



John Adams Courthouse
One Pemberton Square
Boston, Massachusetts 02108



Ralph D. Gants
Chief Justice
Supreme Judicial Court

Paula M. Carey
Chief Justice
Trial Court

February 20, 2020

Acting Field Office Director Todd M. Lyons
DHS/ICE/ERO
Boston Field Office
1000 District Avenue
Burlington, MA 01803

Re: ICE removal of defendants awaiting trial for felonies in Massachusetts State Courts

Dear Acting Field Office Director Lyons:

On October 23, 2019, we sent your predecessor, Marcos Charles, the enclosed letter identifying thirteen cases in our Superior Court where defendants who had been indicted for the alleged commission of felonies were removed from the country by United States Immigration and Customs Enforcement (ICE) pending trial without the knowledge of the court and, as far as we know, without the knowledge of the relevant district attorney.¹ We strongly urged Acting FOD Charles in that letter, in the interests of justice, to cease the removal of defendants by ICE during the pendency of criminal charges in our state courts without advance notice to the court and the relevant district attorney. And we asked him to confirm in writing that ICE will cease that practice. We also invited him to meet with us so that we could address any concerns he might have.

Nearly four months have passed since we sent that letter, but we have yet to receive a reply from you or him. Because actions speak more loudly than words, we were encouraged by the fact that we had learned of no new instances in Superior Court where a defendant was removed from the country by ICE pending trial. We had hoped that this reflected a change in policy arising from the recognition by ICE of the adverse impact on law enforcement, victims, defendants, and the interests of justice caused by such pretrial deportations. But we recently learned that ICE, yet again, had deported a defendant who was awaiting trial in Superior Court on felony charges, specifically trafficking in cocaine. In Commonwealth v. Anibal Maldonado (0381CR00378), the defendant appeared in court on December 13, 2019, to remove a default, and was released on personal recognizance. Before being released, he was taken into custody by

¹ After we sent that letter, two other such cases came to our attention, both from Norfolk County, and both with deportations that occurred before the date of that letter. Those cases are described in an appendix to this letter.

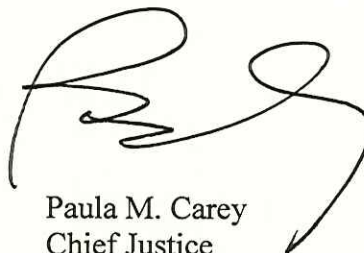
ICE in the courthouse lockup area. Pursuant to Trial Court policy, court officers allowed ICE officers into the lockup area for that purpose, and neither assisted nor obstructed them. On January 24, 2020, when the assistant clerk telephoned ICE to obtain information so that she could have the defendant in for a hearing on February 11, she was informed that ICE had deported the defendant to the Dominican Republic. As a result, the defendant did not appear for the February 11 hearing and a warrant issued for his arrest. Now, if the district attorney wishes to pursue this prosecution, she must seek the assistance of the Department of Justice and the Department of State to extradite the defendant back to Massachusetts from the Dominican Republic.

We hope that this most recent deportation is a departure from ICE policy rather than consistent with it. It certainly is an affront to justice. We reiterate our request for written confirmation that ICE will cease its practice of removing state criminal defendants pending trial without advance notice to the court and the relevant district attorney. We also reiterate our invitation to meet with us so that we can address any concerns you might have.

Sincerely,



Ralph D. Gants
Chief Justice
Supreme Judicial Court



Paula M. Carey
Chief Justice
Trial Court

Enclosure

cc: Chief Justice Judith Fabricant, Superior Court (w/ enclosure)
Chief Justice Paul Dawley, District Court (w/ enclosure)
Chief Justice Roberto Ronquillo, Jr., Boston Municipal Court (w/ enclosure)
Chief Justice Amy Nechtem, Juvenile Court (w/ enclosure)
Chief Judge F. Dennis Saylor IV, United States District Court (w/ enclosure)
Attorney General Maura Healey (w/ enclosure)
Each Massachusetts District Attorney (w/ enclosure)

APPENDIX

Commonwealth v. Abdulrhman Abduljalil (1682CR00270)

The defendant was indicted on August 16, 2016 on two counts of aggravated rape of a child who was at least five years younger than the defendant, two counts of rape of a child with force, five counts of indecent assault and battery on a child under the age of fourteen, and one count of assault to rape a child. On August 24, the defendant was arraigned and bail was set at \$35,000. The defendant was placed on pretrial release with conditions that he stay away from the alleged victim, have no unsupervised contact with children under the age of sixteen, and live with his family in New Hampshire. Bail was posted. By October 26, the defendant was in ICE custody, and an ICE habe was issued for the defendant to appear at a November 2 hearing, which he did. At that time, the Commonwealth's motion to take a DNA sample from the defendant was allowed. On January 9, 2017, a second ICE habe issued for the defendant to appear at a pretrial hearing on January 25. The defendant failed to appear, apparently because he had been deported to Saudi Arabia.

