

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Number 2019-22

FORMAL CHARGES

The Commission on Judicial Conduct (“the Commission”), acting pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), hereby notifies the Honorable Shelley M. Richmond Joseph (“Judge Joseph”), Associate Justice of the District Court Department (presently assigned to the Boston Municipal Court (“BMC”)), that it has found sufficient cause to issue Formal Charges in the above-numbered complaint. These Formal Charges incorporate Commission Complaint Number 2019-22 and all the referenced appendices.

These charges grew out of the investigation of a complaint initiated by the Commission on May 16, 2019. As a result of that investigation, on September 13, 2023, the Commission issued a Statement of Allegations, pursuant to M.G.L. c. 211C, sec. 5(5). Pursuant to M.G.L. c. 211C, sec. 5(6), the Commission served the Statement of Allegations on Judge Joseph through her attorneys, Mr. Michael B. Keating, Mr. Thomas M. Hoopes, and Ms. Elizabeth N. Mulvey, on September 15, 2023. Judge Joseph’s response to the Statement of Allegations was filed with the Commission on November 1, 2023, by her attorneys. Judge Joseph appeared before the Commission with her attorneys on November 14, 2023, pursuant to M.G.L. c. 211C, sec. 5(7). On January 18, 2024, the Commission issued an Amended Statement of Allegations, pursuant to M.G.L. c. 211C, sec. 5(12). Judge Joseph was served with the Amended Statement of Allegations through her attorneys on January 29, 2024. Judge Joseph’s response to the Amended Statement of Allegations was filed with the Commission on February 20, 2024, by her attorneys. On July 18, 2024, the Commission issued a Second Amended Statement of Allegations, pursuant to M.G.L. c. 211C, sec. 5(12). Judge Joseph was served with the Second Amended Statement of Allegations through her attorneys on July 18, 2024. Judge Joseph did not further respond to the Second Amended Statement of Allegations.

The Commission also hereby notifies Judge Joseph that, pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), she has ten (10) days after service of these Formal Charges in which to file a written response with the Commission. The response should set forth in concise language all denials, affirmative defenses, and any other matters upon which Judge Joseph intends to rely at the hearing on these charges. Upon the filing of Judge Joseph’s response or the expiration of the ten days, a copy of the Formal Charges and any response from Judge Joseph shall be filed with the Supreme Judicial Court. Upon this filing, the confidentiality of the Formal Charges and any response thereto shall cease.

The Commission charges that Judge Joseph has engaged in willful judicial misconduct that brought the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer, in violation of M.G.L. c. 211C, sec. 2(5), and that she has violated the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09) by failing to comply with the law, in violation of Rule 1.1; by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and by failing to avoid impropriety, in violation of Rule 1.2.; by failing to uphold and apply the law, and to perform all duties of judicial office fairly and impartially, in violation of Rule 2.2; by failing to perform her judicial duties

competently, in violation of Rule 2.5; by failing to cooperate with other judges and court officials in the administration of court business, in violation of Rule 2.5; and by failing to cooperate and be candid and honest with judicial disciplinary authorities, in violation of Rule 2.16.

The Commission charges Judge Joseph for the following alleged conduct:

1. Judge Joseph received her *Juris Doctor* degree from New England School of Law in 1992. Judge Joseph was then admitted to the Massachusetts Bar and worked as an Assistant Attorney General with the Office of the Attorney General for Massachusetts (“Attorney General’s Office”) from 1993 to 2000. After leaving the Attorney General’s Office, Judge Joseph worked for six months as an associate in a civil law firm. From October of 2000 until her judicial appointment, she practiced with the Law Office of Joseph & Joseph in Newton, Massachusetts. While at the Law Office of Joseph & Joseph, Judge Joseph specialized in criminal defense, hearings before the registry of motor vehicles, and restraining orders.
2. Judge Joseph was sworn in as a Massachusetts District Court Judge on November 2, 2017, and she began her training and orientation as a judge on November 3, 2017.
3. In accord with the practice of the Administrative Office of the District Court (“AODC”), Judge Joseph’s training and orientation included approximately four weeks sitting with a series of other judges to observe a variety of types of courtroom proceedings.
4. In accord with the policy of the Executive Office of the Trial Court (“EOTC”), Judge Joseph’s training also included the assignment of a mentor judge to assist her. As of the time of the assignment of Judge Joseph’s first mentor, her mentor had served continuously as a District Court Judge since 2000. In May of 2018, her mentorship assignment was transferred to another judge, who had served as a District Court judge continuously since 2005. Judge Joseph was then assigned to sit primarily in the court where her mentor was the First Justice, and her mentor observed her regularly and provided close supervision and training. That assignment continued until February of 2019, when she was transferred to a different region and assigned a different mentor.
5. The AODC’s initial orientation program for new judges, and the training materials provided to Judge Joseph during that initial training period, did not specifically address the topic of recording of courtroom proceedings. Judge Joseph did not undertake on her own to familiarize herself with rules applicable to the District Court. At the time of the events that are the subject of this complaint, she was unaware of District Court Special Rule 211, which requires that all District Court proceedings be recorded.
6. The AODC’s training program for new judges also did not specifically provide judges with guidance regarding how to handle ICE detainees, the presence of ICE agents in courthouses, or responding to circumstances in which ICE agents might seek to take custody of a person in a courthouse.

7. In response to the Court's decision in Lunn v. Commonwealth, 477 Mass. 517 (2017), on November 10, 2017, the Chief Justice of the Trial Court and the Court Administrator issued EOTC Transmittal 17-13, entitled "Policy and Procedures Regarding Interactions with the Department of Homeland Security" (the "Lunn policy"). On that same date, EOTC sent Transmittal 17-13 by email to all Trial Court judges, clerks, department heads, and other management personnel, to provide guidance to all Trial Court personnel (a copy of the Lunn policy is attached as Appendix A).
8. The Lunn policy provides the following specific guidance for circumstances in which an Immigration and Customs Enforcement ("ICE") agent seeks to take custody of a person in a courthouse:

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.
9. When the Lunn policy was emailed to all Trial Court judges on November 10, 2017, Judge Joseph was at an early stage of her orientation as a judge. She received access to her official judicial email account no later than November 24, 2017. The Lunn policy may or may not have been sent to her email account, depending on when her email address was added to the Trial Court's distribution list for judges.
10. The District Court held an educational conference for all District Court judges on December 13, 2017, but Judge Joseph was unable to attend this conference because of a death in her family. Among the materials provided to judges at the conference was an "Updated Immigration Benchcard" (attached as Appendix B). This Benchcard instructed all District Court judges to refer to the Lunn policy "[f]or guidance on 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, and how Trial Court staff should respond when officials from DHS enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer" Judge Joseph does not recall whether she received the materials that were distributed at the conference. Judge Joseph did not undertake on her own to ensure that she received materials distributed at the conference.
11. On January 16, 2018, the Chief Justice of the District Court issued District Court Transmittal No. 1222 (attached as Appendix C). AODC emailed the transmittal to the official judicial email address of all District Court judges. That document described the updated Benchcard that had been distributed to judges at the December 13, 2017, conference, and referred to an attached electronic copy of the Benchcard. District Court

Transmittal No. 1222 also referred to the Lunn policy as a source of “additional guidance.” Judge Joseph received transmittal No. 1222 by email on or about the date it was issued.

