UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAMUEL PENSAMIENTO, Petitioner, v. JOSEPH D. MCDONALD, JR., ET AL. Respondents.	No. 18-cv-10475

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

Petitioner Samuel Pensamiento is an immigration detainee at the Plymouth County Correctional Facility. Although Mr. Pensamiento's habeas petition raises several alleged defects in his detention, this emergency motion seeks very simple relief: an order requiring that he be transported to Chelsea District Court on March 19, 2018, to respond to the pending misdemeanor charges arising out of the alleged minor traffic accident.

Mr. Pensamiento has never been convicted of a crime anywhere in the world. He fled persecution in Guatemala in 2013 and applied for asylum in the United States. He was released on bond pending resolution of his asylum claim. While that claim was pending, he met his wife, a U.S. citizen, and married her in 2016. His wife filed an application to sponsor him to become a permanent resident. His immigration case was administratively closed. He worked two jobs to support his wife. They are expecting a child this coming May.

In December 2017, Mr. Pensamiento was charged with two misdemeanor counts after allegedly leaving the scene of a car accident. In January 2018, he appeared for a pre-trial hearing in Chelsea District Court. ICE arrested him at the courthouse. Although Mr. Pensamiento is detained under color of federal law, he is in the physical custody of the Plymouth County Sheriff's Department pursuant to its contract with ICE to house immigration detainees.

Mr. Pensamiento was scheduled to appear in Chelsea District Court for a hearing on his pending charges on March 5, 2018. At his counsel's request, the state court issued writs to habeas corpus *ad prosequendum* to secure his attendance on that date. ICE and the Sheriff's Department apparently ignored those writs as part of a policy or practice of refusing to transport immigration detainees to state criminal proceedings. The state court has issued new writs for the 19th, but it appears they will also be ignored unless this Court issues its own writ or order in aid of the state court's proceeding.

Mr. Pensamiento will suffer severe prejudice if he cannot respond to the pending charges. He will be defaulted, a warrant for his arrest will likely issue, and his counsel will no longer be appointed to his case. Further, his detention is premised upon the allegations of the police report related to that incident, which cannot be resolved until he appears. Lastly, if he is later deported without an opportunity to resolve the pending charges, they will likely prevent him from ever obtaining a visa to return to the United States to reunite with his wife and child.

Accordingly, for these reasons and those stated below, Mr. Pensamiento hereby moves for a writ of habeas corpus *ad prosequendum*, or, alternatively, a temporary restraining order, requiring that he be transported to Chelsea District Court on March 19, 2018. The Court may do so pursuant to 28 U.S.C. §2241(c)(5), Federal Rule of Civil Procedure 65 (through 2254 Rules 1(b) and 12), and its equitable habeas powers.

I. FACTS AND PROCEDURAL HISTORY

A. Mr. Pensamiento Fled To The United States And Built A Life In Massachusetts.

Mr. Pensamiento was born in Guatemala. He is 26 years old. He has never been convicted of any crime anywhere in the world. Affidavit of Stephen Born ("Born Aff't") ¶14.

In 2013, Mr. Pensamiento fled to the United States to escape persecution in Guatemala. He entered the United States without inspection on July 10, 2013. *Id.* ¶3. He was immediately apprehended and placed into immigration proceedings. *Id.* He applied for asylum and was released on bond in September 2013. *Id.* ¶4. He received work authorization, and has a valid Massachusetts driver's license. *Id.* ¶5.

While Mr. Pensamiento's asylum proceeding was pending, he met Ms. Yaritza Moreno while they were employed together at the same restaurant. *Id.* Ex. C. Ms. Moreno is a citizen of the United States. *Id.* She and Mr. Pensamiento were married in August 2016. *Id.* ¶6.

Ms. Moreno later filed a Form I-130 petition to sponsor Mr. Pensamiento to become a lawful permanent resident. *Id.* Ex. A. The U.S. Citizenship and Immigration Service approved that petition on March 9, 2017. *Id.* The Immigration Judge ordered that his removal proceedings be administratively closed on September 20, 2017. *Id.* Ex. B.

