standard language. This state court habeas was generated by the Cambridge District Court at 3:36PM on November 9, 2018 and received thereafter by ICE later that afternoon.
14. ICE approved the state court habeas corpus on Saturday, November 10, 2018.
15. The ICE-ERO Burlington Office and the Cambridge District Court was closed on Monday, November 12 in observance of Veteran's Day.
16. ICE faxed the approved habeas corpus along with a detainer to the Cambridge District Court on Tuesday, November 13 at 9:17AM to notify the court that ICE had approved the habeas corpus. However, the hearing had already begun at this time and therefore the Cambridge District Court was not able to arrange for transportation with the Suffolk County Sherriff's Department.
17. The Cambridge District Court, on November 21, 2018, sent another state court habeas corpus that again erroneously directed ICE to transport Ramirez to and from his next court date. ICE again contacted the District Court to provide the correct language.
18. On November 29, 2018, the Cambridge District Court produced a state court habeas corpus which appointed the Suffolk County Sherriff's Department to pick up and transfer Ramirez to state court on December 5, 2018. The Cambridge District Court faxed this state court habeas corpus to ICE on November 29, 2018.
19. ICE approved this state court habeas corpus on November 29, 2018.

20. ICE faxed a copy of the approved state court habeas corpus and a detainer to the Cambridge District Court on November 29, 2018.
21. An ICE Deportation Officer contacted a clerk at the Cambridge District Court, Brian Sullivan, on November 29, 2018 to inform the court that the habeas had been approved. The ICE Deportation Officer inquired about Ramirez's transportation for his state court hearing, and Clerk Sullivan informed the Deportation Officer that transportation to and from his December 5, 2018 hearing had been arranged with the Suffolk County Sherriff's Department.
22. ICE will contact officials at the Suffolk County House of Corrections, the place of Ramirez's detention, to ensure he is available for pickup on the morning of December 5, 2018.
23. ICE fully intends to continue to honor its responsibilities as set forth in the agreement entered into with the Executive Office of the Trial Court in September 2018 as to the process for ensuring detainees can attend criminal trials.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the Thirtieth day of November, 2018

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David Wesling  
Supervisory Detention & Deportation Officer  
U.S. Department of Homeland Security  
United States Immigration and Customs Enforcement  
Burlington, Massachusetts





**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. 18-cv-12452

**AFFIDAVIT OF ALLEN FORBES**

1. I am an attorney employed by the Suffolk County Sheriff's Department, (SCSD), 200 Nashua Street in Boston, Massachusetts. The SCSD is in charge of the Suffolk County Jail and the Suffolk County House of Correction.
2. Steven W. Tompkins is the Sheriff of Suffolk County.
3. Julio Ramirez is presently confined at the Suffolk County House of Correction, pursuant to an intergovernmental service agreement between the SCSD and the U.S. Immigration and Customs Enforcement agency (ICE).
4. That agreement does not require the SCSD to transport people detained by ICE.
5. Although ICE and the SCSD formerly had such a contract, the SCSD terminated that agreement several years ago. I understand that since then, ICE has contracted with other entities for its transportation needs.

6. On November 29, 2018 I advised counsel for Mr. Ramirez and Respondent Todd Lyons that the SCSD will transport Mr. Ramirez to Cambridge District Court on December 5, 2018 and on any other date that the Cambridge court directs.
7. I also told counsel that the SCSD intends to, in response to habeas corpus for prosecution issued by a Massachusetts Trial Court judge, transport other ICE detainees in its custody as requested by that court.
8. I have suggested to counsel at the immigration unit of the Committee for Public Counsel Services and Petitioner's counsel Daniel McFadden that all agencies concerned with the housing and transportation of ICE detainees meet with representatives of the Massachusetts Trial Court and ICE to reach an agreement on how our agencies can best respond to state court habeas writs for ICE detainees.
9. In the absence of such an agreement, however, Sheriff Tompkins has directed that the SCSD transport ICE detainees who are in its custody to state court proceedings, provided ICE allows the detainee to travel to court.

Signed under the pains and penalties of perjury on November 30, 2018

  
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Allen H. Forbes