

REPORT AND RECOMMENDATION OF THE
COMMISSION ON JUDICIAL CONDUCT

APPENDIX F

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF JUDGE SHELLEY M. RICHMOND JOSEPH
COMMISSION COMPLAINT NUMBER 2019-22

PRE-HEARING MEMORANDUM OF
JUDGE SHELLEY M. RICHMOND JOSEPH

STATEMENT OF THE ANTICIPATED EVIDENCE

This case arose against a backdrop of tension between the federal government and the Commonwealth of Massachusetts relating to immigration issues. In January 2017, at the direction of President Trump, then-DHS Secretary John Kelly, and then-ICE Deputy Director Thomas Homan, ICE began a nationwide campaign specifically targeting state courthouses as sites for civil immigration enforcement. On January 10, 2018, ICE formalized its courthouse arrest policy in Directive No. 11072.1, entitled “Civil Immigration Actions Inside Courthouses.” The Directive “sets forth [ICE’s] policy regarding civil immigration enforcement inside federal, state, and local courthouses.” This policy led to concern among Massachusetts state officials that ICE’s enforcement efforts might dissuade litigants and witnesses from accessing the courthouses.

In July 2017, the Supreme Judicial Court decided *Lunn v. Commonwealth*, 477 Mass. 517 (2017) holding that state judges and administrative personnel had no authority to hold people on a civil immigration detainer. The federal government was not pleased. The tension escalated when the Commonwealth joined with eight other states and the District of Columbia seeking disclosure of records related to immigration enforcement activities in their jurisdictions. *Commonwealth v Massachusetts v. U.S. Dept. of Homeland Security*, U.S.D.C. Mass. 1:17-cv-12022 (filed 10/17/2017).

In the aftermath of the *Lunn* decision, Massachusetts courts wrestled with how to operationalize the Supreme Judicial Court's directive. These efforts resulted in a detailed policy statement, issued to all judges and court staff on November 10, 2017. See Exhibit A, Policy and Procedures Regarding Courthouse Interactions with the Department of Homeland Security. The statement attempted to balance competing interests: the need for order and decorum in courthouses, the safety and security of court personnel and the public, and the ability of federal immigration authorities to perform their responsibilities. Judge Shelley M. Richmond Joseph, appointed to the district court bench on November 2, 2018, began her judicial service in this fraught environment.

Five months into that service, on Monday, April 2, 2018, Judge Joseph was assigned to sit in the Newton District Court. Although she had attended proceedings in that courthouse as a practicing lawyer, she had been assigned there as a judge on only a few occasions. On that day, she was the only judge present in the courthouse.

One of the matters before her was the first appearance of Jose Medina-Perez, who had been arrested over the weekend on charges of possession of both a Class B and a Class E substance. In addition to the state drug charges, Judge Joseph was ultimately informed that there were both a fugitive warrant from Pennsylvania and a civil detainer for a United States Immigration and Customs Enforcement ("ICE") proceeding that allegedly pertained to Medina-Perez. Judge Joseph assigned a bar advocate, Elizabeth Bostwick, to represent Medina-Perez. Bostwick immediately noticed inconsistencies in the various documents supporting the Pennsylvania fugitive charge against her client, and began to investigate the discrepancies in the

court file. Bostwick continued to represent Medina-Perez through the lunch recess at 12:40 p.m. and requested a 2:15 p.m. call after lunch because she had a medical appointment.

During the lunch recess, the courtroom clerk, Lawrence Okstein, informed Judge Joseph that ICE officers were present at the courthouse, and that it was the policy of Newton First Judge Mary Beth Heffernan, who was not at the courthouse that day, to exclude them from the courtroom. As a visiting (and new) judge, Judge Joseph wished to follow the First Judge's unusual policy, but was concerned about whether she had the power to exclude anyone—especially federal agents—from the courtroom. She was unable to locate any relevant guidance or policies in the courthouse, and therefore placed a call to the Administrative Office of the District Court. Judge Joseph was conscientiously trying to follow both the law and the Trial Court's policies, as well as to respect the practice of the presiding justice of the courthouse where she was a visiting judge. Faced with uncertainty, she properly sought advice.