Because Mr. Pensamiento had initially entered the United States without inspection, his application for permanent residency also required him to file a Form I-601A to obtain a waiver of the 10-year bar to re-entry. *Id.* ¶8. That waiver request is currently pending. *Id.*

Mr. Pensamiento and Ms. Moreno are expecting a child this coming May. *Id.* ¶6 & Ex. C. Mr. Pensamiento has been working as a chef to support his pregnant wife. *Id.* Ex. C.

B. ICE Detained Mr. Pensamiento At The Courthouse While He Tried To Resolve Misdemeanor Charges Arising From A Motor Vehicle Accident And Now Seeks To Deport Him.

On December 17, 2017, the Chelsea police arrested Mr. Pensamiento after he allegedly left the scene of a car accident that resulted in some damage to both vehicles and an "apparent minor injury" to the other driver's leg. Affidavit of Adriana Lafaille ("Lafaille Aff't") Ex. C. Mr. Pensamiento was charged with two misdemeanor counts, violation of G. L. c. 90, § 24(2) (leaving scene of accident resulting in property damage) and G. L. c. 90, § 24(2)(a½)(1) (leaving scene of accident resulting in personal injury). *Id.* Ex. B. Mr. Pensamiento was arraigned on December 18, 2017 and released on personal recognizance. *Id.* Exs. A & D.

On January 31, 2018, Mr. Pensamiento reported to Chelsea District Court as instructed for a pre-trial hearing. Affidavit of David Jaffe ("Jaffe Aff't") ¶3. U.S. Immigration and Customs Enforcement ("ICE") arrested him at the courthouse after his hearing. *Id.* Mr. Pensamiento's immigration proceeding has been re-calendared, and ICE is seeking his removal to Guatemala. Born Aff't ¶11. The immigration case is currently pending in Immigration Court for adjudication of Mr. Pensamiento's asylum claim. *Id.* ¶12.

On February 13, 2018, the Immigration Judge conducted a hearing on Mr. Pensamiento's request for release from immigration detention on bond. *Id.* ¶¶14-17. The Immigration Judge ruled that Mr. Pensamiento had failed to prove that he was not dangerous in light of the police report of Mr. Pensamiento's recent charges, and therefore denied bond. *Id.*

Mr. Pensamiento is detained at the Plymouth County Correctional Facility ("PCCF"). PCCF is operated by the Plymouth County Sheriff's Department, which has contracted with ICE to house ICE's immigration detainees.[1]

C. ICE And The Sheriff's Department Are Refusing To Transport Mr. Pensamiento To State Court To Resolve The Pending Charges.

After Mr. Pensamiento's detention, the next hearing to respond to his misdemeanor charges was scheduled for March 5, 2018. Jaffe Aff't ¶4; Lafaille Aff't Ex. A. Upon motion of Mr. Pensamiento's defense counsel, Judge Matthew Machera ordered that writs of habeas corpus *ad prosequendum* be issued to ICE (which would ordinarily transmit the request to Plymouth) and to the Suffolk County Sheriff's Department (which would ordinarily provide the actual transportation to and from Chelsea). Jaffe Aff't ¶¶4-5; Lafaille Aff't Exs. E & F. The writs ordered that Mr. Pensamiento be transported to court for the March 5, 2018 hearing. Jaffe Aff't ¶5; Lafaille Aff't Ex. F. In accordance with guidance from CPCS, Mr. Pensamiento's counsel provided the writs to the Assistant District Attorney for transmittal. Jaffe Aff't ¶5.

However, ICE and its state-operated detention facilities in Massachusetts have, in the last several months, adopted a practice or policy of refusing to comply with writs of habeas corpus *ad prosequendum* issued by Massachusetts courts. Affidavit of Jennifer Klein ("Klein Aff't") ¶¶5-9. Detained immigrants are not being transported to court and have no opportunity to defend or resolve pending criminal charges. *Id.* Consequently, Mr. Pensamiento was not transported to the Chelsea District Court on March 5, 2018, and could not appear for his hearing to respond to

[1] The contract is a matter of public record and is available at: https://www.ice.gov/doclib/foia/isa/r_droigsa080040plymouthcountymaasofmodification1.pdf.

the pending misdemeanor charges. Jaffe Aff't ¶¶6-7. The Assistant District Attorney made multiple inquiries with ICE, but received no response. *Id.* ¶6.