12. On April 2, 2018, Judge Joseph was assigned to preside over a courtroom in the Newton Division of the District Court department (“Newton District Court”). Judge Joseph was the only judge sitting in the Newton District Court on April 2, 2018. She had sat in that Court previously and had done so as the only judge in the courthouse on dates when no matters were scheduled. This was the first time she had sat there alone with a list of scheduled matters.
13. On April 2, 2018, the matters that Judge Joseph presided over included criminal charges against a man using the name, Jose Medina-Perez (“Defendant”).¹ A copy of a transcript of a series of hearings in the Commonwealth v. Medina-Perez matter on April 2, 2018, is attached as Appendix D. This transcript does not include a brief third call of the case that occurred before the lunch recess, and it does not include certain non-substantive comments that Judge Joseph recalls. In all other respects this transcript accurately reflects the content of the recorded hearings conducted in the case in the morning and afternoon.
14. At approximately 10:34 a.m., on April 2, 2018, the Commonwealth v. Medina-Perez matter came before Judge Joseph for arraignment on a charge of being a fugitive from justice based on a warrant issued in a case in Pennsylvania, and two misdemeanor counts of controlled substance violations. The court provided a Spanish language interpreter (the “interpreter”) to assist the defendant in understanding the courtroom proceedings.
15. When the Commonwealth v. Medina-Perez matter was first called at approximately 10:34 a.m., Judge Joseph appointed the bar advocate (“bar advocate”) assigned to Newton District Court on that day to represent the defendant. The prosecutor handling the matter advised Judge Joseph that she was not seeking bail on the controlled substance charges but would request that the defendant be held without bail on the Pennsylvania warrant. The case was then recessed and put on for a second call.
16. After the first call but before the final afternoon call of the Commonwealth v. Medina-Perez matter, Judge Joseph learned that ICE agents were present at the Newton District Court with a civil immigration detainer that authorized the ICE agents to take custody of the defendant if he were released from Massachusetts state custody. The detainer stated that ICE had probable cause to believe that the defendant was a deportable alien based on a final order of removal previously issued against him.²

¹ The Newton District Court docket for Commonwealth v. Medina-Perez (attached as Appendix F) identifies the defendant as Jose Oscar Manuel Medina-Perez. This document will refer to him as Mr. Medina-Perez or, in the context of the District Court proceeding, as “the defendant.”

² The ICE agents also had a warrant of removal for the defendant, stating that the defendant was subject to removal from the United States based upon a final order by a designated official, and that any Immigration Officer with the United States Department of Homeland Security was commanded to take custody of the defendant for removal from the United States.

17. While the Commonwealth v. Medina-Perez matter was recessed, the First Assistant Clerk, who was serving as the session clerk, brought to Judge Joseph's attention that an ICE agent was present in the courtroom, and that the Newton District Court had a policy that ICE agents be directed to wait outside the courtroom. After contacting AODC for information about any applicable Trial Court policy, and learning the content of the Lunn policy, Judge Joseph asked the session clerk to give direction to the ICE agent in accord with the Newton District Court policy. The clerk did so, and the ICE agent waited in the public lobby on the first floor or outside the building.
18. During the recess, persons associated with the defendant in the Commonwealth v. Medina-Perez matter retained private counsel for him, and that attorney entered an appearance.³
19. The final hearing before Judge Joseph in the Commonwealth v. Medina-Perez matter began at approximately 2:48 p.m. At some point before that hearing, the defense attorney had formulated a plan with the court officer that the defense attorney intended to permit Mr. Medina-Perez to avoid the ICE agents. As part of that plan, the court officer indicated that he could release Mr. Medina-Perez through the sally-port door in the lockup if the defense attorney could arrange for the defendant to return to the lockup after his court proceedings. During this final call of the matter, the defendant, the prosecutor, and the newly-retained defense attorney appeared before Judge Joseph in the courtroom. Defense counsel asked for a sidebar conference. Judge Joseph granted that request and conducted a recorded sidebar conference with the defendant's attorney and the prosecutor. An interpreter was present for the defendant and had some access to the sidebar conference. In the course of this conference, the prosecutor advised that she no longer believed that the defendant was the same person subject to the Pennsylvania warrant, and thus that she would move to dismiss the fugitive from justice charge and would not seek bail on the remaining Massachusetts controlled substances charges.
20. The sidebar conference included discussion of whether the defendant was the person who was the subject of the ICE detainer, and the presence of the ICE agents who, at that time, were still waiting in the front area of the courthouse to take the defendant into custody if he were released from state custody. Defense counsel told Judge Joseph, "ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal, . . . and hope that we can avoid ICE."

³ This defense attorney graduated from an ABA-accredited law school in 2000 and has been a member of the Massachusetts Bar since 2001. At the time of the April 2, 2018 incident, defense counsel had been practicing exclusively criminal defense in his own private practice for approximately nine to ten years. That private criminal defense work included approximately nine to ten years of regular appearances representing criminal defendants in the Newton District Court. Prior to his private practice, defense counsel worked as a criminal defense attorney for the Massachusetts Committee for Public Counsel Services, where he was a Superior Court certified attorney for approximately five years. Defense counsel is also the editor of a published practice guide to Massachusetts criminal law.

21. After hearing this information, Judge Joseph said, “the other alternative is if you need more time to figure this out – hold until tomorrow.” Defense counsel explained that “if he’s bailed out . . . ICE will pick him up.” Judge Joseph responded, “ICE is gonna get him?” . . . What if we detain him?” The quality of the recording is insufficient to allow a listener to evaluate the tone of these comments and questions.
22. At that point, defense counsel asked, “Are we on the record?” Judge Joseph then said to the session clerk, “can we go off the record for a moment?” After she repeated that request, the session clerk turned off the courtroom recording system. Judge Joseph did not ask defense counsel for any explanation of his request to confer off the record and did not consider any reason or justification for doing so. In violation of District Court Special Rule 211, Judge Joseph conducted an unrecorded conference with counsel regarding the case, lasting approximately 52 seconds. The unrecorded conference occurred at sidebar, with the prosecutor and defense counsel present, outside the hearing of others present in the courtroom.
23. Judge Joseph’s statements on the record, particularly her questions “ICE is gonna get him?” and “What if we detain him?” would give a reasonable observer the impression that she sought to assist defense counsel in identifying a means for the defendant to avoid ICE. Judge Joseph’s willingness to conduct an unrecorded sidebar conversation with counsel, in violation of District Court Special Rule 211, added to the basis for that impression.
24. During the unrecorded conference, defense counsel asked Judge Joseph to allow the defendant to return downstairs to the lockup area after he was released from state custody, and to allow defense counsel to accompany him there, along with the interpreter.
25. Defense counsel informed Judge Joseph that, if she permitted him to return to the downstairs lockup area with the defendant and the interpreter, he thought his client could be released through the rear sally-port exit of the courthouse. Knowing that the ICE agents were, at her direction, still waiting for the defendant in a different location in the front area of the courthouse, Judge Joseph allowed defense counsel’s request.
26. Judge Joseph responded to these statements from defense counsel in a manner that, in the context of her above-described conduct, caused defense counsel to reasonably believe that Judge Joseph had granted him permission to try to help the defendant avoid being taken into custody by ICE, including by granting defense counsel’s request to return to the lockup area with the defendant and the interpreter, after the defendant had been released from state custody.
27. From her discussion with defense counsel during the unrecorded sidebar conference, Judge Joseph understood that defense counsel intended to continue to help the defendant avoid being taken into custody by ICE that day.

28. When the courtroom recorder was turned on again at approximately 2:51 p.m., the hearing in the Commonwealth v. Medina-Perez matter continued in open court. The prosecutor indicated that her intention was to dismiss the fugitive from justice charge, and not to seek bail on the Massachusetts charges.
29. The defendant's attorney then stated, "I would ask that he, uh - I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may." Judge Joseph responded, "That's fine. Of course." After the defendant was arraigned and advised of certain statutory rights, the session clerk reminded the participants of the presence of ICE representatives "to visit the lockup." Judge Joseph responded, "That's fine. I'm not gonna allow them to come in here. But he's been released on this."
30. After the judge set a date for pretrial conference, a court officer asked whether the defendant had been released. The session clerk confirmed that the defendant had been ordered released. Judge Joseph then reiterated that the defendant's attorney had "asked if the interpreter can accompany him downstairs, um, to further interview him – and I've allowed that to happen."

The proceeding in the Commonwealth v. Medina-Perez matter then concluded at approximately 2:54 p.m.

31. Judge Joseph's statements after the record resumed, referencing her decision to allow defendant and defense counsel to go down to the lockup area after defendant's release from custody, and referencing the ICE officer's exclusion from the courtroom, further added to defense counsel's reasonable impression that Judge Joseph had granted permission for defense counsel to pursue efforts to have the defendant exit the courthouse through a rear exit in an effort to avoid ICE.
32. Judge Joseph's decision to allow defendant and his counsel to go downstairs to the lockup area after the defendant had been released from state custody assisted defense counsel's plan for the defendant to exit the courthouse through the rear sally-port exit and avoid being taken into custody by the ICE agents who, at Judge Joseph's direction and pursuant to the Newton District Court policy, were still waiting in the front area of the courthouse.
33. Immediately following the above-described proceeding, the same court officer who had inquired about the defendant's custody status escorted the defendant to the downstairs lockup area of the Newton District Court, accompanied by the defendant's attorney and the interpreter.
34. Once inside the lockup area, the court officer used his security access card to open the rear sally-port exit of the courthouse and released the defendant out of the courthouse through the sally-port exit at approximately 3:01 p.m., on April 2, 2018.
35. The ICE agent, who, at the direction of Judge Joseph and in accord with practice in the Newton District Court, had been instructed to wait outside the courtroom in the front area of the courthouse, was unaware of the defendant's release out the rear sally-port exit. Because

the defendant had been released through the sally-port exit, the defendant succeeded in avoiding being taken into custody by the ICE agents waiting for him pursuant to the detainer and Warrant of Removal.