One of the Administrative Office's District Court legal counsel read the *Lunn* policy to her, and the two agreed that there was nothing that prohibited the exclusion of ICE agents from the courtroom. Based on that advice, Judge Joseph told Clerk Okstein that she would follow First Judge Heffernan's policy. Judge Joseph never saw or spoke to any ICE agent herself, and relied upon Okstein to communicate with the federal agents.

The Commission's key witness, David Jellinek, has given inconsistent statements about when and how he became involved, but in some fashion, he connected with Medina-Perez's employer, Pablo Olivio, who was present in the courthouse. According to Jellinek, Olivio was not satisfied with Bostwick's efforts and wanted to ensure Medina-Perez's release. Jellinek claims that Olivio paid him \$1000 to retain his services for the day. There is no evidence about

what led Olivio to believe that Jellinek could accomplish Medina-Perez's release more effectively than Bostwick.

In any event, Jellinek claims that, as he reviewed the file, he believed that Medina-Perez was neither the person sought by the Pennsylvania warrant nor the subject of the ICE detainer. He apparently discussed his concerns with Assistant District Attorney Shannon Jurgens, who, at least up until the lunch break, had insisted that the Pennsylvania identification was correct, and that there was a photograph accompanying the Pennsylvania warrant that did not permit the exclusion of Medina-Perez.

More importantly, Jellinek admits that, after being retained to represent Medina-Perez, but before he appeared for the afternoon session, he spoke with Wesley MacGregor, a court officer with whom he was friendly. Jellinek further admits that he discussed with MacGregor his desire to help his client evade ICE. He further admits that he arranged with MacGregor that Medina-Perez could be released out the downstairs sallyport door if he was not held on any of the state court charges. Jellinek believed that he merely had to bring Medina-Perez downstairs after his court appearance to effectuate the plan. Jellinek was clear about his goal: "I was trying to have my client avoid ICE." Jellinek's arrangement with MacGregor happened without Judge Joseph's knowledge, and before Jellinek formally appeared for Medina-Perez.

When Bostwick returned for the afternoon session, Jellinek informed her that he had been retained as private counsel for Medina-Perez and would be replacing her as counsel. Bostwick remained in the courtroom for the remainder of the afternoon, watching the proceedings. When the Medina-Perez case was next called, Clerk Okstein informed Judge Joseph that Medina-Perez was now represented by private counsel, David Jellinek. Jellinek immediately asked to approach

sidebar. At sidebar, Judge Joseph learned that ADA Jurgens, who before lunch had steadfastly maintained that Medina-Perez was the subject of the Pennsylvania warrant, had without explanation reversed her position, now agreeing that Medina-Perez was not the subject of the Pennsylvania warrant. Neither Jellinek nor Jurgens has thus far explained her sudden change of heart.

Jellinek also expressed his view that Medina-Perez was not the subject of the ICE detainer. Judge Joseph believed that, as the presiding judge, she bore some responsibility to ascertain the correct identity of the defendant in her courtroom and to give his counsel at least a minimal opportunity to attempt to convince ICE that the defendant was not the person subject to the ICE detainer. Her words at sidebar demonstrate her intention: she suggested that Medina-Perez be detained “if you need more time to figure this out.” By this statement, Judge Joseph was not offering to help him Medina-Perez evade ICE; rather, she was offering Jellinek a short time to prove his assertion about the mistaken identification. She was surprised when Jellinek rejected her offer, but assumed that he was competently representing his client.