Commonwealth v. Amir Malagon Bisono (1882CR0299)

The defendant was indicted for trafficking in fentanyl (more than ten grams) and in heroin or cocaine (between 18-36 grams). At arraignment on October 8, 2018, bail was set at \$5,000, with conditions of bail release that he be monitored by GPS, reside with his father, and surrender his passport. On June 24, 2019, his bail was posted, he surrendered his passport, and he was placed on GPS. After his release on bail, he was placed in custody by ICE. On October 2, 2019, the defendant's application for voluntary departure was denied and he was removed from the country.



John Adams Courthouse
One Pemberton Square
Boston, Massachusetts 02108



Ralph D. Gants
Chief Justice
Supreme Judicial Court

Paula M. Carey
Chief Justice
Trial Court

October 23, 2019

Acting Field Office Director Marcos Charles
DHS/ICE/ERO
Boston Field Office
1000 District Avenue
Burlington, MA 01803

Re: ICE removal of defendants awaiting trial for felonies in Massachusetts State Courts

Dear Acting Field Office Director Charles:

We have identified in the accompanying document thirteen cases in our Superior Court where defendants who had been indicted for the alleged commission of felonies -- including child rape, armed assault to murder, and drug trafficking -- were removed from the country by United States Immigration and Customs Enforcement (ICE) pending trial without the knowledge of the court and, as far as we know, without the knowledge of the relevant district attorney. In one of these cases (the last case identified), extraordinary resources had to be expended to extradite the defendant back to the United States from the Dominican Republic so that he could face trial. In the others, the district attorney was prevented from seeking justice on behalf of the victim and the public, and the defendant was denied the opportunity to establish his innocence.

This is not a comprehensive list of all the cases where this has happened; we have no simple way to obtain this data through our computerized court records, so these examples are only those that were identified by the Regional Administrative Justice in two of our Superior Court regions, with the last located because of a newspaper article published on August 12, 2019. These cases should be understood, therefore, only as illustrative examples of a pattern of conduct. And we are aware that comparable removals of criminal defendants without the knowledge of the court or the district attorney are occurring in our District Courts and in our Boston Municipal Court.

In the interests of justice, we strongly urge you to cease the removal of defendants by ICE during the pendency of criminal charges in our state courts without advance notice to the court and the relevant district attorney. Removal of state criminal defendants pending trial severely, and often irreparably, interferes with the state criminal process. Among other things, it prevents victims from having their day in court, denies defendants the opportunity to be exonerated, and allows defendants who would otherwise be convicted to escape punishment.

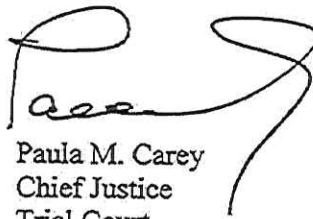
When ICE has in custody a defendant who is awaiting criminal trial in our courts, the appropriate course of action is for the defendant to be held in Massachusetts until the completion of the criminal case, so that he or she can be brought into court at the appropriate times via a writ of habeas corpus ad prosequendum, colloquially a "habe." And when a defendant in ICE custody is habed into a Massachusetts state court for trial or a pretrial proceeding, our protocol provides that the defendant will not be released from custody but will either be held in state custody or returned to ICE custody. If, for example, the defendant is found not guilty at trial or is convicted and sentenced to probation, the defendant will immediately be returned to ICE custody. If convicted and sentenced to jail or prison, the defendant will be returned to ICE custody upon the completion of the custodial sentence. At that time, and only at that time, will ICE removal of a defendant not interfere with the adjudication of the state criminal case.