36. On April 4, 2018, the First Justice of the Newton District Court met with Judge Joseph at the Newton District Court and asked Judge Joseph about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

Judge Joseph told the First Justice that she was not sure what to do about making sure that ICE could take custody of the defendant and that there was some confusion about the Pennsylvania fugitive charge. Judge Joseph advised the First Justice that the defendant was released on personal recognizance. Judge Joseph did not advise the First Justice that she had conducted part of the hearing off the record, nor did the First Justice inquire on the point, having received no information to indicate that any part of the proceeding had occurred off the record.

Judge Joseph was less than fully candid with the First Justice in this conversation, in failing to advise the First Justice that she had conducted part of the hearing off the record, and that during the off-the-record conversation she had granted defense counsel's request to return to the lock-up area with the defendant after his release from custody, and that defense counsel had said that he thought he could have his client released through the sally-port exit if he could return to the lock-up area

37. On a date within the next month, the Regional Administrative Justice ("RAJ") met with Judge Joseph at the Lowell District Court. The RAJ asked Judge Joseph about the off-the-record portion of the hearing in the Commonwealth v. Medina-Perez matter.

The RAJ advised Judge Joseph that it was the RAJ's understanding that a portion of the April 2, 2018 hearing in the Medina-Perez matter had not been recorded. When the RAJ asked Judge Joseph what happened, Judge Joseph was less than fully candid, failing to answer that she had directed her session clerk to turn off the courtroom recorder.

Instead, Judge Joseph responded by implying that her unfamiliarity with the courtroom recording system may have caused a portion of the hearing not to be recorded, asking questions about how the courtroom recording equipment in the Newton District Court worked, referencing an experience in another courthouse where she had disconnected the recording system after learning that it was amplifying a sidebar conversation. She expressed concern about not wanting people in the audience to hear the discussion at sidebar relating to the defendant's identity.

Judge Joseph was less than fully candid in this conversation with the RAJ, in failing to explicitly acknowledge that she had conducted part of the hearing off the record, and in failing to advise the RAJ that during the off-the record conversation she had granted defense counsel's request to return to the lock-up area with the defendant after his release from custody, and that defense counsel had said that he thought he could have his client released through the sally-port exit if he could return to the lock-up area.

The RAJ informed Judge Joseph about District Court Special Rule 211 and emphasized to her that all courtroom proceedings must be recorded.

38. The Chief Justice of the District Court and the RAJ met with Judge Joseph in the Chief Justice's office on May 8, 2018. During that meeting, the Chief Justice expressed to Judge Joseph his concerns about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

The Chief Justice expressed particular concern that the recording had been shut off, and that a defendant had been released from the back of the courthouse. Judge Joseph responded by acknowledging that she had directed the session clerk to turn off the courtroom recording, and by apologizing for having done so.

When the Chief Justice asked Judge Joseph why she had directed that the courtroom recorder be shut off, Judge Joseph responded by explaining that she thought that the defendant's attorney wanted to speak to her off the record about the defendant's identity and about his charge from Pennsylvania. Judge Joseph indicated that the off-the-record discussion pertained to the defendant's identity. Judge Joseph did not disclose that the off-the-record discussion had included defense counsel's request that the defendant be allowed to return downstairs, accompanied by defense counsel and the interpreter, and his statement to the effect that he believed he could have the defendant released through the rear of the courthouse.

Judge Joseph's responses to the Chief Justice's questions regarding the reasons for and the content of the off-the-record conversation were less than fully candid and were misleading.

Judge Joseph was less than fully candid with the Chief Justice in this conversation when she told the Chief Justice that the non-recorded conversation at sidebar was merely her and the defense counsel still talking about the out of state warrant for Mr. Medina-Perez from Pennsylvania.

Judge Joseph was also less than fully candid with the Chief Justice when, in response to a series of questions from the Chief Justice about whether she had anything to do with the defendant's release from the courthouse on April 2, 2018, or any responsibility for it, she strongly denied that she had anything to do with it, or responsibility for it, and did not tell him that, at the conclusion of the Medina-Perez hearing that day, she released the defendant from state custody but then allowed defense counsel, the interpreter, and the defendant to all return to the lockup area, which allowed the defendant to then leave the courthouse through the sallyport and avoid being taken into custody by ICE.

The Chief Justice asked Judge Joseph if she had anything to do with the defendant's release through a non-public exit of the Newton District Court on April 2, 2018. Judge Joseph denied having any role in or awareness of that result. This denial was false.

39. After investigation, a federal grand jury returned indictments against Judge Joseph and a court officer based on the events of April 2, 2018. On September 22, 2022, Judge Joseph entered into an agreement with the United States Attorney, in which she stipulated to certain facts regarding the events of April 2, 2018, and agreed to refer herself to the Commission on Judicial Conduct. Based on that agreement, the United States Attorney moved to dismiss the charges against her, and the United States District Court so ordered on September 23, 2022. (A copy of the motion to dismiss, with attached agreement between Judge Joseph and the United States Attorney and agreement of facts, is attached hereto as Appendix E).
40. The events in connection with the Medina-Perez case on April 2, 2018, including the unrecorded conference, the defendant's release through the non-public sallyport exit, and subsequent federal criminal charges against Judge Joseph and a court officer, have received substantial public attention through news media and other sources. The public attention to this incident has had the effect of undermining public confidence in the judiciary.
41. In the course of the Commission's investigation of this matter, Special Counsel conducted an interview of Judge Joseph, under oath, recorded by a court reporter, with Judge Joseph's counsel present.

In the course of that interview, when asked about events in the Medina-Perez case on April 2, 2018, Judge Joseph denied that defense counsel told her he thought that the defendant could be released out the back door and/or avoid being taken into custody by ICE if he could speak to the defendant downstairs.

She further denied that she had said or done anything to facilitate the defendant's avoidance of ICE, or that she had said or done anything that day that could have led to defense counsel having a reasonable belief that she had assented to his plan to help the defendant avoid being taken into custody by ICE on that day. These denials were false.

Through the above-described conduct, the Commission charges that, Judge Joseph has violated the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09) by failing to comply with the law, in violation of Rule 1.1; by failing to act, at all times, in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, and by failing to avoid impropriety, in violation of Rule 1.2.; by failing to uphold and apply the law, and to perform all duties of judicial office fairly and impartially, in violation of Rule 2.2; by failing to perform her judicial duties competently, in violation of Rule 2.5; by failing to cooperate with other judges and court officials in the administration of court business, in violation of Rule 2.5; and by failing to cooperate and be candid and honest with judicial disciplinary authorities, in violation of Rule 2.16.

The Commission also charges that the conduct set forth above constitutes willful judicial misconduct, conduct prejudicial to the administration of justice and unbecoming a judicial officer, and that brings the judicial office into disrepute, in violation of M.G.L. c. 211C.

For the Commission on Judicial Conduct,



Hon. Katherine A. Field
Chair

Date: November 19, 2024

COMPLAINT NUMBER 2019-22

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint No. 2019-22


The Commission on Judicial Conduct ("the Commission") makes this complaint against the Honorable Shelley M. Richmond Joseph ("Judge Joseph"), Justice of the District Court Department, pursuant to G.L. c. 211C, sec. 5(1), upon the receipt of reasonable information as to conduct that appears to constitute grounds for discipline.

The conduct alleged below, if true, constitutes willful misconduct which brings the judicial office into disrepute, as well as conduct prejudicial to the administration of justice and unbecoming a judicial officer, in violation of M.G.L. c. 211C, sec. 2(5). This conduct, if true, also violates the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09).