Jellinek then asked to go off the record. Judge Joseph, hoping to receive more information about the puzzling and rapidly unfolding sequence of events, agreed.¹ There ensued a period of fifty-two seconds during which Jellinek now claims that he alerted Judge Joseph—in the presence of ADA Jurgens—to his plan to have Medina-Perez released out the sallyport door, thereby enabling him to avoid ICE apprehension. The Commission’s allegations against Judge

¹ Although off-the-record conferences are prohibited by District Court Special Rule 211, Judge Joseph was unaware of that rule. Her testimony, which will be confirmed by other lawyers and judges, including District Court Chief Judge Paul Dawley, is that she had participated in other off-the-record conferences while a lawyer, and therefore saw nothing untoward or unusual about Jellinek’s request.

Joseph depend entirely on Jellinek's testimony about what happened during this 52-second interval; there is no claim that she had any awareness of his plan before going off the record.

While Judge Joseph has limited memory of that brief off-the-record discussion, she is certain that she was not informed of Jellinek's plan. ADA Jurgens, who participated in that discussion, likewise was not aware of any such plan. Based on Judge Joseph's later statements on the record, it appears that Jellinek asked to speak with his client in the lockup, and for the interpreter to accompany them downstairs. Judge Joseph viewed Jellinek's request for the interpreter's assistance as reasonable and logical under the circumstances. Indeed, she would not deny a defendant the right to have his attorney explain "what happens next"—in this case, the statutorily required drug warnings (and their short time-limit), the anticipated ICE proceedings, and the next state court appearance, should the ICE issue be resolved by then. Judge Joseph was also aware that the new *Lunn* policy expressed a preference that custodial prisoners be taken by ICE from the court lockup, thereby permitting an orderly transfer of custody and minimizing disruption in the courtroom and other public areas of the courthouse. Based on that policy, she assumed that Medina-Perez would be released to ICE from the court lockup downstairs.

Judge Joseph confirmed on the record that she had granted Jellinek's request to accompany his client downstairs, with the interpreter to expedite the discussion, so that the court staff would know that was happening. She then proceeded to conduct the arraignment, issue the required warnings, and set a date for the next appearance. As Jellinek, the interpreter, and Medina-Perez were making their way downstairs to the lockup, Clerk Okstein reminded Judge Joseph that ICE wanted to "visit the lockup." Judge Joseph confirmed that the agents could do so, but adhered to her original position that, in accordance with First Judge Heffernan's policy, they

could not enter the courtroom to do so. She fully expected that the agents would enter the lockup by other courthouse routes, and, in accordance with the *Lunn* policy, take Medina-Perez into custody there once he had finished conferring with his counsel. She has no idea why that did not happen, and there is conflicting testimony from Clerk Okstein, the ICE agent, and the chief court officer on that point. That was Judge Joseph's last involvement with Medina-Perez.

Contrary to his statement to Judge Joseph that the ICE agents intended to take custody of Medina-Perez in the lockup, Clerk Okstein went into the public lobby and told the waiting ICE agent that Medina-Perez would be released through the main courtroom entrance. Also contrary to the discussion on the record between Clerk Okstein and Judge Joseph, and in violation of the Trial Court's policy, Clerk Okstein told the ICE agent that he could not enter the lockup.

After the arraignment, ADA Jurgens left the courtroom through the main door. She met the ICE agents in the front hall and told them that the only way for Medina-Perez to be released was through that public entrance, and in fact, stood there waiting with them. There has never been any suggestion that Jurgens, who had been present at side bar when Jellinek claims that he revealed his plan to have Medina-Perez released out the back door, was somehow complicit in misleading or distracting the ICE agents. When Medina-Perez did not appear, the ICE agents became impatient. Clerk Okstein assured them that Medina-Perez should be coming up shortly, and ADA Jurgens asked the victim witness advocate to go downstairs to check. When the advocate returned to say Medina-Perez was not in the lockup, one of the ICE agents went around to the sallyport door, where a court officer, presumably MacGregor, said that he had released Medina-Perez through the back. No one informed Judge Joseph of Medina-Perez's escape.

