

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss:

No. SJ-2016-  
Boston Municipal Court  
East Division  
No. [REDACTED]

SANTOS MOSCOSO,  
Petitioner,

v.

A JUSTICE OF THE EAST BOSTON DIVISION  
OF THE BOSTON MUNICIPAL COURT,  
Respondent

**EMERGENCY PETITION FOR RELIEF**  
**PURSUANT TO G.L. c. 211, § 3**

**I. INTRODUCTION**

The Defendant challenges the lawfulness of a Boston Municipal Court order that he be detained without probable cause of a crime, but instead solely at the request of federal immigration authorities for the purpose of civil immigration enforcement. The order, which is part of a widespread practice of Massachusetts criminal courts and local law enforcement authorities honoring requests to detain persons for federal immigration authorities, violates the Defendant's right under the Fourth Amendment and art. 14 to be free from unreasonable seizures, as well as his right to due process under the Fourteenth

Amendment and art 12. These substantive violations merit extraordinary relief pursuant to G. L. c. 211, § 3. The Defendant respectfully asks that you ALLOW the petition and order that if the Defendant posts bail and is no longer otherwise to be detained on criminal matters by the Commonwealth, that the court release him. The Defendant further requests that should the Single Justice refer this matter to the full bench, that the Single Justice order the Defendant's release upon posting bail pending a final decision on this matter.

## **II. STATEMENT OF FACTS**

The Defendant, Santos Moscoso, is held in state custody on docket no. [REDACTED] out of the East Boston Division of the Boston Municipal Court.<sup>1</sup> Aff. Defense Counsel ¶ 3 (App. 20-21). Immigration and Customs Enforcement (ICE), the immigration enforcement branch of the U.S. Department of Homeland Security (DHS), has filed a notice titled "Immigration Detainer - Request for Voluntary Action" (herein after "ICE

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<sup>1</sup> Mr. Moscoso was originally held on four cases in the East Boston Division - [REDACTED] - but on April 19, 2016, the court dismissed three of those cases for lack of prosecution.

detainer") with Mr. Moscoso's state custodians. ICE Detainer (App. 19). That detainer "request[s]" that state custodians "maintain custody of [Mr. Moscoso] for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody." Id. The ICE detainer alleges that there is "probable cause" that Mr. Moscoso is "a removable alien" because there is a final order of removal against him, biometric information and federal databases indicate that he "either lacks immigration status or notwithstanding such status is removable under U.S. immigration law," and statements made by Mr. Moscoso "and/or other reliable evidence" indicate that he lacks immigration status or is removable. Id. The detainer is unaccompanied by a warrant, purported removal order, or any other particularized facts to support these allegations. Aff. Defense Counsel ¶ 3 (App. 20-21). The Defendant has not been provided with an opportunity to challenge the issuance of this detainer, Def. Aff. ¶ 6 (App. 16-17), -- nor will he because the regulations on which the detainer is based do not allow for such a challenge. 8 C.F.R. § 287.7. The Defendant's detainer, like all ICE detainers, was

issued by a rank-in-file immigration officer, "B 7656 Sullivan - DO [Deportation Officer]." ICE Detainer (App. 19); see 8 C.F.R. § 287.7(b) (authorizing all "deportation officers" and "immigration enforcement agents," among others, to issue detainers). It was issued without review by a neutral magistrate and without probable cause that the Defendant has committed a crime. ICE Detainer (App. 19); see 8 C.F.R. § 287.7(b). In just that past year, DHS has filed hundreds of similar detainers in Massachusetts. TRAC Immigration, Reported ICE Detainers by State and Detention Facility, November 2014 - October 2015, available at <http://trac.syr.edu/immigration/reports/413/include/table4.html>.