The Commission is in receipt of the attached federal indictments, returned on April 25, 2019, which allege the following:

1. On April 2, 2018, during a courtroom hearing in the Newton District Court on criminal matters involving a man using the name, Jose Medina-Perez ("Defendant"), Judge Joseph asked the session clerk to shut off the courtroom recorder for approximately one minute, while the hearing continued, in violation of Rule 211 of the Special Rules of the District Courts of Massachusetts.
2. On April 2, 2018, despite knowing that an officer from Immigration and Customs Enforcement ("ICE") was present at the Newton District Court with a civil detainer to take custody of the Defendant, Judge Joseph conspired with others to assist the Defendant in avoiding being taken into custody by the ICE officer. Judge Joseph took direct actions in furtherance of this conspiracy and either directed or knowingly allowed others to assist the Defendant in avoiding being taken into custody by the ICE officer.
3. When, at a later point in April of 2018, Judge Joseph was questioned by a senior judge about her actions in connection the audio recording of the Defendant's hearing on April 2, 2018, Judge Joseph made false and misleading statements to the senior judge about why the audio recorder was shut off during the Defendant's hearing.

For the Commission,


Julie J. Bernard
Chair

Date: May 16, 2019

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

(1) SHELLEY M. RICHMOND JOSEPH and
(2) WESLEY MACGREGOR,

Defendants

) Criminal No.
)

) Violations:
)

) Count One: Conspiracy to Obstruct Justice
) (18 U.S.C. § 1512(k))
)

) Count Two: Obstruction of Justice; Aiding and
) Abetting
) (18 U.S.C. § 1512(c)(2); 18 U.S.C. § 2)
)

) Count Three: Obstruction of a Federal
) Proceeding; Aiding and Abetting
) (18 U.S.C. § 1505; 18 U.S.C. § 2)
)

) Count Four: Perjury
) (18 U.S.C. § 1623)
)

INDICTMENT

At all times relevant to this Indictment:

Introduction

1. The United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE") was the federal governmental agency charged with enforcing federal immigration law in the United States. ICE's duties included conducting federal removal proceedings, which encompassed, among other things, identifying, apprehending, and initiating the removal process of aliens in the United States, who were subject to Immigration Court or other administratively issued final orders of removal.

2. The Newton District Court (“NDC” or “Courthouse”) was a District Court within Middlesex County, Massachusetts, that had two courtrooms, a clerk’s office, a probation office, and a lockup facility, which was situated on the bottom level of the Courthouse. The NDC had one to two assigned District Court Judges presiding over court matters, which included certain criminal, civil, housing, juvenile, and other types of cases under Massachusetts state or local laws.

3. Defendant Shelley M. Richmond JOSEPH was appointed as a Massachusetts District Court Judge on or about November 6, 2017, and was thereafter assigned to preside at various District Courts in Middlesex County, including NDC, in accordance with a monthly assignment schedule. Defendant JOSEPH had presided as the Judge at NDC on several occasions prior to April 2, 2018. Prior to her appointment, defendant JOSEPH was an experienced Newton-based criminal defense attorney, who was a partner in a small law practice, and who had previously lectured at law schools and professional legal education seminars on criminal and civil practice. As a District Court Judge, defendant JOSEPH had the authority to, among other things, arraign criminal defendants, set bail, detain or release defendants, and control other courtroom proceedings.

4. Defendant Wesley MACGREGOR was a Massachusetts Trial Court Officer since 1993 and was assigned to the NDC since approximately 2016. As an NDC Court Officer, defendant MACGREGOR was authorized to take custody of defendants within the NDC, and had security card access to the entry and exit doors to the lower level NDC lockup facility, including the rear, sally-port exit to the lockup.

5. The defense attorney (the “Defense Attorney”) was a criminal defense lawyer who regularly represented criminal defendants at the NDC. The Defense Attorney was familiar with

defendant JOSEPH as a judge and defense lawyer, and with defendant MACGREGOR from frequent appearances at the NDC.

6. The alien subject ("A.S.") was arrested on March 30, 2018 by Newton Police and charged under Massachusetts General Law with being a fugitive from justice from Pennsylvania (the "M.G.L. Fugitive Charge" or "MGL Count 1") and narcotics possession (the "M.G.L. Drug Charges" or "MGL Counts 2 and 3," together with MGL Count 1, the "M.G.L. Charges"). On April 2, 2018, A.S. was arraigned on the M.G.L. Charges in the NDC before defendant JOSEPH. A.S. retained the Defense Attorney as A.S.'s lawyer for the NDC proceedings.

Federal ICE Proceedings

7. Fingerprints of A.S. taken by Newton Police on March 30, 2018 and submitted to a national law enforcement database revealed that A.S. had been previously deported from the United States by federal immigration officials in 2003 and again in 2007. Federal immigration records revealed that, upon A.S.'s last removal, a federal immigration official had issued an order that prohibited A.S. from entering the United States for a period of twenty years, that is, until 2027.

8. After learning of A.S.'s arrest by Newton Police, on or about March 30, 2018, an ICE Immigration Officer issued a federal Immigration Detainer – Notice of Action (the "Detainer"), and a Warrant of Removal (the "Warrant") for A.S. to Newton Police. The Detainer requested that Newton Police: (i) notify ICE prior to any release of A.S.; (ii) relay the Detainer to any other law enforcement agency to whom Newton Police transferred A.S.; and (iii) maintain custody of A.S. for up to 48 hours for ICE to take custody. The Warrant stated that A.S. was subject to removal from the United States based upon a final order by a designated official, and that any

Immigration Officer with the United States Department of Homeland Security was commanded to take custody of A.S. for removal from the United States.

9. On April 2, 2018, Newton Police transferred custody of A.S. to the NDC and forwarded the Detainer and the Warrant to the NDC Clerk's Office, with copies of the same provided to the Assistant District Attorney assigned to NDC from the Middlesex District Attorney's Office (the "ADA"), and the NDC Probation Office ("Probation"), among other Courthouse personnel, and the Defense Attorney.

10. As part of ICE removal proceedings, on the morning of April 2, 2018, ICE dispatched an ICE Officer (the "ICE Officer") in plainclothes to execute the Warrant and take custody of A.S. upon A.S.'s release from the NDC. At the NDC, the ICE Officer, in accordance with DHS Policy (see below), notified NDC personnel (including, among others, the Court Officers, the Clerk of Court (the "Clerk"), and the ADA), and the Defense Attorney of the ICE Officer's identity and purpose at the Courthouse on that date.

Newton District Court – Custom, Practice, and Rules

11. The NDC maintained a regular court calendar during which criminal and civil case matters were heard before the NDC District Court Judge in the first-floor courtroom (the "Courtroom"). Defendants in NDC custody were held in the lockup area in the lower level of the Courthouse, and were brought upstairs by an NDC Court Officer to an enclosed glass dock in the Courtroom for their court appearances. If a defendant was released from custody, the normal custom and practice in NDC was for the Court Officer to release the defendant from the glass dock on the first floor and out into the Courtroom, which had one public entry/exit that led to the NDC lobby.

12. On or about November 10, 2017, the Executive Office of the Massachusetts Trial Court issued guidance to all Massachusetts state judges, clerks, and other courthouse personnel titled, "Policy and Procedures Regarding Interactions with the Department of Homeland Security," ("DHS Policy"). The DHS Policy instructed, in pertinent part, that (1) "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;" (2) "DHS officials may enter a courthouse to perform their official duties;" and (3) that, "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."

13. Massachusetts Rules of Court, which prescribed rules for all state district courts, including NDC, provided, in pertinent part, that "[A]ll courtroom proceedings, including arraignments in criminal ... cases, shall be recorded electronically" The NDC had an electronic recording device in the Courtroom, which the Clerk operated to record all NDC proceedings.

The April 2, 2018 NDC Proceedings

14. On April 2, 2018, defendant JOSEPH was assigned as the District Court Judge at NDC, hearing and ruling on several criminal proceedings in the Courtroom on that date. The proceedings were electronically recorded by the Clerk, who was seated directly in front of defendant JOSEPH's bench at the front of the Courtroom. The ADA, probation officers, court officers, including defendant MACGREGOR, defense attorneys, and other members of the public were also in attendance.

15. At approximately 9:30 a.m., the ICE Officer arrived in plainclothes at NDC. The ICE Officer announced his identity and purpose to various Courthouse personnel, including the Clerk, who informed defendant JOSEPH. The ICE Officer then remained in the public audience area of the Courtroom during the morning session.

16. At approximately 10:34 a.m., defendant JOSEPH assigned a court-appointed lawyer ("Bar Advocate") to A.S. and arraigned A.S. on the M.G.L. Charges, but agreed to re-call the case later that day after ordering the ADA to provide more information to the Court and the Bar Advocate as to the M.G.L. Fugitive Charge.