The next morning, apparently concerned about the consequences of his actions, Jellinek sought out First Judge Heffernan for an *ex parte* discussion. She says that he told her a “big long story,” and that Judge Joseph had said he could meet with his client in the lockup with the interpreter to sort out the detainer. Her focus, based on what Jellinek told her, was on the court officer’s role. In that conversation, Jellinek did not suggest that Judge Joseph had been aware of or approved the plan he had made with MacGregor. Consistent with Jellinek’s presentation, First Judge Heffernan did not report and/or discipline Judge Joseph for any misconduct. Instead, her response was to issue a new policy for court officers, requiring that defendants be released only out the front door – a policy countermanded within days by senior Trial Court security officials.

The day after Jellinek approached her, First Judge Heffernan spoke to Judge Joseph, who was again assigned to the Newton District Court. Judge Joseph learned for the first time in that conversation that Medina-Perez had gone out the back door and evaded the ICE agents. Judge Joseph did not mention the off-the-record discussion to First Judge Heffernan because Judge Joseph had no idea that it was prohibited by court rule and no idea that Jellinek would later claim he had disclosed his plan to her. First Judge Heffernan agrees that she did not ask Judge Joseph whether she had gone off the record, and Judge Joseph therefore had no reason either to mention it or to conceal it. As a result of First Judge Heffernan’s actions, MacGregor received a discipline letter, but no other steps were taken.

First Judge Heffernan had a second conversation with Judge Joseph two days later, when they spoke for ten minutes by telephone. Judge Heffernan has no memory of that conversation, but Judge Joseph recalls expressing her fear that the escape would make the court look bad and cause difficulty for First Judge Heffernan. She further recalls that they discussed the public

safety concern, and their hope that Medina-Perez would be apprehended without committing another crime. The conversation, in fact, ended pleasantly, with First Judge Heffernan assuring Judge Joseph that she would handle the matter. Again, First Judge Heffernan did not suggest that Judge Joseph had done anything improper.

At some point, Clerk Okstein—who had acquiesced in Judge Joseph’s request to go off the record without alerting the new judge that it was prohibited by court rule²—told First Judge Heffernan that part of the discussion was unrecorded. First Judge Heffernan in turn told Regional Administrative Judge Stacey Fortes. They obtained the recording, and at least one of them listened to it. Neither one drew the inference that the CJC now seeks to draw, that something sinister was afoot. Contemporaneous emails suggest that First Judge Heffernan continued to view the situation as a problem with the court officer.

Several days later, RAJ Fortes approached Judge Joseph in Lowell during a lunch recess. RAJ Fortes viewed this as an informal conversation, with no advance notice to Judge Joseph of her intent or the subject of the conversation. They spoke about going off the record—which was the first time Judge Joseph realized that it was prohibited by a court rule. Judge Joseph mentioned an experience she had had in Waltham—which, along with Newton, still had an older recording system—where the gallery could hear what was being said at sidebar. Judge Joseph made no effort to conceal the fact that there had been an unrecorded conference on April 2, and now understanding that it was prohibited by court rule, assured RAJ Fortes that she would not do it again. RAJ Fortes agrees that the focus of this discussion was the off-the-record conference,

² In making this observation, Judge Joseph is in no way attempting to blame Clerk Okstein for her actions; rather, his ready acquiescence underscores the fact that he, too, did not view the request as out of the ordinary.

not the ICE agents. Like First Judge Heffernan, RAJ Fortes did not suggest that Judge Joseph was complicit in Medina-Perez's escape.

After RAJ Fortes spoke with Judge Joseph, it seemed that all involved had moved on. Three weeks later, RAJ Fortes sent an email to Chief Judge Dawley, informing him of the Medina-Perez situation in anticipation of a meeting he and the Chief Judge of the Trial Court were scheduled to have with the ICE Regional Director, so that he would not be "blindsided by any info." There is no suggestion in that email of any concern with Judge Joseph's conduct aside from the unrecorded conference. Dawley himself described in an email his impression that it "sound[ed] like court personnel were just trying to accommodate the attorney-client relationship by use of the interpreter." In fact, that had been precisely Judge Joseph's intention.