On April 19, 2016, the Defendant appeared in the East Boston Division for a probable cause hearing on docket [REDACTED]. The Commonwealth answered not ready and the court granted a continuance to May 26, 2016. The court reduced the Defendant's bail to \$100. Mr. Moscoso has \$100 available to post bail, but if he had posted on April 19, 2016, he would be sent to a warrant in Chelsea District Court or a warrant in Somerville District Court. Def. Aff. ¶ 3-4 (App. 16);

Aff. Defense Counsel ¶ 3 (App. 18). He is scheduled to clear those warrants on May 4, 2016 and May 25, 2016, and then reappear in the East Boston Division on May 26, 2016. Id.

On April 19, 2016, the Defendant moved the court to release him notwithstanding the detention request when he posts bail on May 26, 2016, explaining that he will not post bail on that date if posting the bail would be futile and only lead him to be further detained pursuant to the federal request. Def. Aff. ¶ 7 (App. 17). The Judge denied his motion. Judge's Order (App. 4). This decision to honor a civil immigration detention request is repeated by courts and law enforcement authorities across Massachusetts on a regular basis. Aff. J. Klein (App. 22).

### **III. ARGUMENT**

#### **A. THE TRIAL COURT DOES NOT HAVE AUTHORITY TO HOLD MR. MOSCOSO FOR PURELY CIVIL IMMIGRATION VIOLATIONS.**

By announcing that the court would hold the Defendant on the ICE detainer past the time when he would otherwise be released from state custody, the trial court has effectuated a new arrest based solely on a civil immigration detention request. Morales v. Chadbourne, 793 F.3d 208, 217 (1st Cir. 2015)

("Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes - one that must be supported by a new probable cause justification."); Miranda-Olivares v. Clackamas County, No. 12-02317, 2014 U.S. Dist. LEXIS 50340, at \*30-31 (D. Or. Apr. 11, 2014) (holding that where Miranda-Olivares was capable of posting court-ordered bail, but informed she would not be released if she posted bail, her continued detention constituted a new seizure). The trial court and Mr. Moscoso's local custodian lack authority to make such an arrest.

The authority of Massachusetts courts and law enforcement agents to arrest is defined, and circumscribed, by Massachusetts law. Massachusetts law grants authority to arrest persons under suspicion of having committed a crime. See, e.g., G.L. ch. 276, § 28 (authorizing warrantless arrest for certain misdemeanors); G.L. ch. 276, § 23A (authorizing arrest for felonies and misdemeanors); G.L. ch. 41, § 98 (police authority to maintain order and arrest for purposes of "prosecut[ion]"); G.L. ch. 279, § 3 (arrest without warrant for probation violation);

Trial Court XI: Uniform Rule for Probable Cause Determinations for Persons Arrested Without a Warrant (those subject to warrantless arrest entitled to magistrate determination of probable cause of a crime prior to prolonged detention); Commonwealth v. Gorman, 288 Mass. 294 (1934) (discussing common law authority to arrest for crimes under certain circumstances). Massachusetts law does not authorize arrest for civil immigration violations.<sup>2</sup>

The United States Supreme Court has made clear that because generally "it is not a crime for a removable alien to remain present in the United States . . . [i]f the police stop someone on nothing more than possible removability, the usual predicate for an arrest is absent." Arizona v. United States, 567 U.S. \_\_\_, 132 S.Ct. 2492, 2506 (2012). Indeed in Arizona the Court struck down an Arizona statute that provided state law enforcement with unlimited warrantless,

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<sup>2</sup> Massachusetts statutes are peppered with specific provisions authorizing arrest for specific offenses, see, e.g., G.L. ch. 260, § 10, G.L. ch. 209A, § 6(7), G.L. ch. 90, § 21, making an exhaustive list unwieldy. A thorough review of Massachusetts statutes uncovered no authority to arrest solely for civil immigration violations and undersigned counsel are aware of no such authority.

civil immigration arrest authority, because ICE's warrantless arrest authority under 8 U.S.C. § 1357(a)(2) is limited only to circumstances when an individual "is likely to escape before a warrant can be obtained for his arrest." Id. at 2505-07. Yet here, through a warrantless detainer, ICE is attempting to circumvent its own limited warrantless arrest authority by having the Commonwealth do its dirty work. See Buquer v. City of Indianapolis, 797 F. Supp. 2d 905, 919-22 (S.D. Ind. 2011) (preliminarily enjoining Indiana statute that would permit state law enforcement to arrest based on a detainer and/or removal order because it exceeds the civil immigration arrest authority granted to state law enforcement and exceeds ICE's own limited warrantless arrest authority), permanently enjoined at 2013 WL 1332158 (S.D. Ind. 2013).