Upon learning that Mr. Pensamiento was not transported to court on March 5, 2018, the Chelsea District Court rescheduled the hearing for March 19, 2018, and issued new writs of habeas corpus *ad prosequendum* to ICE and to the Sheriff's Department. Jaffe Aff't ¶7; Lafaille Aff't Exs. A & G. It appears these will also be ignored, leaving Mr. Pensamiento with no opportunity to respond to the charges.

The pendency of the misdemeanor charges is extremely prejudicial to Mr. Pensamiento. If he cannot appear, a warrant for his arrest will issue, and his appointed counsel will no longer be able to represent him. Jaffe Aff't ¶8. The Immigration Judge relied upon the allegations of the police report to deny Mr. Pensamiento bond, yet Mr. Pensamiento has no opportunity to contest or otherwise resolve the allegations. Born Aff't ¶¶14-18. Moreover, if Mr. Pensamiento is deported while these charges remain unresolved, then the pendency of the charges may permanently prevent him from obtaining a visa to return to the United States to reunite with his wife and child. *Id.* ¶20. It is imperative that Mr. Pensamiento be permitted to appear and attempt to resolve these charges on March 19th.

II. ARGUMENT

A. The Court Should Issue A Writ Of Habeas Corpus *Ad Prosequendum* Requiring That Mr. Pensamiento 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." It should issue the writ to preserve Mr. Pensamiento's ability to respond to his state charges—and protect the integrity of Massachusetts criminal proceedings—even if it does not resolve the question whether

Respondents' failure to allow him to attend his criminal hearing violates any provision of law or of the Constitution.

In routine circumstances, these 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. A writ already did issue from the Massachusetts court. Mr. Pensamiento is in the physical custody of a Massachusetts correctional facility. A Massachusetts prosecutor sought federal assistance in the execution of the writ. Nevertheless, ICE and the Sheriff's Department have evidently taken the position that, because Mr. Pensamiento is detained under federal law, a writ from the Massachusetts court need not be obeyed. This Court can remedy the situation by issuing its own writ under federal law in aid of the Massachusetts court's 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 will not argue that it 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. <u>In The Alternative, The Court Can And Should Enter A Temporary Restraining Order Requiring That Mr. Pensamiento Be Transported To His Hearing.</u>

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 arising out of 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 pursuant to the ordinary standards of Federal Rule of Civil Procedure 65. *See, e.g.*, *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. Pensamiento 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. Pensamiento is likely to show that the Respondents' failure to allow him to attend his criminal proceedings violates state law and his constitutional right of access to the courts.

First, the Sheriff's Department, a Massachusetts state agency, has no authority to ignore a writ of habeas corpus *ad prosequendum* issued by a Massachusetts court, particularly where ignoring such an order effectively denies a criminal defendant his constitutional rights to defend himself against pending criminal charges.

Massachusetts courts can compel a prisoner's attendance at a criminal hearing by issuing such a writ. *See Commonwealth v. Wilson*, 399 Mass. 455, 462 (1987). Generally, Massachusetts courts use the writ for prisoners in a different state or in federal custody. *See Wilson*, 399 Mass. at 462. However, nothing prevents a Massachusetts court from using the Writ for prisoners housed in the Commonwealth's facilities.

Here, Mr. Pensamiento is the physical custody of the Plymouth County Sheriff's Department. The Sheriff's Department has been a state agency since the enactment of Chapter 61 of the Acts of 2009, which transferred all "functions, duties and responsibilities . . . including, but not limited to, the operation and management of the county jail and house of correction . . . from the county to the Commonwealth." *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). That statute also made "all . . . contracts of the office of [the] transferred sheriff . . . obligations of the [C]ommonwealth." *Id.* (citing St. 2009 ch. 61, §§ 6, 9).