On May 8, 2018, Judge Joseph attended a meeting with Judge Dawley at which RAJ Fortes was also present. Judge Dawley had received from First Judge Heffernan the impression that her concern was the off-the-record conference. According to him, the meeting included two topics. He first explained to Judge Joseph the importance and purpose of the rule against unrecorded court proceedings, and emphasized to her that "the record is your friend." RAJ Fortes explained that Chief Judge Dawley's questions and Judge Joseph's responses were more direct, but not different, than the conversation in Lowell. She attributed the additional specificity to the fact that Judge Joseph had by then had an opportunity to refresh her memory by listening to the audio, which was not the case when RAJ Fortes had spoken to her in Lowell with no advance notice.

Chief Judge Dawley also questioned Judge Joseph about whether she had any involvement in Medina-Perez's release, and believed her firm and unequivocal denial. Judge

Joseph apologized for going off the record, and, as she had told RAJ Fortes, promised that it would never happen again. Chief Judge Dawley says that the meeting ended on a positive note—which is completely inconsistent with any belief that Judge Joseph had been aware of Jellinek’s plan. Contemporaneous emails support the collective impression of the participants that it had been a constructive meeting that was a learning experience for a new judge. Once again, the words and actions of these supervisory judges did not suggest a belief that Judge Joseph was either complicit in Medina-Perez’s escape or lacking in candor with them. Indeed, as of that time, Jellinek had not yet begun to blame Judge Joseph.

A federal investigation began in mid-May. Five months later, after multiple witnesses had testified to the grand jury, Jellinek received a call from an attorney warning Jellinek that he was soon to receive a federal subpoena. Shortly afterward, on November 8, 2018, David Jellinek appeared with counsel at the United States Attorney’s Office, signed a proffer letter, and for the first time, began to suggest that Judge Joseph had knowledge of his plan to have Medina-Perez evade ICE. The record contains no information about how that came to pass. Jellinek was soon granted complete immunity for his actions in masterminding a scheme to allow his client to avoid the ICE agents. Over several tellings, Jellinek’s story has continued to evolve, but even now contains significant gaps. His version of events is not supported by the testimony of any other witness or by any contemporaneous documents or conduct.

The case against Judge Joseph rests solely on the uncorroborated, inconsistent, and implausible testimony of a completely immunized witness, David Jellinek, who admits that he engaged with a court officer in a scheme to allow his client to evade capture by ICE agents. Early on, Jellinek admitted to federal agents that he had “no idea” what was in Judge Joseph’s

mind during or after the sidebar. He further claimed that his statement was so subtle that ADA Jurgens did not understand his plan—begging the question about how Judge Joseph could have understood something that escaped the ADA. It was not until he was interviewed by the Special Counsel in connection with this proceeding that Jellinek began to claim that he fully disclosed his plan, and that Judge Joseph expressly approved it.

Judge Joseph steadfastly denies the allegations against her, had no knowledge of Jellinek's scheme, and has truthfully recounted her memory of events in response to questions from her supervisors. Her position is supported by the contemporaneous words and conduct of everyone else involved in this unfortunate situation. Her indictment on federal charges in April 2019 generated enormous publicity and the widespread belief that she, in the space of 52 seconds, conspired with a defense attorney to assist a defendant to evade ICE agents who were waiting to take him into custody. The indictment was dismissed in the fall of 2022. As a condition of dismissal, Judge Joseph agreed to self-report to the Commission, which has resulted in this proceeding. Since that dismissal, Judge Joseph has been reinstated to the bench, and until the formal charges issued, had been performing her judicial duties without incident and with the support of her colleagues.