The detainer regulations, which ICE relies on to make the request for detention on the detainer, also do not extend arrest authority to state authorities. 8 C.F.R. § 287.7(d). As at least one federal district court has observed, the detainer regulation merely provides a time limit on detention but does not in and of itself delegate arrest authority. Villars v.

Kubiatowski, 45 F.Supp.3d 791,806-07(N.D. Ill. 2014); see People ex rel. Swenson v. Ponte, 994 N.Y.S.2d 841, 844 (N.Y. Sup. Ct. 2014) (granting state habeas not to honor immigration detainer because detainer did not provide arrest authority under state or federal law). Indeed, in a recent deposition in a putative class action challenging ICE's use of immigration detainers, ICE's 30(b)(6) witness testified that a detainer is merely a request that does not legally extend authority to arrest and detain. Gonzalez v. ICE, Case No. 13-4416 (C.D. Cal. filed June 19, 2013), Rapp 30(b)(6) Dep. Tr.134:8-135:24 (App. 32-33).

Massachusetts law provides no authority for its criminal courts or law enforcement officers to arrest based solely on civil immigration violations. As a consequence, the trial judge does not have authority to hold Mr. Moscoso based solely on an ICE detention request.

**B. MR. MOSCOSO'S DETENTION BASED SOLELY ON AN ICE DETAINER IS A VIOLATION OF HIS RIGHTS UNDER THE FOURTH AMENDMENT AND ART. 14 BECAUSE IT IS UNSUPPORTED BY A DETERMINATION OF PROBABLE CAUSE OF A CRIMINAL VIOLATION MADE BY A NEUTRAL MAGISTRATE.**

The Defendant's detention based solely on an ICE detainer constitutes an unconstitutional seizure for

at least two reasons: (1) the detention is not supported by probable cause that Mr. Moscoso has committed a crime, and (2) the determination to issue the detainer is not subject to review by a neutral magistrate.

1. No Probable Cause Defendant Has Committed a Crime

Detention based solely on an immigration detainer constitutes a "seizure" under the Fourth Amendment and art. 14. Morales, 793 F.3d at 217. Therefore, such detentions must satisfy the requirements of the Fourth Amendment and art. 14. Id. In Morales, the First Circuit affirmed the denial of an ICE motion to dismiss for qualified immunity, finding that it was "clearly established . . . that immigration stops and arrests were subject to the same Fourth Amendment requirements" and "that detention authorized by an immigration detainer would require more than just reasonable suspicion." Id. at 211-12.

"A lawful arrest requires the existence of probable cause to believe that the individual arrested is committing or has committed a criminal offense." Commonwealth v. Jackson, 464 Mass. 758, 761 (2013). By contrast, the ICE detainer does not purport to assert

a criminal violation but instead asks state law enforcement to detain the Defendant based solely on an alleged civil violation. Arizona, 132 S.Ct. at 2495 ("Removal is a civil matter.") Where there is no authority for state officials to detain for civil enforcement, detention by state officials based solely on a civil ICE detainer constitutes an unconstitutional seizure. See Villars, 45 F.Supp.3d at 807 (holding that plaintiff stated a claim for which relief may be granted, where he alleged that he was held on a detainer that failed to state probable cause for any crime); see also Buquer, 797 F. Supp. 2d at 918-19(finding state statute authorizing arrest for civil immigration infractions violates the Fourth Amendment because it does not require probable cause of a crime).

