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April 9, 2018

The Honorable Elspeth B. Cypher
Associate Justice of the Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108-1707

Re: Amicus letter in support of SJ-2018-0119, A Petition for Writ of Protection Pursuant to G.L. c. 211, § 3

Dear Justice Cypher:

As the elected District Attorney of Middlesex County I write in support of the writ of protection sought by the petitioners in the above-referenced matter. I urge you to reserve and report the petition to the full bench of the Supreme Judicial Court so that it may consider issuing a writ of protection in order to preserve the right of all persons to access the courts of this Commonwealth without fear of civil arrest by Immigration and Customs Enforcement (ICE) on unrelated civil immigration matters.

As the District Attorney for the Northern District (also known as Middlesex), I represent the fifty-four cities and towns of Middlesex County. Middlesex County is the largest county in the Commonwealth and New England as a whole. The Middlesex Office prosecutes approximately forty thousand criminal cases each year in the district and superior courts. Middlesex prosecutors serve the Commonwealth in twelve district courts and two superior courts—courthouses that are located in diverse areas that range from urban to suburban to rural and which serve a population of over one and a half million persons from diverse cultural, racial, ethnic, linguistic, and religious backgrounds. All of the large cities in Middlesex County, which include Cambridge, Malden, Everett, Somerville, Lowell, and Framingham, contain significant immigrant communities.¹

¹ According to the 2009 American Community Survey, five of the ten communities with the highest concentrations of immigrant households were in Middlesex County. See Clayton-Matthews, Alan and Watanabe, Paul, Massachusetts Immigrants by the Numbers, Second Edition: Demographic Characteristics and Economic Footprint, Immigrant Learning Center, Inc., March 2012. According to the same survey, Malden had the highest foreign-born population of Middlesex County, at 37% of the total population, second

The United States Census Bureau estimates that twenty percent of the population of Middlesex County was born outside of the United States. This amounts to over three hundred thousand individuals in a county of over 1.6 million. About half of those individuals, or approximately 150,000, are estimated to be non-citizens with various immigration statuses. These immigration statuses could include lawful permanent residents (LPRs), students, temporary protected status (TPS) holders, refugees and asylum seekers, as well as undocumented immigrants.² There is no doubt, given the significant foreign-born population within Middlesex, that many non-citizens within my Office's jurisdiction pass through the courts of Middlesex County as victims, witnesses, plaintiffs seeking restraining orders, defendants, and civil litigants. In my own decades-long career as a prosecutor, I have personally handled numerous cases where both victims and essential witnesses in criminal cases were foreign-born non-citizens. It is based upon that personal experience, as well as my Office's overall mission to serve the interests of justice, that I write in support of the Petition for a Writ of Protection filed on behalf of non-citizens who seek access to the courts of the Commonwealth without fear of arrest on civil immigration matters.

I am deeply concerned that the prospect of ICE conducting civil arrests in courthouses across the Commonwealth will have a hugely detrimental effect on law enforcement and on the ability of prosecutors to seek justice on behalf of the Commonwealth. I share the concerns voiced by the petitioners, and other amicus filings, that victims and witnesses will be greatly harmed by the specter of ICE agents arresting individuals who are required to attend court.³ Justice is harmed when victims and witnesses, who are essential to our prosecutions, are afraid to even set foot in a courthouse because of the possibility of facing arrest for civil immigration infractions. In the absence of critical witnesses, the Commonwealth will inevitably be forced to dismiss cases, including those that involve serious violent crimes. Criminals will feel emboldened to commit crimes against individuals who they know are now more unlikely to report those crimes or participate in subsequent prosecutions

only to Chelsea in terms of the highest percentage of foreign-born persons amongst municipalities in the entire Commonwealth. Id.

² It is also worth considering the possibility that non-citizens who are lawfully present in the United States, with no legal basis for deportation, could potentially not fully understand the intricacies of immigration law and mistakenly believe that ICE could also target them.

³ The petitioners in this case include both an essential witness to a crime and a victim of a crime who have been deterred from participating in prosecutions as a result of ICE's activities in courthouses in the Commonwealth. See Petitioners' Brief at 15-16, 18.

based upon their immigration status.⁴ Immigrants who are witnesses to crimes will be afraid to share important information with investigators, lest they be required to go to court and risk arrest on civil immigration charges.⁵ It is worth noting that even victims of crimes who are citizens are harmed when essential witnesses are too afraid to cooperate with law enforcement due to the presence of ICE agents in our courthouses. None of these results are consonant with justice or with the protection of public safety. This Court should take the opportunity to consider how best to provide protection for the victims and witnesses who are so essential to criminal prosecutions—and who have a right to feel safe when they step into the halls of justice.

I am disturbed by the implications that ICE's activities in our courthouses may have for domestic violence victims seeking restraining orders.⁶ The potential impact on domestic violence victims who are non-citizens is obvious: they may choose not to avail themselves of an opportunity to seek protection from our courts in the form of a restraining order if they personally fear civil arrest upon entering a state courthouse. This will inevitably embolden abusers. Moreover, domestic violence victims who are citizens, but whose partners are not, may also avoid seeking the assistance of our courts when they fear that their non-citizen partners may face civil arrest if summonsed into court for a hearing on a restraining order. This will only further perpetuate a cycle of abuse.

I further share the concerns expressed by petitioners that defendants may not have the opportunity to answer to state criminal charges against them because ICE has taken them into custody, and that they potentially may never have the opportunity to resolve their criminal case once taken into federal custody. As the petitioners have noted and it has been our experience that ICE rarely delivers a defendant to court for trial even when a habe has issued. This is of

⁴ It is worth noting that such individuals include other categories of immigrants beyond those who are undocumented. See, eg, Immigration and Naturalization Act ("INA") § 237(a). They could, for example, be lawful permanent residents who are eligible for deportation based upon past criminal cases, or TPS holders whose status expires under the Trump administration's directives, or relatives of United States citizens with pending naturalization applications, or asylum seekers whose asylum applications have been denied but who have been previously granted stays of removal by ICE.

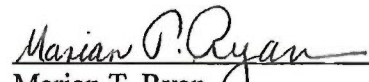
⁵ As the Attorney General has previously pointed out, ICE's current policies, including courthouse arrests, seriously impact public safety by undercutting "local law enforcement's ability to develop the critical trust needed to keep communities safe." Maria Cramer, ICE courthouse arrests worry attorneys, prosecutors, Boston Globe, June 16, 2017.

⁶ One of the petitioners, an undocumented woman from Brazil with a four-year old United States citizen child, has not sought a permanent restraining order against her abusive ex-husband because she fears arrest by ICE at the courthouse. See Petitioners' Brief at 16-17.

obvious concern to those defendants who wish to exercise their rights to a trial, and is also troubling for those victims who are denied the opportunity to see those cases resolved. ICE should not be permitted to deprive victims of the opportunity to see justice done in criminal cases prior to civil immigration action being taken.

In sum, this is an issue with grave implications for the fair and effective administration of justice in the Commonwealth. For all of the foregoing reasons, I would ask that this Court refer the petition for a writ of protection to the full bench of the Supreme Judicial Court for resolution of this important matter.

Respectfully Submitted,


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