WITNESS LIST

In addition to the witnesses identified by Special Counsel, Judge Joseph intends to call the following witnesses:

Elizabeth Bostwick, Esq., Massachusetts bar advocate

Richard Simmons, ICE Deportation Officer (reading of prior statements)

Domenico Federico, ICE Deportation Officer (reading of prior statements)

Judge Joseph has also identified to the Special Counsel several other potential witnesses on such topics as the practice of going off the record in Massachusetts courts, the practice of permitting counsel to confer with clients after court appearances, and the confusion and inconsistency surrounding the enforcement of the *Lunn* policy. Counsel for Judge Joseph believes that these witnesses may not be necessary, but reserves the right to make that decision based on the evidence presented by the Special Counsel.

LENGTH OF HEARING

Counsel for Judge Joseph anticipates that the presentation of evidence on her behalf should take approximately two to two and one-half hearing days. This estimate includes counsel's direct and cross-examination of witnesses, including Judge Joseph herself, but does not include any time for the Special Counsel's examinations or for opening statements, closing arguments, or a view of the Newton District Courthouse.

The Respondent
SHELLEY M. RICHMOND JOSEPH
By her Attorneys,

/s/ Michael B. Keating

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THE COMMONWEALTH OF MASSACHUSETTS
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Paula Carey
Chief Justice of the Trial Court

Jonathan S. Williams
Court Administrator

Executive Office Transmittal 17-13

To: Judges, Clerks, Registers, Chief Probation Officers and all staff

From: Chief Justice Paula M. Carey
Court Administrator Jonathan S. Williams

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

Date: November 10, 2017

Re: Policy and Procedures Regarding Interactions with the Department of Homeland Security

In Transmittal 17-10 we provided notice of the Supreme Judicial Court's decision in *Lunn vs. Commonwealth & Another*, addressing the authority of Massachusetts court officers to arrest pursuant to a civil immigration retainer. As noted at the time, the Court specifically concluded that court officers did not have the authority to arrest and hold an individual solely on the basis of a Federal immigration detainer beyond the time that individual would otherwise be entitled to release from State custody.

At this time we are pleased to provide the document entitled *Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security*, to provide clear guidance to judges, clerks, probation, security and all court staff on responding to DHS requests and the presence in DHS officers in our courthouses.

Please be advised that we have provided the DHS Field Agent in Charge with a copy of this document. We will also be sharing it with CPCS and local bar associations.

Please contact your departmental administrative office with any questions or concerns.

**Policy and Procedures Regarding Courthouse Interactions
With the Department of Homeland Security**

I. PURPOSE AND PRINCIPLES

The following policy governs the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers. It also governs how Trial Court staff shall respond when officials from the D H S enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer.

Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees. Trial Court employees play essential roles in ensuring the orderly administration of justice and providing a safe and secure environment inside the courthouse.

Nothing in this policy shall be construed to restrict compliance with 8 U. S. C. § 1373 (current edition) or to limit or abrogate: a court officer's authority to detain an individual pursuant to G.L. c. 221, § 70A; an order of a judge; a warrant issued by a judge or clerk authorizing the arrest of an individual for a criminal offense; or a criminal detainer.

II. RESPONSE TO DHS REQUESTS

Individuals subject to a civil immigration detainer often arrive in custody at a courthouse accompanied by a DHS "Notice of Action" immigration detainer form (currently DHS Form I-247A) that requests court employees to voluntarily: 1) detain the individual subject to the detainer for up to 48 hours in order for DHS officials to arrive and take custody of the individual even though the individual would otherwise be released from the trial court's custody; 2) transmit information to DHS regarding the individual subject to the detainer; 3) serve the individual with a copy of the detainer form; 4) relay the detainer to any other law enforcement agency to which the court employee transfers custody of the individual; and 5) notify DHS in the event of the individual's death, hospitalization or transfer to another institution. The DHS detainer form frequently is accompanied by a civil immigration warrant (ICE Form I-205 and/or Form I-200) that is signed not by a judge or clerk, but by a DHS official. In addition, there may be instances in which DHS officials directly ask court personnel for information regarding an individual or an individual's case.

Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant. Trial Court employees do not have authority to detain an individual based solely on a civil immigration detainer. Nor do Trial Court employees have the authority to comply with a civil warrant issued by a DHS official for the arrest of an individual based solely on a civil immigration violation. Trial Court employees shall not serve civil immigration detainers or civil immigration warrants. Individuals subject to civil immigration detainers or warrants shall be processed and handled in the same manner as all other individuals coming before the court. No person shall be held in custody for any shorter or longer period than the person would otherwise be held based solely on a civil immigration detainer or civil immigration warrant.

Requests by DHS officials for information regarding an individual or an individual's case, whether made in a civil immigration detainer or made directly to court personnel, shall be treated by court employees in the same manner as would a request for information from any other member of the public.

If a DHS official requests information from a court officer regarding the status of an individual's case, the court officer may direct the DHS official to the appropriate clerk's office.

If a DHS official requests information from the clerk's office regarding an individual's case, or any case file, the scope of the responding employee's response shall be guided by the same statutes, rules, and policies that govern public access to court records.

If a DHS official requests information from Probation, the Probation employee shall direct the request to the attention of the Probation Legal Unit to be processed in the normal course.

III. DHS OFFICIALS TAKING CUSTODY OF INDIVIDUALS AT A COURTHOUSE

Although DHS officials are permitted to act in the performance of their official duties in Massachusetts courthouses, it is essential to the fair administration of justice that members of the community are provided a safe and secure environment when they enter the courthouse. To that end, DHS officials may enter a courthouse and perform their official duties provided that their conduct in no way disrupts or delays court operations, or compromises court safety or decorum.

In accordance with existing policy, armed law enforcement officers may enter a courthouse while in the performance of official duties. As applicable to all law enforcement officers, when an armed DHS official enters a courthouse, courthouse security personnel shall ask the DHS official to state his or her official law enforcement purpose for entering the courthouse and the proposed enforcement action to be taken, if any. The DHS official's information shall immediately be transmitted to a security supervisor or designated court officer.

The security supervisor or designated officer shall inform the first justice, or regional administrative justice of the department with jurisdiction over the person if DHS officials are present in the courthouse with the intent of arresting or taking anyone into custody, i.e. a party or other participant in a case before a judge or magistrate, or a person attending to business in the courthouse.

A. Individuals over whom the Trial Court has custody

Consistent with Chapter 2, sections XIV and XV of the Court Officer Manual (current edition), when an individual who was brought into court in custody is subject to release after his or her court proceeding, court security personnel shall process that individual out of lock up in the normal course regardless of whether the individual is subject to a civil immigration detainer or warrant.

If, during the processing of an individual subject to release out of the courthouse, a DHS official is present in the courthouse and seeks admission into the courthouse's holding cell area in order to take custody of the individual pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel's custody,

if a security department supervisor determines that the DHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.

Before being granted entry into the holding cell area, DHS officials must present credentials and a copy of the detainer or civil immigration arrest warrant to court security personnel, sign in to the holding cell area, and surrender their weapons.

To the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse.

B. Individuals coming to court who are not in the custody of the trial court

In those instances where DHS officials seek to take custody in a courthouse of an individual who is not in custody of the courthouse security personnel, Trial Court employees shall neither impede DHS officials from doing so nor assist in the physical act of taking that individual into custody. In the event that court security personnel are present as DHS officials place an individual in custody in a courthouse, the role of such court personnel is to take those actions necessary to maintain the safety and decorum in the courthouse.

Nonpublic spaces in a courthouse, such as within clerks' offices or Probation offices, may not be used by DHS officials. No DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant in a courtroom, unless permission has been given in advance by the regional administrative judge or first justice sitting in the courthouse.

IV. RECORDING INTERACTIONS WITH DHS

Court security personnel shall keep a log of every individual over whom the court accepts custody and who is subject to a civil immigration detainer or warrant, if known. Court security staff shall likewise keep a log of every instance in which DHS was notified that a person subject to a detainer was released from court custody, as well as every time DHS takes an individual into custody in a courthouse.

In addition, court security personnel shall draft an incident report for every instance in which DHS takes an individual into custody in a courthouse.