We would appreciate it if you would confirm in writing that ICE will cease its practice of removing state criminal defendants pending trial without advance notice to the court and the relevant district attorney. We would be happy to meet with you to discuss this matter further so that we may address any concerns you might have. We look forward to your response.

Sincerely,



Ralph D. Gants
Chief Justice
Supreme Judicial Court



Paula M. Carey
Chief Justice
Trial Court

Enclosure

cc: Chief Justice Paul C. Dawley
Chief Justice Judith Fabricant
Chief Justice Amy L. Nechtem
Chief Justice Roberto Ronquillo, Jr.
Chief Judge Patti B. Saris, United States District Court
Attorney General Maura Healey
Each Massachusetts District Attorney

Middlesex County

Commonwealth v. Acosta-Rosario, Martin (1781CR00455):

The defendant was indicted on charges of armed assault to murder, assault and battery with serious bodily injury, unlawful possession of a loaded firearm, and four other offenses. On December 14, 2017, he was arraigned, and bail was set at \$1,500, with GPS as a condition of release if bail was posted. On December 28, bail was posted, and the defendant was released on GPS. In January 2019, the defendant was taken into custody by ICE. The Clerk's Office was told that the defendant would be held at the Plymouth County HOC. An ICE habe was issued for the defendant to appear at a February 19 hearing. On February 8, ICE called the Clerk's Office to say that the defendant's deportation hearing was going forward on February 19, and he would not be transported. On February 27, the defendant was transported to court. The defendant's counsel advised the court that a deportation order had issued, and that the defendant was scheduled for deportation in the next several weeks. The court set the bail at \$7,500, with the same GPS condition. Unable to post bail, the defendant was taken to the Middlesex HOC. On March 20, the defendant posted bail at the HOC and, according to defense counsel, was taken into ICE custody before leaving the HOC. According to ICE, on April 2, 2019, the defendant was deported to the Dominican Republic.

Commonwealth v. Interiano-Vivas, Miguel A. (1781CR00578):

The defendant was indicted for trafficking cocaine, 36-100 grams. At arraignment bail was set at \$17,500. That amount, previously posted in the District Court, was transferred to the Superior Court. On January 9, 2019, the defendant was detained in a public area of the courthouse as he was entering a courtroom for a motion hearing. The court ordered ICE to release the defendant to enter the courtroom for the hearing, and ICE complied. On January 28, 2019, the court reduced the defendant's bail to personal recognizance, and the defendant was taken into ICE custody. According to ICE, on February 20, 2019, the defendant was deported to El Salvador.

Commonwealth v. Pina-Castillo, Daniel (1881CR00285):

The defendant was indicted for trafficking Fentanyl, more than 10 grams. On July 12, 2018, he was released on personal recognizance. The defendant's motion to dismiss was scheduled for October 17. On that date, the defendant did not appear. Defense counsel advised the court that family members reported the defendant had been taken into custody by ICE that morning on his way into the courthouse. On January 15, 2019, the court issued an ICE habe for the defendant to appear for a final pretrial conference. In response, ICE told the Clerk's Office that the defendant had been transferred out-of-state for deportation. According to ICE, on February 5, 2019, the defendant was deported to the Dominican Republic.

Commonwealth v. Ospina, Hernan (1881CR00370):

The defendant was indicted for trafficking in cocaine, 18-36 grams. He was arraigned in September 2018, and bail was set at \$10,000 cash. In March 2019, bail was posted at the Clerk's Office, and the defendant was taken into custody by ICE outside the courthouse. The defendant was taken to the ICE facility at South Bay. A hearing was scheduled for April 22, and a habe issued to South Bay. When the Assistant Clerk called to confirm receipt of the habe, she was told that the defendant was no longer at South Bay. In a second call to the ICE office in Burlington, Massachusetts, the Assistant Clerk was told the defendant had been deported to Columbia on April 20.