The instant case is very similar to the facts of Miranda-Olivares, in which Ms. Miranda-Olivares declined to post bail despite having the resources to do so, because county officials assured her that she would not be released if she posted bail, due to the ICE detainer issued against her. 2014 U.S. Dist. LEXIS 50340, \*5-6. After her criminal case was resolved she was held for less than forty-eight hours and then

transferred to ICE custody. Id. The district court found that the period after the court set bail at an amount she could post (though she chose not to post it because of the ICE detainer) and before the criminal case was resolved constituted a new seizure for constitutional purposes, because she remained in custody based only on the ICE detainer. Id. at \*30-31. This new seizure violated Ms. Miranda-Olivares' Fourth Amendment right because she was held without probable cause of either a criminal or an immigration violation. Id.

Without probable cause to believe that Mr. Moscoso has committed a crime, the ICE detainer cannot be used to justify his continued detention.

## 2. Absence of Determination by a Neutral Magistrate

In addition, detaining the Defendant solely based on an ICE detainer issued without a judicial or quasi-judicial determination of probable cause of a crime violates the Fourth Amendment and art. 14. See Gerstein v. Pugh, 420 U.S. 103, 111-116 (1975) (arrest must be supported by probable cause of a crime and promptly followed by a determination of a neutral magistrate to justify extended detention); Buquer, 797

F. Supp. 2d at 918-19 (stating state statute authorizing arrest on immigration detainers and/or a removal order violates the Fourth Amendment because “[t]here is no mention of any requirement that the arrested person be brought forthwith before a judge for consideration of detention or release”); Arias v. Rogers, 676 F.2d 1139, 1142-43 (7th Cir. 1982) (finding, pursuant to 8 U.S.C. § 1357(a)(2) and the Fourth Amendment, that subsequent to a warrantless immigration arrest, an arrestee must be brought without unnecessary delay before an immigration judge for a probable cause hearing). Unlike a search warrant or an arrest warrant, an ICE detainer may be issued by virtually all rank-in-file Department of Homeland Security agents, without any intervention by a neutral magistrate. 8 C.F.R. § 287.7(b) (authorizing all “deportation officers” and “immigration enforcement agents,” among others, to issue detainers). The Defendant’s detainer was signed by “B 7656 Sullivan - DO [Deportation Officer].” ICE Detainer (App. 19). Without a determination of probable cause that Mr. Moscoso has committed a crime made by a neutral magistrate, continued detention based solely on a

detainer cannot be justified under either the Fourth Amendment or art. 14.<sup>3</sup>

**C. MR. MOSCOSO WAS NOT PROVIDED WITH NOTICE OR A MEANINGFUL OPPORTUNITY TO CHALLENGE THE DETAINER IN VIOLATION OF HIS PROCEDURAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT AND ART. 12.**

"The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." Mathews v. Eldridge, 424 U.S. 319, 348 (1976) (quotations omitted). There can be no doubt that the deprivation of liberty associated with the enforcement of the ICE detainer implicates the Defendant's rights under the Fourteenth Amendment as well as art. 12. See Aime v. Commonwealth, 414 Mass. 667, 676 (1993) ("The right to be free from governmental detention and

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<sup>3</sup> Additionally, the detainer does not include any information to permit review of any underlying determination that the Defendant is subject to removal. Aff. Defense Counsel ¶ 3 (App. 18). The assertions in Mr. Moscoso's ICE detainer are unsupported by basic documentation like an order of removal, an indication of what database affirmatively indicates lack of status or removable status or a lack of specificity of the contents or context of any "statements" or "other reliable evidence." Regardless, because the ICE detainer does not purport to provide probable cause of criminal activity, additional supporting documents would not satisfy the requirements of the Fourth Amendment or art. 14.

restraint is firmly embedded in the history of Anglo-American law." ). This fundamental liberty interest, when weighed against the government interest - voluntary assistance with federal civil immigration enforcement, compels the conclusion that some measure of notice and an opportunity to be heard must be provided. See Paquette v. Commonwealth, 440 Mass. 121, 131 (2003) ("A fundamental requisite of 'procedural' due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"); Morales v. Chadbourne, 996 F.Supp.2d 19, 40 (D.R.I. 2014)(holding that arrest and detention on an immigration detainer triggers Fifth Amendment notice and opportunity to be heard protections).

