

The Commonwealth of Massachusetts

Committee for Public Counsel Services

Immigration Impact Unit

21 McGrath Highway, Somerville, MA 02143

TEL: 617-623-0591
FAX: 617-623-0936

ANTHONY J. BENEDETTI
CHIEF COUNSEL

WENDY S. WAYNE
DIRECTOR

HABEING DEFENDANTS FROM IMMIGRATION CUSTODY TO MASSACHUSETTS CRIMINAL COURTS

January 2019

Below please find the most updated procedure for habeing clients held in ICE custody back into state court. This procedure is the result of discussions between the Trial Court, the Sheriffs' Departments and ICE. We are hopeful that this new coordination will result in greater success for our clients.

Background

ICE detainees are held in the following places in Massachusetts: Suffolk County House of Corrections, Plymouth County Correctional Facility, Bristol County House of Corrections and Franklin County House of Corrections. The Sheriff with physical custody of the defendant is responsible for transporting that person to state court. However, before being transported to state court, ICE must give the Sheriff permission to release the person for transport.

Procedure

In order to effectuate permission from ICE and transport by the Sheriff:

- Request a Habe for the Sheriff Holding Your Client in ICE Custody: Tell the court that your client is in ICE custody, identify which facility is holding your client, and request that a habe issue to that Sheriff. It is the defense attorney's responsibility to inform the court where the defendant is being held.
 - The Clerk should issue a habe to the sheriff with physical custody of the defendant. There is a specific habe for those in ICE custody which includes specific language relating to ICE. The habe is available in the MassCourts system.
- Request That the Court Send a Photocopy of This Habe to ICE.
 - The Clerk must fax a photocopy of this habe to ICE's Massachusetts Field Office in Burlington at 781-359-7589.
- Request That the Habes Be Sent in Advance: Because ICE and the Sheriff must coordinate in order for transport to occur, defense counsel should request that the clerk issue the habe a few days prior to the court date (as opposed to the day before).

Attached to this advisory please find the two Trial Court memos that outline this transportation procedure.

- On November 30, 2018, the Trial Court issued a memo detailing how the habeas should be issued to the Sheriff with physical custody of the defendant. It includes instructions on the specific language that must be included and how to generate this habe from the MassCourts system.
- On January 15, 2019, the Trial Court issued an amendment to the November memo. The update includes a new sample habe and instructions to provide a copy of the habe to ICE.

Please contact the IIU (iiu@publiccounsel.net) if you have attempted to have your client brought from ICE custody to state court and have been unsuccessful, as we are trying to keep track of this issue.



**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT
John Adams Courthouse
One Pemberton Square, Floor 1M
Boston, Massachusetts 02108
617-878-0203**

**Paula M. Carey
Chief Justice of the Trial Court**

**Jonathan S. Williams
Court Administrator**

Executive Office Transmittal 18-21

To: Judges, Clerks, Registers, Chief Probation Officers, and Chief Court Officers

From: Chief Justice Paula M. Carey *PAC*

cc: Jonathan Williams, Court Administrator, Departmental Chief Justices, Probation Commissioner, Jury Commissioner, Deputy Court Administrators, OCM Directors

Date: November 30, 2018

Re: **Revised language for state writs of habeas corpus issued for individuals in ICE custody**

The United States Immigration and Customs Enforcement (ICE) has requested that, in matters in which state courts issue a writ of habeas corpus for a person held in ICE custody, the writ include language guaranteeing that, upon the conclusion of the state proceeding, the state will return the person to ICE's custody. After careful consideration of ICE's request, the Trial Court has come to the conclusion that ICE's request is consistent with the law and does not run afoul of the Supreme Judicial Court's decision in *Lunn v. Commonwealth*, 477 Mass. 517 (2017). The Trial Court has decided to create a new writ of habeas corpus to reflect transportation practice and to ensure compliance with the law. Staff from the various court departments, in conjunction with the EOTC, worked together to draft the revised language.

A new writs of habeas corpus has been added into MassCourts for use in situations where a person held in ICE custody is being habed into a session. When a party informs the court that a person for whom a writ is to be issued is in ICE custody, a "Habeas Corpus for detainee in the custody of the United States Custom Enforcement" should be issued for that person's presence. To access the form in MassCourts, the court user will enter docket code "HABEICE", and complete all fields to generate the new ICE Habeas Corpus Writ which will now contain the following language:

TO THE OFFICIAL IN CHARGE OF THE INSTITUTION NAMED ABOVE:

You are hereby ORDERED to bring the defendant - detainee named above, who is presently in your custody, before this court on the date and time indicated above for the event indicated.

If the defendant - detainee is transferred from your facility prior to the appearance date, please transmit this writ with the defendant - detainee to the new facility. If the defendant - detainee is released from custody prior to the appearance date, please notify the court immediately.