State agencies 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, 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 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*, 417 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.

Nor can Sheriff's Department use its contractual arrangement with ICE to justify ignoring the writ. That arrangement is governed by an intergovernmental services agreement ("IGSA") under which Sheriff's Office has agreed to house ICE detainees for a fee. The Supreme Court has ruled that the statute granting the federal government general authority to enter into IGSAs with state and local government entities does not imbue those entities with federal authority. *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).[2]

Thus, "state jail officials" like those holding Plaintiff "act[] exclusively as creatures of state sovereignty even when housing federal prisoners." Ronald K. Chen, *State Incarceration of Federal Prisoners after September 11: Whose Jail Is It Anyway?*, 69 Brooklyn L. Rev. 1335, 1348 (2004). The Sheriff's Department has no power to ignore state law or state court orders. Nor can it bargain away its obligations to comply with state law merely by signing an IGSA. The Sheriff's Department is therefore acting unlawfully by failing to comply with the Chelsea District Court's writ requiring that Mr. Pensamiento be brought to court.

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[2] The Sheriff's Department also has a Memorandum of Agreement with ICE pursuant to Section 287(g) of the Immigration and Nationality Act, which permits certain participating personnel to perform immigration-related functions like conducting interviews, serving warrants, and prepare charging documents. That agreement does not purport to authorize the Sheriff's Department to refuse to transport detainees to judicial proceedings in violation of Massachusetts court orders. The agreement is a publicly available at: https://www.ice.gov/doclib/287gMOA/287gPlymouthMa2017-02-08.pdf

Second, this violation not only offends state law, but also rises to a constitutional dimension. Respondents' refusal to allow Mr. Pensamiento to attend court violates his right to be present in criminal proceedings—a fundamental right that "is rooted in both the due process and confrontation clauses of the Constitution." *See United States v. Latham*, 874 F.2d 852, 856 (1st Cir. 1989); *see also Hopt v. Utah*, 110 U.S. 574, 579 (1884); *Tennessee v. Lane*, 541 U.S. 509, 523 (2004).

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., United States v. Clark*, 475 F.2d 240 (2d Cir. 1973); *Blackwell v. Brewer*, 562 F.2d 596 (8th Cir. 1977); *Bustamante v. Eyman*, 456 F.2d 269 (9th Cir. 1972). 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 right of a defendant to be present in criminal proceedings is not limited to U.S. citizens. Noncitizens too have a constitutional right to be present in state court to defend themselves against criminal charges. *See, e.g.*, *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Wong Wing v. United States*, 163 U.S. 228, 23 (1896). As the Supreme Court has held, even noncitizens, whose presence in the United States may be found to be unlawful, are also entitled to due process protections:

> There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.

Mathews v. Diaz, 426 U.S. 67, 77-78 (1976) (internal citations omitted).

Accordingly, both ICE and the Commonwealth of Massachusetts have a duty to transport immigration detainees to state court so that they can defend themselves against criminal charges. Unless he can attend his court proceedings, Mr. Pensamiento will never have the opportunity to be tried for his charges or to reach an agreed-upon disposition. The existence of this duty is further supported by decisions recognizing the affirmative obligations of states that "flow from [the] principle" that they must afford litigants, and in particular criminal defendants, a meaningful opportunity to be heard in court. *Tennessee v. Lane*, 541 U.S. 509, 523 (2004); *see e.g.*, *Lewis v. Casey*, 518 U.S. 343, 349–55 (1996); *Griffin* v. *Illinois*, 351 U.S. 12, 19-20 (1956); *Burns* v. *Ohio*, 360 U.S. 252, 257-258 (1959); *Ex parte Hull*, 312 U.S. 546 (1941). It is also consistent with the Supreme Court's holding that states have a constitutional duty under the Sixth Amendment speedy trial clause 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).

