

**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

**Sheriff Steven W. Tompkins and Superintendent Yolanda Smith's Opposition to  
Petitioner's Motion for a Temporary Restraining Order**

Suffolk County Sheriff Steven Tompkins and Superintendent Yolanda Smith (County Respondents) submit the following memorandum in opposition to the Petitioner's motion for a Temporary Restraining Order, to the extent that such an order<sup>1</sup> would compel the County Respondents to transport the Petitioner. As set forth below, the Suffolk County Sheriff's Department has already agreed to transport Mr. Ramirez to Cambridge District Court on December 5, 2018 as well as any subsequent date requested by that court. Moreover, the Tenth Amendment's anti-commandeering doctrine would seem to prohibit this Court from issuing an

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<sup>1</sup> The Petitioner's motion does not explicitly state that it seeks an order requiring the County Respondents to transport him. Instead it asks for an order "requiring that he be transported to the Cambridge District Court". (Dkt #2 p.1) His supporting memorandum suggests that the County Respondents have an obligation, enforceable in federal court, to transport ICE detainees to state court proceedings as needed. (Dkt, 3, pp12-13)

order compelling a state agency, like the sheriff's department, to implement a federal program by transporting Ramirez.

### **Facts**

The following facts are supported by the affidavit of Allen Forbes, submitted herewith. Julio Ramirez is presently confined at the Suffolk County House of Correction, pursuant to an intergovernmental service agreement between the Suffolk County Sheriff's Department (SCSD) and the U.S. Immigration and Customs Enforcement agency. That agreement does not require the SCSD to transport people detained by ICE. Although ICE and the SCSD formerly had such a contract, the SCSD terminated that agreement several years ago. Since then, ICE has contracted with other entities for its transportation needs.

On November 29, 2018 Allen Forbes, representing the SCSD, advised counsel for Mr. Ramirez and Respondent 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. Forbes also advised counsel that the SCSD intends to, in response to habeas corpus for prosecution writs issued by Massachusetts Trial Court judges, transport other ICE detainees in SCSD custody as requested by those courts<sup>2</sup>.

### **Argument**

In order to obtain a temporary restraining order against the SCSD, Ramirez must establish 1) a reasonable likelihood of success on the merits, 2) the potential for irreparable harm if the injunction is withheld, 3) a favorable balance of hardships and 4) the effect on the public interest. *Jean v. Mass. State Police*, 492 F.3d 24, 26–27 (1st Cir. 2007); *Quincy Cablesys., Inc. v. Sully's Bar, Inc.*, 640 F.Supp. 1159, 1160 (D. Mass. 1986). The Court may accept as true “well-pleaded

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<sup>2</sup> Because ICE is the legal custodian of its detainees lodged at the House of Correction, the SCSD will require ICE's authorization in order to transport these detainees to court.

allegations and uncontroverted affidavits.” *Rohm & Haas Elec. Materials, LLC v. Elec. Circuits*, 759 F.Supp.2d 110, 114, n.2 (D. Mass. 2010) (quoting *Elrod v. Burns*, 427 U.S. 347, 350, n.1 (1976)).

Ramirez cannot demonstrate that if the Court denies his motion he would be irreparably harmed, insofar as the SCSD has agreed that it will transport him to his hearing. The SCSD has advised the parties, and now represents to this Court, that it will transport Mr. Ramirez to that hearing as well as any subsequent date requested by the Cambridge court. The request for emergency relief is therefore moot, insofar as there is no controversy before the Court. Because the SCSD has agreed to transport Ramirez as needed, there is “no ongoing conduct to enjoin.” *Town of Portsmouth v. Lewis*, 813 F.3d 54, 58 (1st Cir. 2016).

Even if the motion for a temporary restraining order were not moot, the issuance of an order requiring the SCSD to transport ICE detainees would likely be unconstitutional. Under the Tenth Amendment, all “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Accordingly, any law that “commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program” would contravene that state’s sovereignty. *Hodel v. Va. Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 288 (1981); *New York v. United States*, 505 U.S. 144, 161 (1992); *Printz v. United States*, 521 U.S. 898, 903 (1997). Since 2010, the SCSD has been an agency of the Commonwealth of Massachusetts. *Canales v. Gatzunis*, 979 F.Supp.2d 164, 171 (2013).

In *Printz* the Supreme Court found unconstitutional a requirement in the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, that state law enforcement agencies conduct background checks on prospective gun purchasers. Gun sellers were required to collect

background information from purchasers and transmit it to a local law enforcement agency. 18 U.S.C. § 922(s)(2). If the purchaser was deemed ineligible, that agency was required to produce a written explanation upon request. 18 U.S.C. §922 (s)(6)(C). *Printz*, 521 U.S. at 903.

The burden imposed by the statute was minimal, and Congress’s reasons for enacting it were significant- what Congress called ‘an epidemic of handgun violence.’ Nevertheless, *Printz* held that the Tenth Amendment unquestionably established a system of dual sovereignty, which allocated to Congress “the power to regulate individuals, not states” *Id.* 920. Because each state is sovereign, the federal government may not commandeer its resources:

It is an essential attribute of the States’ retained sovereignty that they remain independent and autonomous within their proper sphere of authority. It is no more compatible with this independence and autonomy that their officers be ‘dragooned’...into administering federal law, than it would be compatible with the independence and autonomy of the United States that its officers be impressed into service for the execution of state laws.

*Id.* 928, (citations omitted). If state governments could be forced to implement federal programs, a state would be “put in the position of taking the blame for its burdensomeness and its defects.”

*Id.* 930.

State agencies cannot be compelled to implement ICE policies. The Third Circuit found that a federal command that local law enforcement agencies incarcerate people pursuant to ICE detainers would violate the Tenth Amendment. *Galarza v. Szalcyk*, 745 F.3d 634, 640 (3rd Cir. 2014), 745 F.3d at 643-44 (in light of *Printz*, 521 U.S. at 898, and *New York*, 505 U.S. at 161, “a conclusion that a detainer issued by a federal agency is an order that state and local agencies are compelled to follow . . . would violate the anti-commandeering doctrine of the Tenth Amendment.”); see also *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305, \*6 (D. Or. Apr. 11, 2014) (“[A] conclusion that Congress intended detainers as

orders for municipalities . . . would raise potential violations of the anti-commandeering principle.”).

The SCSD has agreed, by its contract with ICE, to house immigration detainees, but that agreement does extend to transporting them. If this Court were to order the SCSD to transport Ramirez, it would be effectively commandeering the SCSD’s resources to do something it is not otherwise obliged to do. Such an order would be substantially identical to the statute struck down in *Printz*. Like the Brady Act’s demands on local law enforcement agencies, an order compelling the SCSD to transport ICE detainees would infringe on the Commonwealth of Massachusetts’ sovereignty and redirect its resources. Accordingly, the Court should deny the Petitioner’s motion, to the extent it seeks an order compelling the SCSD to transport him.

### **Conclusion**

For all of the forgoing reasons, the County Respondents respectfully request that the Court deny the motion for a temporary restraining order.

Sheriff Steven W. Tompkins

Superintendent Yolanda Smith

By their attorney,

MAURA HEALEY  
ATTORNEY GENERAL

Allen H. Forbes  
Special Assistant Attorney General

s/ Allen H Forbes

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November 30, 2018

**CERTIFICATE OF SERVICE**

I, Allen H. Forbes, hereby certify that a true copy of the following document was served on all parties via ECF on November 30, 2018.

s/ Allen H. Forbes

Allen H. Forbes

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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