Commonwealth v. Ramscheid, Danilo Portugal (1981CR00056):

The defendant was charged with posing a child under 18 in a sexual act and secretly recording a nude person. The defendant was released by the District Court after posting \$10,000 bail, and then taken into custody by ICE. Thereafter, he was indicted. On February 26, 2019, he was transported for arraignment to the Middlesex Superior Court in Woburn from the Plymouth County House of Correction, where he was being held by ICE. At arraignment, the Commonwealth requested that the defendant be held without bail due to the ICE detainer. Defense counsel requested that the previously posted \$10,000 be imposed. The magistrate set bail in the amount of \$100,000, and the defendant was taken to the House of Correction in Billerica. After a hearing on June 3, 2019, the defendant's bail was reduced to \$50,000, with GPS as a condition of release. The defendant was returned to the House of Correction. On June 26, 2019, the defendant posted the \$50,000 bail and was brought to Middlesex Superior Court for the GPS. Upon his release, he was taken into custody by ICE. On August 12, 2019, an ICE habe was issued for a hearing on August 29, 2019. The habe was faxed to Bristol County, where the defendant was being held, as well as to the ICE Regional Office in Burlington. On August 22, 2019, defense counsel notified the clerk's office that the defendant had been deported. On that date, clerk's office personnel spoke with the defendant's deportation officer, who confirmed that the defendant had been deported to Brazil on August 19, 2019.

Essex County

Commonwealth v. Arias, Jose L. (1477CR00455):

The defendant was arraigned on March 27, 2015, following his indictment for trafficking heroin - 200 or more grams. Bail was set at \$100,000. The defendant's motion to suppress was allowed by a judge of the Superior Court, but the Commonwealth was granted leave to file an interlocutory appeal, and the decision was reversed by the Appeals Court, with further appellate review denied by the Supreme Judicial Court. The defendant posted \$100,000 bail on October 26, 2017, and failed to appear for trial assignment on December 8, 2017, because he had been deported by ICE on or about November 21, 2017.

Commonwealth v. Reynoso, Jimmy (1577CR00338):

The defendant was arraigned on May 11, 2015 on an indictment for armed assault to murder and related charges. The defendant was released on \$1,000 bail, with conditions, including GPS. Bail was posted on June 30, 2015. He was deported on October 27, 2015.

Commonwealth v. Macario, Alejandro (1677CR00270):

The defendant was arraigned on August 4, 2016 after his indictment on child rape charges. At the Commonwealth's request, bail was set at the same \$7,500 ordered by the District Court, with conditions, including GPS. The defendant posted bail on August 29, 2016, but was defaulted on December 13, 2016 because the defendant had been sent by ICE to Louisiana, apparently to effectuate his deportation to the Dominican Republic.

Commonwealth v. Ramirez, Victor (1677CR00473):

The defendant was arraigned on October 25, 2016 after his indictment on child rape charges. Bail was initially set at \$50,000, but was later reduced on September 19, 2017 at the Commonwealth's request to \$1,000 due to the victim's medical issues. Bail was posted that day. The defendant was defaulted at the scheduled March 27, 2018 trial date because he had been deported.

Commonwealth v. Rosario-Soto, Deby (1777CR00265):

The defendant was arraigned after being indicted for cocaine trafficking, 18 grams or more, on August 7, 2017. Bail was set at the Commonwealth's request at \$50,000, which had already been posted in the District Court. The defendant was defaulted for failing to appear on July 17, 2018 because he had been deported.

Commonwealth v. Peguero-Soto, Cesarin (1777CR00449):

The defendant was arraigned on August 31, 2017 after his indictment for trafficking cocaine - over 36 grams. Bail was set at the Commonwealth's request at \$40,000, which was already posted in the District Court. The defendant was defaulted for failure to appear on October 11, 2017, because he had been deported.

Commonwealth v. Baez Arias, Santo M. (1777CR00568 and 1877CR00001):

The defendant was arraigned for trafficking heroin - 200 grams or more. Bail was set at \$75,000. The trafficking indictment was nolle prossed when the drugs came back as fentanyl, and new indictment was returned for possession with intent to distribute a Class B substance. Bail was reduced to \$25,000, and the defendant was released on bail. He defaulted on March 20, 2018 after having been deported by ICE.

Suffolk County

Commonwealth v. Ortega, Jose (1484CR10096):

The defendant was indicted and arraigned in Suffolk County Superior Court on three counts of rape of a child under 16, two counts of indecent assault and battery on a child under 14 and one count each of open and gross lewdness and providing obscene material to a minor. After his release on bail on May 29, 2014, and before his next hearing date on June 6, 2014, he was removed from the country by U.S. Immigration and Customs Enforcement (ICE) officials, and a default warrant was issued authorizing the defendant's arrest. It took five years and an extradition proceeding to bring Ortega back to Boston from the Dominican Republic to face trial on these charges.