17. At approximately 12:04 p.m., defendant JOSEPH re-called A.S.'s case and asked the ADA for the Commonwealth's position as to bail or detention of A.S. on the M.G.L. Charges. The ADA told defendant JOSEPH that the ADA would not seek to detain A.S. on the M.G.L. Drug Charges, but would only make a bail request for the M.G.L. Fugitive Charge. A.S.'s case was then set for a further call later that afternoon to address the M.G.L. Fugitive Charge.

18. Following the 12:04 p.m. proceeding, associates of A.S. retained the Defense Attorney to represent A.S. on the M.G.L. Charges. The Defense Attorney received copies of the Detainer and Warrant, and was also permitted to review other law enforcement database records that were obtained by Probation in connection with A.S.'s case.

19. Also following the 12:04 p.m. proceeding, at defendant JOSEPH's direction, the Clerk instructed the ICE Officer to leave the Courtroom and wait outside the Courtroom, contrary to the DHS Policy. The Clerk informed the ICE Officer that, in the event of A.S.'s release, A.S. would be released out of the Courtroom into the NDC lobby. The ICE Officer complied and waited in the NDC lobby on the first floor.

20. At approximately 2:48 p.m., A.S.'s case was re-called and the Defense Attorney appeared on behalf of A.S. before defendant JOSEPH. The following proceedings were captured on the Courtroom's court recorder:

Clerk: Judge, the next case will be Commonwealth versus [A.S.].
[Defense Attorney] has filed an appearance on behalf of [A.S.]

Defendant JOSEPH: Good afternoon.

Defense Attorney: Good afternoon, Your Honor. [Defense Attorney] on behalf of [A.S.] May we approach briefly?

Defendant JOSEPH: Yes, please.

Defense Attorney: Thank you.

Clerk: Do you want to wait for your client? Or do it –

Defense Attorney: No. Sidebar.

Defendant JOSEPH: We're just going to go sideb- [U¹] ... is dismissed. So it's my understanding that ICE is here.

Defense Attorney: So there's the fugitive –

Defendant JOSEPH: But there's no warrant –

ADA: Yes.

Defense Attorney: There isn't [U] that we can tie this to him.

ADA: Eh-, I, I don't think it's him.²

Defendant JOSEPH: Okay.

Defense Attorney: But ICE is convinced that this guy. I went over to ICE, they say they have a biometric match. I went through and did the research. There's 13 FBI numbers connected to this social. So something's bad with the [U]. My client denies that it's him. ICE is going to pick him up if he walks out the front

¹ Unintelligible on recording.

² Referring to A.S. not being the same person as the subject sought on the Pennsylvania warrant.

door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal, and hope that he can avoid ICE. ... That's the best I can do.

ADA: I don't think arguing ICE is really my ...

Defense Attorney: Right.

ADA: - my, my ...

Defendant JOSEPH: The other alternative is if you need more time to figure this out - hold until tomorrow ...

Defense Attorney: Yeah, but he -

Defendant JOSEPH: Then it's a different ...

ADA: There is a detainer attached to my paperwork. But, but, I, I feel like that's separate and apart from what my role is.

Defense Attorney: There is an ICE detainer. So if he's bailed out from Billerica when he goes back there, ICE will pick him up -

Defendant JOSEPH: **ICE is gonna get him?**

Defense Attorney: Yeah.

Defendant JOSEPH: **What if we detain him -**

Defense Attorney: Are we on the record?

Defendant JOSEPH: **[Clerk], can we go off the record for a moment?**

Clerk: What's that?

Defendant JOSEPH: Are we off the record?

Clerk: No, we're on the record.

Defense Attorney: Can we go off the record for a minute?

21. In violation of Massachusetts Rules of Court, and at the direction of defendant JOSEPH, the Courtroom recorder was turned off for the next approximately 52 seconds.

22. At approximately 2:51 p.m., the recorder was turned back on and the following excerpted proceedings were captured on the Courtroom recorder:

Clerk: Judge, we're back on the record on [A.S.] [Defense Attorney] on behalf of [A.S.]

Defendant JOSEPH: Good afternoon, [Defense Attorney].

Defense Attorney: Good afternoon. After some extensive research into the various FBI numbers [U/] social security numbers, as well as obtaining a photo from Pennsylvania, we don't believe that this gentleman is the same gentleman as on the fugitive-from-justice warrant.

ADA: Your Honor, with the information that I have I don't think that there is enough tying him to the Pennsylvania warrant. The great deal of other out-of-state records – I do believe that some of them, uh, belong to this individual. But that is not what's at issue here.

Defendant JOSEPH: Okay.

ADA: So at this point I would dismiss, um, the –

Defendant JOSEPH: The fugitive?

ADA: - [MGL] Count 1, -

Defendant JOSEPH: Okay.

ADA: - um, and there's not a bail request for the [MGL] Counts 2 and 3. But I would ask that, for a pretrial conference date on those.

Defendant JOSEPH: Okay.

Defense Attorney: Absolutely.

Defendant JOSEPH: That's fine.

Defense Attorney: **I would ask that he, uh – I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may."**

Defendant JOSEPH: **That's fine. Of course.**

Defense Attorney: Thank you.

Defense Attorney: All set, Mr. Clerk?
Defendant JOSEPH: Wait just a second.
Clerk: **There was a representative from, uh, ICE here in the Court ... [U] to, to visit the lockup.**
Defendant JOSEPH: **That's fine. I'm not gonna allow them to come in here. But he's been released on this.**

Defendant MACGREGOR: He's released, Mr. Clerk?
Clerk: What's that?
Defendant MACGREGOR: He's released?
Clerk: He is.
Defense Attorney: Yep.
Defendant JOSEPH: **He is. Um, [Defense Attorney] asked if the interpreter can accompany him downstairs, um, to further interview him --**
Defense Attorney: Yes, please --
Defendant JOSEPH: **- and I've allowed that to happen. [2:54 p.m.]**

23. Immediately following the proceeding, defendant MACGREGOR escorted A.S. from the Courtroom downstairs to the lockup, accompanied by the Defense Attorney and an interpreter. Once inside the lockup, defendant MACGREGOR used his security access card to open the rear sally-port exit and released A.S. out the back door at approximately 3:01 p.m.

24. The ICE Officer, who had been instructed by the Clerk to wait for A.S. in the lobby directly outside the Courtroom, as that was where A.S. would have been released in accordance with customary NDC practice, was unaware of A.S.'s release out the rear sally-port exit, and was unable to take custody of A.S. pursuant to the Warrant.

The Conspiracy

Object of the Conspiracy

25. It was the object of the conspiracy to corruptly attempt to obstruct, influence, and impede an official proceeding, to wit, an ICE federal removal proceeding, by preventing the ICE Officer from taking custody of A.S. at the NDC Courthouse on or about April 2, 2018.

Manner and Means of the Conspiracy

26. It was a part of the conspiracy that defendant MACGREGOR and the Defense Attorney agreed that defendant MACGREGOR would use his security access card to release A.S. out the rear sally-port exit in order for A.S. to evade arrest by the ICE Officer at the NDC Courthouse.

27. It was a part of the conspiracy that defendant JOSEPH and the Defense Attorney agreed to create a pretext for A.S. to be brought back downstairs to the lockup so that A.S. could be released out the rear sally-port exit in order to evade arrest by the ICE Officer at the NDC Courthouse.

Acts in Furtherance of the Conspiracy

28. In furtherance of the conspiracy and to achieve the object thereof, the defendants and their co-conspirators committed and caused to be committed one or more of the following acts in furtherance of the conspiracy:

29. Defendant JOSEPH ordered the Clerk to turn off the Courtroom recording device to conceal defendant JOSEPH's conversation with the Defense Attorney.

30. With the recorder off, defendant JOSEPH and the Defense Attorney discussed devising a way to have A.S. avoid being arrested by the ICE Officer.

31. Defendant JOSEPH ordered that the ICE Officer be prevented from entering the downstairs Courthouse lockup area.

32. After ordering A.S.'s release, defendant JOSEPH ordered that A.S. be returned downstairs to the lockup for the Defense Attorney to "further interview" A.S., which, in reality, was a pretext to allow A.S. to access the rear sally-port exit in order to avoid the ICE Officer.

33. Once A.S. was returned downstairs to the lockup, defendant MACGREGOR used his security access card to open the sally-port exit and release A.S. from the back door of the Courthouse, contrary to NDC custom and practice.