In this case, Mr. Moscoso obtained a copy of the detainer only with the assistance of criminal defense counsel in the course of litigating this motion. Aff. Defense Counsel ¶ 3 (App. 14). He was never given an opportunity to challenge the issuance of the ICE detainer. Def. Aff. ¶ 6 (App. 12). Moreover, the federal regulation authorizing the issuance of a detention request - 8 C.F.R. § 287.7 - does not set forth any process to challenge the issuance of a

detainer. Mr. Moscoso was consequently denied his basic due process rights.

**D. THE TRIAL JUDGE'S DECISION TO ENFORCE THE ICE DETAINER REQUEST THREATENS THE DEFENDANT'S ABILITY TO ASSIST IN THE PREPARATION OF HIS DEFENSE.**

In the instant case, ICE has issued a detainer request against the Defendant. At the same time, the state court has lowered his bail to an amount that he is able to post. If, however, the Defendant does in fact post his bail and the court chooses to enforce the ICE detainer request, the court will nevertheless retain custody of the Defendant for purposes of immigration enforcement. This puts the Defendant in the impossible position where he must choose between possible deportation and continued criminal detention, thus depriving him of the full "ability to gather evidence, contact witnesses, or otherwise prepare his defense." Barker v. Wingo, 407 U.S. 514, 532-33 (1972). See also, 4 Wayne R. LaFave et al., Criminal Procedure § 12.2(c)(3d ed. 2013) ("There is little reason to doubt the proposition that pretrial detention has a significant adverse impact upon the ability of a Defendant to vindicate himself at trial"); Charles H. Whitebread & Christopher Slobogin,

Criminal Procedure 527-28 (4th ed. 2000) (stating that bail “facilitates preparation of a defense and prevents incarceration of a possibly innocent person”).

**E. STATE AUTHORITIES HAVE A CHOICE OF WHETHER OR NOT TO HONOR ICE DETAINER REQUESTS AND THERE IS PRECEDENT FOR STATE AUTHORITIES DECLINING TO COMPLY.**

As is evident from the face of the Defendant’s ICE detainer, DHS takes the position that compliance with ICE detainers is voluntary. Galarza v. Szalczyk, 745 F.3d 634, 641-42 (3d Cir. 2014) (“Since at least 1994, and perhaps as early as 1988, ICE (and its precursor INS) have consistently construed detainers as requests rather than mandatory orders.”); Letter from Daniel Ragsdale, Acting Director of ICE, to U.S. House of Representatives (Feb. 25, 2014) (App. 23). Moreover, the only federal court of appeals to directly consider the issue has similarly held that ICE detainers are not orders. Galarza, 745 F.3d at 639-42.<sup>4</sup> U.S. district courts have followed suit. Morales v. Chadbourne, 996 F. Supp. 2d 19 (D.R.I.

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<sup>4</sup> The Third Circuit in Galarza further held that were ICE detainers mandatory, it would raise serious concerns under the Tenth Amendment, which limits the power of the federal government to command state officers. 745 F.3d at 643-45.

2014); Miranda-Olivares, 2014 U.S. Dist. LEXIS 50340, \*10-24; see also Buquer, 797 F. Supp. 2d 905 (S.D. Ind. 2011).

There is precedent for state criminal authorities declining to comply with ICE detainers: after Miranda-Olivares, sheriffs' offices throughout Oregon and beyond (including Colorado), announced they would not be complying with detainer requests. Julia Preston, Sheriffs Limit Detention of Immigrants, N.Y. Times, Apr. 18, 2014, available at <http://www.nytimes.com/2014/04/19/us/politics/sheriffs-limit-detention-of-immigrants.html>.