FURTHER ORDERS OF THE COURT:

The defendant-detainee shall be returned to ICE immediately after the conclusion of the above-referenced hearing or, if the defendant - detainee is taken into custody following the hearing, immediately after the defendant - detainee is released from that custody, by the state, county, or local entity having custody of the defendant - detainee at that time.

The [] County Sheriff shall make the necessary arrangements, including but not limited to providing transportation, to insure the defendant's presence in court for the above-referenced hearing and his or her return to ICE's custody at the conclusion of the state's custody.

The single MassCourts docket entry "HABEICE" and the same form may be utilized to arrange transportation for a detainee who may be scheduled to appear before a court session as a defendant, witness, or a probationer. Additionally, a copy of the issued form will auto-display on the MassCourts case record. For detailed instructions regarding the issuance of an ICE writ of Habeas Corpus please refer to attached **Business User Guide: MassCourts Process to issue required Writ of Habeas Corpus for Detainee in custody of United States Custom Enforcement (ICE)**.

MassCourts changes have been completed in the District Court and users will be able to generate it starting Monday, December 3, 2018. JISD will complete the process of adding the new docket code and form to the remaining departments, as each department is currently verifying which party and case types should be associated with this process.

Business User Guide: MassCourts Process to issue required Writ of Habeas Corpus for Detainee in custody of United States Custom Enforcement (ICE).

- To insure that an individual held in ICE custody at a state facility is transported to a scheduled court event, court users should utilize the **HABEICE** docket entry in MassCourts.
- The **HABEICE** docket code will result in the issuance of a writ of Habeas Corpus that will display specific language regarding the custody status of the United States Custom Enforcement. The writ of habeas corpus will also contain language that indicates if the detainee is to be transported to the court event as a defendant, witness or probationer.
- To obtain the ICE Habeas Corpus, the user should navigate to the case record on which the detainee is scheduled to appear. If the detainee is not the named defendant on the case and is scheduled to appear as a witness; the detainee must be added as a case witness.
 - **Adding Detainee as a Witness:** On the case summary screen, the court user should select "add party" in the party information section to open the party type selection screen. User shall select party type *Witness* to open the party maintenance screen. Search or enter all party information provided for the detainee and click Continue to return to party maintenance screen and click **SAVE** to add detainee as a witness.
- **Schedule the Court Event:** Before initiating the process for obtaining the ICE habeas corpus, the court user shall schedule the court event which will require the appearance of the detainee as a defendant or a witness.
- **Docketing the HABEICE Entry:** After the scheduled event has been added to the MassCourts case, the court user shall navigate to the docket entries section of the case summary screen and click "add docket entry". In the docket entry field add docket code "**HABEICE**" and select tab. Five variable fields

will be display for the user to enter the following:

- The name of the Institution where the party is being detained.
 - The party or witness name.
 - Select the scheduled event for the detainee to appear.
 - Select the County location of the Sheriff who is responsible for arranging transportation of the ICE detainee
 - Select the party type of the detainee [defendant, witness or probationer]
- After completion of all variable fields, click **SAVE**.
 - **Issuing the ICE Habeas Corpus:** After saving the **HABEICE** docket entry, the court user may select dynamic link "Docket Notice Generation" or select "Continue" at the bottom of the docket maintenance screen. Either action will open notice generation screen for user to select "notice" to access the party selection screen for user to indicate the party name that will display on the Habeas Corpus document.
 - **Printing and saving the completed ICE Habeas Corpus:** After selecting the party, the completed ICE Habeas Corpus form will display. Two copies of the form will print, one to be forwarded to the Institution and one for the court file. Court user to print the form and then select the green "SAVE FORM" box.
 - **ICE Habeas Corpus Smart Form:** The ICE Habeas Corpus form is produced in MassCourts as a smart form and will be auto-imaged to the MassCourts case record. No additional scanning is necessary. The court user should retain a signed or executed copy for the case file and transmit a signed copied to the Institution presently holding the detainee in custody.

HABEAS CORPUS FOR DETAINEE IN THE CUSTODY OF THE UNITED STATES CUSTOM ENFORCEMENT INSTITUTION'S COPY	DOCKET NUMBER	Trial Court of Massachusetts
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DEFENDANT - DETAINEE NAME	COURT NAME & ADDRESS
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SAMPLE

DOB	GENDER	SSN	PCF NUMBER
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NAME & ADDRESS OF INSTITUTION	NEXT EVENT DATE & TIME
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DEFENDANT-DETAINEE MUST APPEAR AT ABOVE COURT ON THIS DATE AND TIME

TO THE OFFICIAL IN CHARGE OF THE INSTITUTION NAMED ABOVE:
 You are hereby ORDERED to bring the defendant - detainee named above, who is presently in your custody, before this court on the date and time noted above for the event indicated.