Defendant JOSEPH's False and Misleading Statements to other District Court Judges

34. Defendant JOSEPH made false and misleading statements regarding the April 2, 2018 incident to other district court judges inquiring about the matter, including defendant JOSEPH's false statements to a senior district court judge during a meeting in mid-April 2018. During this meeting, when asked why the NDC Courtroom recorder was shut off during the April 2, 2018 proceeding, defendant JOSEPH falsely attributed unfamiliarity with the Courtroom recording equipment as the reason the recorder was turned off.

Perjury

35. Beginning in or about May 2018 to in or about April 2019, a federal Grand Jury sitting in Boston, Massachusetts, conducted an investigation into possible violations of federal criminal laws, including Title 18, United States Code, Sections 1512 (c)(2) (obstruction of justice) and 1505 (obstruction of a federal proceeding), in the District of Massachusetts. The circumstances surrounding defendant MACGREGOR's April 2, 2018 release of A.S. from the NDC sally-port exit were material to the Grand Jury's investigation.

36. On or about July 12, 2018, defendant MACGREGOR falsely testified before the federal Grand Jury, in substance and in part, that, prior to releasing A.S. from the sally-port exit, he was unaware that ICE agents were in the Courthouse, and he was unaware there was a detainer for [A.S.]. Defendant MACGREGOR's testimony before the Grand Jury included the following false material declarations:

(A) Q: [Y]ou said you didn't know there was an immigration detainer.

A: I didn't see one.

Q: Did you know there was an immigration detainer?

A: No. I couldn't if I didn't see it.

Q: Well, someone --

A: The clerk's -- clerk's office didn't have it, it wasn't in the clerk's papers, wasn't in the arrest record, and I have not seen an ICE detainer on Mr. [] -- whatever his name is, [A.S.]?

(B) Q: So, am I right that the first time you learned that there had been ICE agents in the courthouse was after [A.S.] was gone when [Court Officer A] said to you, I heard

the judge tell two ICE agents to leave the courtroom?

A: The judge asked them to leave, yes.

Q: The courtroom. And [Court Officer A] told you this after [A.S.] was gone?

A: Correct.

(C) Q: And you did not hear from anyone else that day other than [Court Officer A] that –
that there had been an ICE agent in the courthouse for [A.S.]?

A: Correct.

COUNT ONE
Conspiracy to Obstruct Justice
(18 U.S.C. §§ 1512(k))

The Grand Jury charges:

37. The Grand Jury re-alleges and incorporates by reference paragraphs 1 to 34 of this Indictment.

38. On or about April 2, 2018, in Newton, in the District of Massachusetts, the defendants

(1) SHELLEY M. RICHMOND JOSEPH and
(2) WESLEY MACGREGOR,

conspired with the Defense Attorney to corruptly obstruct, influence, and impede an official proceeding, namely, a federal immigration removal proceeding before the United States Department of Homeland Security.

All in violation of Title 18, United States Code, Sections 1512(k) and 1512(c)(2).

COUNT TWO
Obstruction of Justice; Aiding and Abetting
(18 U.S.C. §§ 1512(c)(2) and 2)

The Grand Jury further charges:

39. The Grand Jury re-alleges and incorporates by reference paragraphs 1 to 34 of this Indictment.

40. On or about April 2, 2018, in Newton, in the District of Massachusetts, the defendants

(1) SHELLEY M. RICHMOND JOSEPH and
(2) WESLEY MACGREGOR,

did corruptly attempt to obstruct, influence, and impede an official proceeding, namely, a federal immigration removal proceeding before the United States Department of Homeland Security.

All in violation of Title 18, United States Code, Sections 1512(c)(2) and 2.

COUNT THREE
Obstruction of a Federal Proceeding; Aiding and Abetting
(18 U.S.C. §§ 1505 and 2)

The Grand Jury further alleges:

41. The Grand Jury re-alleges and incorporates by reference paragraphs 1 to 34 of this Indictment.

42. On or about April 2, 2018, in Newton, in the District of Massachusetts, the defendants

(1) SHELLEY M. RICHMOND JOSEPH and
(2) WESLEY MACGREGOR,

did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, namely, a federal immigration removal proceeding before the United States Department of Homeland Security.

All in violation of Title 18, United States Code, Sections 1505 and 2.

COUNT FOUR
Perjury
(18 U.S.C. § 1623)

The Grand Jury further charges:

43. The Grand Jury re-alleges and incorporates by reference paragraphs 1 to 33 and 35 to 36 of this Indictment.

44. On or about July 12, 2018, in Boston, in the District of Massachusetts, the defendant

(2) WESLEY MACGREGOR,

while under oath and testifying in a proceeding before a grand jury of the United States knowingly made false material declarations in response to certain questions as set forth in paragraph 36 of this Indictment.

All in violation of Title 18, United States Code, Section 1623.

A TRUE BILL

FOREPERSON

DUSTIN CHAO
CHRISTINE WICHES
ASSISTANT UNITED STATES ATTORNEYS
DISTRICT OF MASSACHUSETTS

District of Massachusetts: APRIL 25, 2019
Returned into the District Court by the Grand Jurors and filed.

DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

(1) SHELLEY M. RICHMOND JOSEPH
and

(2) WESLEY MACGREGOR,

Defendants

) Criminal No.

) Violations:

) Count One: Conspiracy to Obstruct Justice
) (18 U.S.C. § 1512(k))

) Count Two: Obstruction of Justice; Aiding and
) Abetting
) (18 U.S.C. § 1512(c)(2); 18 U.S.C. § 2)

) Count Three: Obstruction of a Federal
) Proceeding; Aiding and Abetting
) (18 U.S.C. § 1505; 18 U.S.C. § 2)

) Count Four: Perjury
) (18 U.S.C. § 1623)

RECORD OF THE NUMBER OF GRAND JURORS CONCURRING IN AN INDICTMENT

As the foreperson of the grand jury of this court at a session held at _____
on _____, I certify that (*specify number*) _____ grand jurors concurred in the
indictment in this case. Under Fed. R. Crim. P. 6(c), this record is being filed with the court and
will *not* be made public unless the court orders otherwise.

Date: _____

Foreperson

APPENDIX A



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 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 detainee 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.

APPENDIX B

INFORMATION ON IMMIGRATION MATTERS

Alien Warnings Under G. L. c. 278, § 29D and Mass R. Crim. P. 12(c)(3)(A)(iii) and 12(d)(3)(A)(iii)

The following warning must be given during every plea colloquy at which the defendant is proffering a plea of guilty or *nolo contendere*, or an admission to sufficient facts:

“If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of *nolo contendere*, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States, and if the offense to which you are pleading guilty, *nolo contendere*, or admitting to sufficient facts is under federal law one that presumptively mandates removal from the United States and federal officials decide to seek removal, it is practically inevitable that this conviction would result in deportation, exclusion from admission, or denial of naturalization under the laws of the United States.”

The defendant shall not be required at the time of the plea to disclose to the court his legal status in the United States. G.L. c. 278, § 29D.

Motions for a New Trial

G.L. c. 278, § 29D

If the § 29D warning is not given and the defendant later shows that the plea may have or has had one of the enumerated consequences, the court must vacate the conviction and allow the defendant to withdraw the plea even if he or she has already been deported from the United States. The defendant has burden of proving one or more consequences (deportation, exclusion, denial of naturalization) may occur. *Comm. v. Berthold*, 441 Mass. 183 (2004); see *Comm. v. Grannum*, 457 Mass. 128 (2010) (deportation consequence established by showing an ICE detainer, Notice to Appear, Order of Removal, “express written policy” of federal government, etc., not just a statutory cite.); *Comm. v. Valdez*, 475 Mass. 178 (2016) (exclusion consequence established by showing (1) a bona fide desire to leave the country and reenter, and (2) a substantial risk that conviction would trigger exclusion from admission.). The court should presume warning was not given if absent from the record. G.L. c. 278, § 29D.