Furthermore, there is specific precedent within Massachusetts for state authorities declining to enforce ICE detainers. The cities of Somerville, Boston, Lawrence, Cambridge, Holyoke, Northampton and Amherst have limited the enforcement of ICE detainers.<sup>5</sup> Yadires Nova-Salcedo, Lawrence City Counsel Approves Trust Act, CBS Boston, Aug. 27, 2015, available at

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<sup>5</sup> Declining to honor ICE detainers does not prevent DHS from enforcing immigration law. Granting Defendant's petition will not prevent DHS officers from pursuing and arresting him, if they so choose, without using Massachusetts courts or law enforcement officers as tools of civil immigration enforcement.

<http://boston.cbslocal.com/2015/08/27/lawrence-city-council-approves-trust-act/>; Oliver Ortega, City Counsel Oks measure limiting immigration holds, Boston Globe, Aug. 20, 2014, available at <http://www.bostonglobe.com/metro/2014/08/20/boston-city-council-approves-ordinance-limiting-immigration-holds/8elMVYhUlaPlRiFr7Akkik/story.html>; Evan Allen, Somerville ends participation in Secure Communities, Boston Globe, May 21, 2014, available at <http://bostonglobe.com/metro/2014/05/21/somerville-mayor-joseph-curtatone-end-city-participation-federal-secure-communities-program/AmDY0zNPDk5b7snbSrJe0/story.html>; Cambridge City Council Policy Order Resolution, June 2, 2014, available at [http://www2.cambridgema.gov/cityClerk/PolicyOrder.cfm?item\\_id=43313&pv=Yes](http://www2.cambridgema.gov/cityClerk/PolicyOrder.cfm?item_id=43313&pv=Yes); Mike Plaisance, Holyoke Mayor Alex Morse directs police to skip enforcement of federal requests to hold immigrants past normal holding period, Masslive.com, November 19, 2014, available at [http://www.masslive.com/news/index.ssf/2014/11/holyoke\\_mayor\\_alex\\_morse\\_direct.html](http://www.masslive.com/news/index.ssf/2014/11/holyoke_mayor_alex_morse_direct.html); Amherst Votes to Opt Out of Controversial Secure Communities, New England

Public Radio, May 22, 2012, available at <http://nepr.net/news/2012/05/22/amherst-votes-opt-out-controversial-secure-communities/>.<sup>6</sup>

**F. GENERAL LAWS C. 211, § 3, IS AN APPROPRIATE VEHICLE FOR RESOLVING THIS CASE.**

Under G.L. c. 211, § 3, this Court has "general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided." To obtain relief under this statute, a criminal defendant generally "must demonstrate both [1] a substantial claim of violation of his substantive rights and [2] irreparable error, such that he cannot be placed in status quo in the regular course of appeal." Ventresco v. Commonwealth, 409 Mass. 82, 83 (1991) (citation and internal quotation marks omitted). This Court has also granted relief under G.L. c. 211, § 3, where the petition challenges "a repeated or systemic

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<sup>6</sup> In September 2014, the Massachusetts Executive Office of Public Safety (EOPS) sent a notice to all Massachusetts sheriffs regarding the potential liability risks of honoring ICE detainer requests. Sharman Sacchetti, Questions surround memo sent to Mass. sheriffs about ICE detainers, MyFoxBoston, Sept. 4, 2014, available at [http://myfoxboston.com/story/26441946/question-surround-memo-sent-to-mass-sheriffs-about-ice-detainers#.VAhalz\\_kXRA.email](http://myfoxboston.com/story/26441946/question-surround-memo-sent-to-mass-sheriffs-about-ice-detainers#.VAhalz_kXRA.email).