If the defendant - detainee is transferred from your facility prior to the appearance date, please transmit this writ with the defendant - detainee to the new facility. If the defendant - detainee is released from custody prior to the appearance date, please notify the court immediately.

FURTHER ORDER OF THE COURT:
 The defendant - detainee shall be returned to ICE immediately after the conclusion of the above referenced hearing or if the defendant - detainee is taken into custody following the hearing, immediately after the defendant - detainee is released from that custody, by the state, county or local entity having custody of the defendant - detainee at that time.

The Sheriff shall make the necessary arrangements, including but not limited to providing transportation, to insure the presence in court for the above-referenced hearing and his or her return to ICE's custody at the conclusion of the state's custody.

ADDITIONAL ORDERS OF THE COURT:

TESTE OF FIRST JUSTICE	DATE ISSUED	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK
WITNESS:		X

RETURN OF SERVICE

I certify that:

I have produced the defendant-detainee named above in court as ordered.

I am unable to produce the defendant-detainee and I am returning this writ to the court because:

DATE OF RETURN	SIGNATURE OF PERSON MAKING RETURN	TITLE OF PERSON MAKING RETURN
	X	X

HABEAS CORPUS FOR DETAINEE IN THE CUSTODY OF THE UNITED STATES CUSTOM ENFORCEMENT COURT COPY		DOCKET NUMBER	Trial Court of Massachusetts 
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DEFENDANT - DETAINEE NAME	SAMPLE		COURT NAME & ADDRESS
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DOB	GENDER	SSN	PCF NUMBER
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NAME & ADDRESS OF INSTITUTION	NEXT EVENT DATE & TIME
	AAAAAAAAAAAAA DEFENDANT-DETAINEE MUST APPEAR AT ABOVE COURT ON THIS DATE AND TIME

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 You are hereby ORDERED to bring the defendant - detainee named above, who is presently in your custody, before this court on the date and time noted above for the event indicated.

If the defendant - detainee is transferred from your facility prior to the appearance date, please transmit this writ with the defendant - detainee to the new facility. If the defendant - detainee is released from custody prior to the appearance date, please notify the court immediately.

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The Sheriff shall make the necessary arrangements, including but not limited to providing transportation, to insure the presence in court for the above-referenced hearing and his or her return to ICE's custody at the conclusion of the state's custody.

ADDITIONAL ORDERS OF THE COURT:

TESTE OF FIRST JUSTICE	DATE ISSUED	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK
WITNESS:		X

RETURN OF SERVICE

I certify that:

I have produced the defendant-detainee named above in court as ordered.

I am unable to produce the defendant-detainee and I am returning this writ to the court because:

DATE OF RETURN	SIGNATURE OF PERSON MAKING RETURN	TITLE OF PERSON MAKING RETURN
	X	X

Amended Writ of Habeas Corpus for Persons in ICE Custody

Authored by: Kevin Buckley

Publish: 1/15/2019 10:34:00 AM

Last update: 1/15/2019 12:54:43 PM

Executive Office Transmittal 19-3 Regarding the Amended Writ of Habeas Corpus for Persons in ICE Custody

To: Judges, Clerk Magistrates, Registers, Chief Probation Officers, and Chief Court Officers

Executive Office Transmittal 19-3

From: Chief Justice of the Trial Court Paula M. Carey and Court Administrator Jonathan S. Williams

January 15, 2019


As a follow-up to [Executive Office Transmittal 18-21](#), titled “Habeas Corpus for detainee in the custody of the United States Custom Enforcement,” a writ of habeas corpus has been added to MassCourts for use in situations where a person in the custody of the United States Immigration and Customs Enforcement (ICE) is being “habed” into a session. This Transmittal provides additional guidance regarding the procedure to be followed in such a situation.

- The new writ of habeas corpus for a detainee in ICE’s custody requires the Court to designate a county sheriff to transport the detainee to and from court. At present, ICE does not have a facility in Massachusetts where it houses detainees in its custody; rather, ICE has entered into agreements with the Sheriffs of Suffolk, Plymouth, and Bristol Counties whereby those sheriffs house detainees in ICE’s custody.

Accordingly, when issuing a writ of habeas corpus for a detainee in ICE’s custody, the Court should order the Sheriff who is housing the detainee to transport the detainee to and from court. The Suffolk, Plymouth, and Bristol County Sheriffs have acknowledged their understanding that, pursuant to the new writ of habeas corpus for a detainee in ICE’s custody, they will be ordered to transport ICE detainees in their physical custody to and from court.

The parties to the matter in which the ICE detainee's presence is requested are responsible for informing the court where the detainee is being held.

