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On July 24, 2017 the Supreme Judicial Court issued a decision in *Commonwealth v. Lunn*, 477 Mass. 517 (2017), holding that Massachusetts courts and law enforcement officials – including sheriffs and police officers – do not have authority to hold persons based solely on immigration detainers. The decision is attached.

This case arose after Mr. Lunn, whose only pending criminal charge was dismissed, asked the trial court to release him notwithstanding an immigration detainer and the court declined to do so. Mr. Lunn, represented by CPCS trial attorney Alyssa Hackett, filed an emergency petition under MGL ch. 211, sec. 3. Although immigration officials took Mr. Lunn into custody before the petition was heard, Justice Lenk reported the issue to the full bench of the SJC, where CPCS IIU attorney Emma Winger argued the case as lead counsel.

Here are the key points of the decision:

* The Court held that detention based on an immigration detainer constitutes an arrest which must be authorized by Massachusetts law.
* It observed that there was no authority under Massachusetts law – either statutory or common law – for an arrest for civil immigration purposes.
* It declined to adopt the suggestion of the United States, appearing as amicus, that there was some “inherent authority” to arrest based on an ICE detainer, observing that those held on detainers do not have “the protections afforded other arrestees under Massachusetts law.” Specifically, detainers are issued without a judicial warrant and do not allow for a prompt determination of probable cause by a neutral magistrate.
* The Court’s decision applies to all Massachusetts law enforcement officials, not just court officers. The Court begins its discussion of arrest authority by observing that “Court officers in Massachusetts, while on court house premises, have the same authority to arrest as Massachusetts police officers.”
* The Court declined to address the constitutional concerns raised by Mr. Lunn and the Attorney General, leaving that question for another day should the Legislature attempt to create statutory arrest authority.

The IIU would like to extend its sincerest thanks to Mark Fleming of the National Immigrant Justice Center in Chicago, who was co-counsel in this case and whose advocacy on this issue inspired this litigation, as well as all supporting amici.