misapplication of the law." Commonwealth v. Tobias T., 462 Mass. 1001 (2012). See, e.g., Commonwealth v. Charles, 466 Mass. 63, 89 (2013) ("We conclude that the legality of these proceedings presents a systemic concern that this court should resolve now through the exercise of its general superintendence powers under G. L. c. 211, § 3."); Simmons v. Clerk-Magistrate of the Boston Div. of the Hous. Court Dep't, 448 Mass. 57, 62 (2006) ("Accordingly, we conclude that the legality of this practice by the Housing Court Department is a systemic concern that this court should resolve through the exercise of its general superintendence powers under G.L. c. 211, § 3.").

The Defendant readily meets the requirements for relief under G.L. c. 211, § 3. First, relief is needed in order to prevent a violation of the Defendant's substantive rights. As discussed above, the trial judge has ordered that he be held without a judicial determination of probable cause that he has committed any crime and without notice or an opportunity to be heard on the immigration detention request, in violation of his rights under the Fourth and Fourteenth Amendments and articles 12 and 14.

Second, the Defendant "has no adequate alternative remedy." In re. Vaccari, 460 Mass. 756, 758 (2011)(citation and internal quotation marks omitted). The forty-eight hour time frame inherent in the ICE detainer makes a traditional appeal following the resolution of a criminal case essentially useless. By the time even a notice of appeal is filed, the Defendant will likely have been unlawfully detained and then transferred to immigration custody. Before any appeal could be resolved, assuming he is truly subject to removal, the Defendant is likely to have been removed.

Finally, this case presents a repeated, systemic misapplication of the law. According to statistics compiled by TRAC Immigration Project, authorities reported 478 ICE detention requests in Massachusetts between November 2014 and October 2015. TRAC Immigration, Reported ICE Detainers by State and Detention Facility, November 2014 - October 2015, available at <http://trac.syr.edu/immigration/reports/413/include/table4.html>. In the experience of the Immigration Impact Unit for the Committee for Public Counsel Services, these detention requests are routinely honored. Aff't

J. Klein (App. 22). Defendants subject to ICE detainers are routinely being held based solely on these civil immigration requests - either because they are choosing not to post bail given the certainty of transfer to immigration custody or because they have been released from state custody and state authorities have chosen to hold them at ICE's request. Id. In other words, resolution of the issue presented here would have a "wide-ranging impact beyond this case." Commonwealth v. Hernandez, 471 Mass. 1005, 1007 (2015).<sup>7</sup> Because this case presents "'a systemic issue affecting the proper administration of the judiciary[,] . . . resolution of the issue by this [C]ourt is appropriate and should not await some fortuitous opportunity of report or ordinary appeal.'" Brantley v. Hampden Div. of the Probate, 457 Mass. 172, 183 (2010), quoting A Juvenile v. Commonwealth, 80 Mass. 552, 556 (1980).

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<sup>7</sup>Despite the wide-ranging impact, none of the defendants facing an ICE detainer are likely to be in a position to challenge their detention through a traditional appeal, for the same reason that Mr. Moscoso does not have that option - the forty-eight hour time-frame renders a direct appeal fruitless.

**IV. CONCLUSION**

For the above-stated reasons, the Defendant, Santos Moscoso, requests that this honorable Court allow this petition and order his release notwithstanding the federal immigration detention request.

Respectfully submitted,  
SANTOS MOSCOSO  
By his attorneys,

/s/ Emma C. Winger  
Emma C. Winger (BBO # 677608)  
Immigration Impact Unit  
Committee for Public Counsel  
Services  
21 McGrath Highway  
Somerville, MA 02143  
Phone: (617) 623-0591  
ewinger@publiccounsel.net

/s/ M. Barusch /ew/  
M. Barusch (BBO # 676916)  
Staff Attorney  
Committee for Public Counsel  
Services  
1 Congress Street  
Boston, MA 02108  
Phone: (617) 209-5500  
mbarusch@publiccounsel.net

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