- The court issuing the writ of habeas corpus for a person in ICE's custody should make a photocopy of the "institution's copy" and fax the photocopy to ICE's Massachusetts Field Office at the following fax number: (781) 359-7589. A directive that a photocopy of the writ should be faxed to ICE's Massachusetts Field Office has been added to the writ.

HABEAS CORPUS FOR DETAINEE IN THE CUSTODY OF THE UNITED STATES CUSTOM ENFORCEMENT <i>INSTITUTION'S COPY</i>	DOCKET NUMBER 1653CR999888	Trial Court of Massachusetts District Court Department 
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DEFENDANT - DETAINEE NAME JOE TEST				COURT NAME & ADDRESS Woburn District Court 30 Pleasant Street Woburn, MA 01801 (781)935-4000	
DOB 01/01/1970	GENDER Male	SSN 123-45-6789	PCF NUMBER		

NAME & ADDRESS OF INSTITUTION MCI - Cedar Junction (at Walpole) Route 1A PO Box 100 South Walpole, MA 02071				NEXT EVENT DATE & TIME 04/15/2017 09:35 AM Bench Trial (CR)	
				AAAAAAAAAAAA DEFENDANT-DETAINEE MUST APPEAR AT ABOVE COURT ON THIS DATE AND TIME	

TO THE OFFICIAL IN CHARGE OF THE INSTITUTION NAMED ABOVE:

You are hereby ORDERED to facilitate the transfer of the defendant - detainee named above, who is presently in your custody, before this court on the date and time noted above for the event indicated.

If the defendant - detainee is transferred from your facility prior to the appearance date, please transmit this writ with the defendant - detainee to the new facility. If the defendant - detainee is released from custody prior to the appearance date, please notify the court immediately.

FURTHER ORDER OF THE COURT:

The defendant - detainee shall be returned to ICE immediately after the conclusion of the above referenced hearing or if the defendant - detainee is taken into custody following the hearing, immediately after the defendant - detainee is released from that custody, by the state, county or local entity having custody of the defendant - detainee at that time.

The Middlesex County Sheriff shall make the necessary arrangements, including but not limited to providing transportation, to insure the defendant's presence in court for the above-referenced hearing and his or her return to ICE's custody at the conclusion of the state's custody.

ADDITIONAL ORDERS OF THE COURT:

THIS IS A TEST.

Immediately upon issuance of this document, the Clerk shall fax a photocopy of this Habeas Corpus writ to ICE's Massachusetts Field Office at the following fax number: (781)-359-7589


TESTE OF FIRST JUSTICE WITNESS: Hon. Marianne C Hinkle	DATE ISSUED 12/14/2018	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK X
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RETURN OF SERVICE

I certify that:

- I have produced the defendant-detainee named above in court as ordered.
- I am unable to produce the defendant-detainee and I am returning this writ to the court because:

DATE OF RETURN	SIGNATURE OF PERSON MAKING RETURN X	TITLE OF PERSON MAKING RETURN X
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HABEAS CORPUS FOR DETAINEE IN THE CUSTODY OF THE UNITED STATES CUSTOM ENFORCEMENT <i>COURT COPY</i>	DOCKET NUMBER 1653CR999888	Trial Court of Massachusetts District Court Department 
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DEFENDANT - DETAINEE NAME JOE TEST				COURT NAME & ADDRESS Woburn District Court 30 Pleasant Street Woburn, MA01801 (781)935-4000	
DOB 01/01/1970	GENDER Male	SSN 123-45-6789	PCF NUMBER		

NAME & ADDRESS OF INSTITUTION MCI - Cedar Junction (at Walpole) Route 1A PO Box 100 South Walpole, MA 02071	NEXT EVENT DATE & TIME 04/15/2017 09:35 AM Bench Trial (CR)
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FURTHER ORDER OF THE COURT:

The defendant - detainee shall be returned to ICE immediately after the conclusion of the above referenced hearing or if the defendant - detainee is taken into custody following the hearing, immediately after the defendant - detainee is released from that custody, by the state, county or local entity having custody of the defendant - detainee at that time.

The Middlesex County Sheriff shall make the necessary arrangements, including but not limited to providing transportation, to insure the defendant's presence in court for the above-referenced hearing and his or her return to ICE's custody at the conclusion of the state's custody.

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THIS IS A TEST.

Immediately upon issuance of this document, the Clerk shall fax a photocopy of this Habeas Corpus writ to ICE's Massachusetts Field Office at the following fax number: (781)-359-7589

TESTE OF FIRST JUSTICE WITNESS: Hon. Marianne C Hinkle	DATE ISSUED 12/14/2018	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK X
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RETURN OF SERVICE

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- I have produced the defendant-detainee named above in court as ordered.
- I am unable to produce the defendant-detainee and I am returning this writ to the court because:

DATE OF RETURN	SIGNATURE OF PERSON MAKING RETURN X	TITLE OF PERSON MAKING RETURN X
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