Ineffective Assistance of Counsel

A defense attorney’s failure to advise the defendant of the immigration consequences prior to pleading or proceeding to trial violates the 6th amendment and art. 12 rights to effective assistance of counsel. *Padilla v. Kentucky*, 559 U.S. 356 (2010); *Comm. v. Marinho*, 464 Mass. 115 (2013); *Comm. v. DeJesus*, 468 Mass. 174 (2014). **The defendant’s motion must show both deficient performance and prejudice:**

Deficient Performance

The defendant must show deficient advice by counsel regarding the consequences of criminal dispositions

- Affirmative mis-advice
- Failure to give *specific*, accurate advice in a manner client can understand when consequences are clear based on statutes and case law (general warning insufficient). See *Comm. v. DeJesus*, 468 Mass. 174 (2014)

Shown by affidavits indicating that counsel failed to inquire about the defendant’s immigration status, mis-advised the defendant regarding the immigration consequences faced by the defendant, or otherwise failed to advise the defendant appropriately.

Prejudice

The defendant must show that **but for** counsel’s deficient performance, the proceedings would have been different.

- The defendant would have rejected plea and gone to trial, and
- It would have been rational to reject plea because:
 - There was a substantial defense that would have been pursued at trial;
 - There was a reasonable possibility that a different plea bargain could have been negotiated; or
 - Special circumstances show that the defendant placed particular emphasis on immigration consequences.

Comm. v. Clarke, 460 Mass. 30 (2011)

Generally, where a substantial issue is raised and is supported by a substantial evidentiary showing, the judge should hold an evidentiary hearing; for instance, where the defendant and the Commonwealth present conflicting affidavits or where the affidavits are missing key elements.

Comm. v. Gordon, 82 Mass. App. Ct. 389, 394-95 (2012).

Habing Defendants in ICE Custody

Neither federal immigration nor state transportation officers are required by law to transport a state court defendant in federal immigration detention to state court but it is sometimes possible to do if the defendant is being held in an ICE facility in New England. **Two habes are necessary:**

Habe #1: Should be addressed to ICE-ERO, 1000 District Avenue, Burlington, MA 01803.* The clerk should call ICE at 781-359-7601* to verify the correct method of delivery. The habe should request that ICE notify the sheriff for the county in which the criminal case is being heard to arrange transportation to court. ICE will either transport the defendant to the Suffolk County House of Correction at South Bay or will make the detainee available for pick up from the nearest ICE facility (likely if the ICE facility and the court are in the same county). ICE may request confirmation from the clerk or DA's office. The sheriff then has the responsibility to transport the defendant to and from court.

Habe #2: Should be addressed to the sheriff of the county in which the case is being heard, asking that the sheriff transport the defendant from ICE custody at South Bay (or the ICE facility where the defendant is being held) to court and to coordinate with ICE by contacting ICE at 781-359-7601.*

* Contact information current as of 12/17.

Miscellaneous Notes

- **Bail**: It is permissible to inquire into a defendant's immigration status when making bail determinations if necessary to establish or confirm identity and/or to gather information related to other recognized bail factors.
- **Detainers**: It is not permissible to hold an individual in custody solely on the basis of a Federal civil immigration detainer beyond the time that the individual would otherwise be entitled to be released from State custody. *Lunn v. Commonwealth*, 477 Mass. 517, 537 (2017). Civil immigration detainers should be distinguished from criminal detainers and criminal arrest warrants, which may provide Massachusetts court officer with a basis to arrest and detain an individual. *Id.* at 13, 24 n. 22.

For guidance on 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, and how Trial Court staff should respond when officials from DHS enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer, see Executive Office Transmittal 17-13, dated November 10, 2017, which contains the Trial Court's *Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security*.

DISCLAIMER: Federal immigration law and its intersection with State law is extremely complex. The information on this card is by no means comprehensive. Users are advised not to rely on this card as a substitute for a thorough analysis of the law and the facts applicable to each individual case.

AODC Rev. 12/17

APPENDIX C



Paul C. Dawley
Chief Justice

Trial Court of the Commonwealth District Court Department

Administrative Office
Edward W. Brooke Courthouse
24 New Chardon Street, 1st Floor
Boston, MA 02114-4703

TRANSMITTAL NO.	1222
-----------------	------

Last Transmittal No. to:	
First Justices	1221
Other Judges	1221
Clerk-Magistrates	1221
Assistant Clerk-Magistrates	1221
CPOs	1221

MEMORANDUM

TO: District Court Judges, Clerk-Magistrates, Assistant Clerk-Magistrates, and Chief Probation Officers

FROM: Hon. Paul C. Dawley, Chief Justice

DATE: January 16, 2018

SUBJECT: **1. First Justice Appointments**
2. Acting First Justice Appointment
3. Acting Clerk Magistrate Appointments
4. March 2018 Regional Education Meeting Dates
5. District Court Conversion to Full Criminal Docketing
6. Updated Immigration Benchcard
7. 90 Day Guide Updates
8. Triple I's in 209A and 258E Cases
9. Judiciary Policy Regarding Display of Commemorative or Expressive Works in Massachusetts Courthouses
10. Courthouse Protocols for Fentanyl and Carfentanil

1. First Justice Appointments. I am pleased to announce the appointment of Hon. Paul H. Smyth as First Justice of Pittsfield District Court, effective January 16, 2018. I am confident Judge Smyth will be an outstanding leader of the court and I thank him for taking on this extra responsibility. I would like to thank Hon. Jacklyn Connly for serving as Acting First Justice since June 2017.

Effective upon the retirement of Hon. Albert S. Conlon, I am pleased to appoint Hon. Matthew J. Nestor as First Justice of the Lynn District Court effective January 16, 2018. I thank Judge Conlon for his dedication to the Lynn District Court and for his tremendous contributions to the District Court for so many years. I am grateful to Judge Nestor for assuming these responsibilities and I am confident he will continue the excellent work of Judge Conlon.

2. Acting First Justice Appointment. Effective January 16, 2018, I have appointed Hon. Matthew J. Machera as Acting First Justice of the Chelsea District Court. I thank Judge Machera for taking on these additional responsibilities. I anticipate that within the next 4-6 weeks the announcement regarding the vacancy for the Chelsea District Court First Justice position will be posted.

3. Acting Clerk Magistrate Appointments. Hingham District Court Clerk Magistrate Joseph A. Ligotti retired effective January 1, 2018. I thank him for his many years of dedicated service to the Trial Court and wish him the best in retirement. Effective upon his retirement, I have appointed First Assistant Clerk Magistrate Andrew P. Quigley to temporarily serve as Acting Clerk Magistrate in Hingham. I thank First Assistant Clerk Magistrate Quigley for agreeing to assume these responsibilities.

In addition, Dudley District Court Clerk Magistrate Kenneth F. Candito has notified me of his intention to retire effective January 16, 2018. I thank him for his many years of dedicated and excellent service to the Trial Court and wish him the best in retirement. As you are aware, Clerk Magistrate Candito currently serves as Acting Clerk Magistrate of Westborough District Court. Effective December 29, 2017, I appointed Fitchburg Clerk Magistrate Patrick J. Malone to temporarily serve as Acting Clerk Magistrate in the Westborough District Court. I thank Clerk Magistrate Malone for agreeing to accept this appointment.

Effective December 29, 2017, I also appointed First Assistant Clerk Magistrate Brian M. D'Andrea to temporarily serve as Acting Clerk Magistrate in the Fitchburg District Court. I am grateful to First Assistant Clerk Magistrate D'Andrea for assuming these responsibilities.

Dudley District Court First Assistant Clerk Magistrate William F. George will continue to serve as Acting Clerk Magistrate of Dudley District Court.

4. March 2018 Regional Education Meeting Dates. The dates and locations for the March 2018 Regional Education Meetings have been established. On the respective dates listed below, the clerk magistrates' meeting is scheduled for the morning from 9:00 a.m. to 12:00 p.m. and judges are scheduled to meet in the afternoon from 1:30 p.m. to 4:30 p.m. The dates and locations are as follows:

Regions 1 and 2: Friday, March 2nd at the Plymouth Trial Court, Jury Pool Room

Regions 5 and 6: Tuesday, March 6th at the Worcester Law Library, 5th Floor

Regions 3 and 4: Wednesday, March 7th at the Peabody District Court, 3rd Session

5. District Court Conversion to Full Criminal Docketing. As of December 15, 2017, every district court began using MassCourts for full criminal docketing. Each district court now uses the electronic case management system to record and docket all court activity. The functionality includes document imaging of the most essential court orders and filings.