Indeed, the nature of this obligation to transport Mr. Pensamiento to court is similar to detention facilities' obligations in the healthcare context. The Fourteenth Amendment requires

detention facilities to transport pre-trial detainees to the hospital and pay for medical care, where the circumstances are sufficient to indicate the need for medical attention. *See, e.g., Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 245 (1983); *Miranda-Rivera v. Toledo-Dávila*, 813 F.3d 64, 75 (1st. Cir. 2016); *Fitzke v. Shappell*, 468 F.2d 1072, 1076 (6th Cir. 1972); *Estate of Carter v. City of Detroit*, 408 F.3d 305, 310 (6th Cir. 2005). In the same way as prisoners cannot care for their own medical needs, immigrant detainees must rely upon their jailors to transport them to their state criminal hearings.

Notably, the Supreme Court has underscored 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." *Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004). The duty is even more apparent in this case because Mr. Pensamiento's transportation to court and attendance to his hearings will impose very little burden on ICE or the Sheriff's Office.

In short, ICE and the State of Massachusetts must permit Mr. Pensamiento to be transported to Chelsea District Court for his hearing so that he may be afforded the opportunity to defend himself against his criminal charges. The Court should enforce those duties.

3. Unless A TRO Is Granted, Mr. Pensamiento Is Likely To Suffer Irreparable Harm.

If Mr. Pensamiento cannot go to court, he will suffer a severe and immediate impact: a default warrant will issue, and he will lose the representation of his appointed counsel, who is already familiar with him and his case. Jaffe Aff't ¶8.

Further, as explained above, the Immigration Court found Mr. Pensamiento dangerous and denied bond based solely on the allegations in the police report relating to the car accident. Born Aff't ¶¶13, 16. If Mr. Pensamiento can go to court, he can defend these charges 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. Pensamiento for a redetermination of his bond. Presently, however, the immigration authorities are preventing him from resolving the charges that form the predicate of his detention. He will remain detained and separated from his wife (and, soon, his newborn child). *See Flores-Powell*, 677 F.Supp.2d at 463 ("A loss of liberty may be an irreparable harm") (citing *Bois v. Marsh*, 801 F.2d 462 (1986) (D.C. Cir. 1986)).

Lastly, ICE is pursuing Mr. Pensamiento's deportation. If Mr. Pensamiento is removed without an opportunity to resolve these charges, they will likely pose a permanent impediment to his return to the United States. Born Aff't ¶13. He would be permanently separated from his wife and child.

4. The Balance Of Harms And Public Interest Favor Granting A TRO.

As described above, Mr. Pensamiento will likely suffer severe harm if he is unable to attend his hearing. In contrast, there is no harm whatsoever to ICE or the Sheriff's Department if he is transported—the Sheriff's Departments routinely and securely move prisoners throughout the Commonwealth for exactly this purpose, and Mr. Pensamiento will be returned to the PCCF as soon as his hearing is complete. Indeed, 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. Pensamiento 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, e.g.*, *Standefer v. United States*, 447 U.S. 10, (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 brackets and quotation marks omitted)).

III. CONCLUSION

For all the foregoing reasons, Mr. Pensamiento 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 Chelsea District Court on March 19, 2018.

March 12, 2018

Respectfully submitted,

/s/ Adriana Lafaille
Matthew R. Segal (BBO # 654489)
Adriana Lafaille (BBO # 680210)
American Civil Liberties Union Foundation of Massachusetts, Inc.
211 Congress Street
Boston, MA 02110
(617) 482-3170

Anthony Mirenda (BBO #550587)
Daniel L. McFadden (BBO #676612)
Aaron Lang (BBO #693352)
Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Tel: 617-832-1000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

This motion is being filed contemporaneously with the associated petition for writ of habeas corpus. No service order has yet issued. I hereby certify that I will immediately send true copies of this Motion and of the associated memorandum and declarations by electronic mail to Rayford A. Farquhar, Chief of Defensive Litigation, Civil Division, U.S. Attorney's Office for the District of Massachusetts.

/s/ Adriana Lafaille
Adriana Lafaille