The project was begun with the outstanding efforts of Kathleen McKeon, Clerk Magistrate of the Woburn District Court and Special MassCourts Liaison for the District Court who lead the work of Clerk-Magistrates and others in the District and Boston Municipal Court in the creation of the necessary codes and templates which serve as the foundation for electronic criminal docketing. Thanks to the efforts and support of JISD, the enhancements to MassCourts to support full docketing were put in place shortly thereafter. The criminal conversion to each of the 62 district courts, which included implementation in each court and extensive training of

court users, could not have been accomplished without the diligent efforts of each of the District Court Performance Analysts. Their unwavering energy, willingness to travel to all areas of the Commonwealth and their strong work ethic made the quick and successful completion of this project a reality. Credit must also be given to the District Court users in all divisions, who willingly accepted the changed docketing process, despite the initial disruption created in their normal work assignments and who continually invest their time to improve their knowledge of the MassCourts Application for the benefit of all court users.

6. Updated Immigration Benchcard. At the December 13, 2017 conference, we distributed a revised Information in Immigration Matters benchcard, dated 12/17, to note the Supreme Judicial Court's holding in *Lunn v. Commonwealth*, that Massachusetts court officers do not have the authority to hold an individual in custody solely on the basis of a Federal civil immigration detainer beyond the time that the individual would otherwise be entitled to be released from State custody. 477 Mass. 517, 537 (2017). Consistent with District Court Transmittal No. 1209, which was issued after the *Lunn* decision and rescinded prior District Court transmittals on this subject, this revised benchcard replaces the benchcard dated 10/16, which should be discarded. **Please contact Jackie Lawton, (jacqueline.lawton1@jud.state.ma.us) (617) 788-8810 if you did not receive the updated benchcard.** The electronic version of the new benchcard is also attached so that you can replace pp. 125-126 in your 90 Day Guide. Additional guidance on responding to requests from the Department of Homeland Security can be found in the Trial Court's Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security issued by Executive Office Transmittal 17-13, dated November 10, 2017.

7. 90 Day Guide Updates. In an effort to keep your 90 Day Guide current, please replace Transmittal No. 1095 at pp. 55-57, which describes the VALOR Act procedures, with the attached District Court Transmittal No. 1201. As noted in this more recent VALOR Act transmittal, the Supreme Judicial Court's holding in *Commonwealth v. Morgan*, 476 Mass. 768 (2017), that a judge is permitted to exercise discretion to dismiss the prosecution of a veteran who successfully completes a diversion program over the objection of the Commonwealth, is contrary to the position set forth in Transmittal 1095 (Dec. 19, 2012). The attached Transmittal No. 1201 summarizes the holding of *Morgan* and sets forth the VALOR Act procedures.

8. Triple I's in 209A and 258E Cases. The Probation Service has confirmed that in restraining order and harassment prevention order cases, when the CARI is run on the defendant, the III record will also be run and provided to the court. If the court directs Probation to do so, Probation will also run the Triple I record on the plaintiff.

9. Judiciary Policy Regarding Display of Commemorative or Expressive Works in Massachusetts Courthouses. Effective December 1, 2017, The Supreme Judicial Court has adopted a new Judicial Policy regarding Display of Commemorative Expressive Works in Massachusetts Courthouses. A copy of this new policy is attached to this transmittal.

MEMORANDUM

January 16, 2018

Page 4

10. Courthouse Protocols for Fentanyl and Carfentanyl. As referenced in Executive Office Transmittal 18-1, the Trial Court has developed Courthouse Protocols for Fentanyl and Carfentanyl. Due to the increasing safety concern regarding these substances, the protocols have been created to ensure the safety of all courthouse employees and the public while still maintaining the interests of the parties in the admissions of these substances and the rights of the criminal defendants. The newly developed protocols are attached to this transmittal for your review.

APPENDIX D



4/2/2018 Newton District Court recording transcript excerpts

[10:34:06 am]

- Clerk Larry Okstein: "Calling the matter of Commonwealth versus Jose Medina Perez. Mr. Interpreter, this is the arrest that I believe requires an, an interpreter."
- Clerk Okstein: "Judge, this is an arrest [*inaudible*]. Does Mr. Perez qualify for a court-appointed ...?"
- Probation Officer Ricky Hymon: "[*Inaudible*]. He, he's marginally indigent."
- Judge Shelley Joseph: "150?"
- PO Ricky Hymon: "150."
- Clerk Okstein: "So, Mr. Perez, it's alleged by the Newton Police Department that on March 30, 2018, you were a fugitive, fugitive from justice on a court warrant in violation of Mass General Law, chapter 276, section 20, and that, uh, you did possess Class B drug in violation of Mass General Law, chapter 94C. 94, C, section 34, and that you also possessed Class E substance, in violation of Mass General Law, chapter 94C, section 34."
- Judge Joseph: [10:35:48] "Sir, I'm going to enter a plea of 'not guilty' on your behalf."
- Clerk Okstein: "Attorney Bostwick, I believe, is our duty today. She --"
- Judge Joseph: "You have the right to an attorney in this matter."
- Clerk Okstein: "Attorney Bostwick."
- Judge Joseph: "You can hire an attorney. You can represent yourself. I'm also informed by the Probation Department that you do qualify for court-appointed counsel at the fee of \$150. Would you like me to appoint an attorney to represent you?"
- Male interpreter: "See, I'm not allowed to represent you."
- Defendant: "Yes."
- Judge Joseph: "Um, I'm sorry, who's our duty attorney?"
- Clerk Okstein: "Judge, Att-, Attorney Bostwick. She's headed into the courtroom right this second, Judge."
- Judge Joseph: "OK. Commonwealth, do you have any information about the fugitive matter?"
- ADA Shannon Jurgens: "Yes, Your Honor. Um, the Newton Police reached out to Pennsylvania --"
- Judge Joseph: "Let's wait for counsel to come in." [10:36:42]
- Judge Joseph: "Good morning, counsel. Would you accept an appointment?"
- Atty Bostwick: "Sure."
- Judge Joseph: "This is a matter to which, um, Mr. Perez has, um, just been arraigned for possession of Class B, possession of Class E, and being a fugitive for justice out of Pennsylvania. And the Commonwealth was just going to indicate what information they have with respect to the fugitive matter."
- ADA Jurgens: "Yes, Your Honor. It is, um, for a, uh, what they call a DUI charge in Pennsylvania, and Pennsylvania is willing to extradite. So we are asking, um, that Mr. Medina-Perez be held without bail. Um, I'm asking for a three-week date, um, and we can nolle pros it or. I guess we'll have to work out the new charges here in Massachusetts, but."

- Judge Joseph: "I'm going to give counsel an opportunity to speak with him. Um, is there any question of identification?"
- ADA Jurgens: "I believe it was a fingerprint hit, Your Honor. So, no."
- Judge Joseph: "If you could just provide that information for counsel as well. And we'll just give this a further call."
- Atty Bostwick: "Thank you."
- Clerk Okstein: "So, further call."
- Judge Joseph: "Thank you."

[ends 10:37:47 a.m.]

[12:04:38 p.m.]

- Clerk Okstein: "Judge, calling the matter of Commonwealth versus Jose Me-, Medina Perez, Docket 1812CR149, Attorney Bostwick."
- Clerk Okstein: *[inaudible]*, Judge?"
- Judge Joseph: "Thank you."
- Judge Joseph: *[12:05:04]* "Is there an issue of ID?"
- Attorney Bostwick: "Your Honor I think, I haven't, I've gone through a fair amount of the paperwork..."
- Judge Joseph: "Do you need a further call or...?"
- Attorney Bostwick: "Well, I'm happy to show the Court what I have in terms of, this is for the Pennsylvania warrant and I think it's...I don't think it's him."
- ADA Jurgens: "Your Honor that is the photo that is attached to the warrant from, the warrant is, um, eight years old, um, and it, it was the FB-, it is, uh ... PCF number was a fingerprint hit for the warrant."
- Judge Joseph: "I can't tell by the photograph."
- Attorney Bostwick: "I, I guess Your Honor if I could have a further call because I am trying to get some information from his employer..."
- Judge Joseph: "Sure, of course."
- Attorney Bostwick: "...that they may have to verify certain things ..."
- Judge Joseph: "Yeah."
- Attorney Bostwick: "and, um, I might need a few minutes to do that. But I would just say based on the photo on the Pennsylvania warrant, Your Honor, I don't think it's him."
- Judge Joseph: "I mean, th-, the photograph that you showed certainly shows an individual who is heavier. Um, it's hard to tell from the photograph about the, this is the new one? This is, this is the one that came... No, but this is the, this is the recent photograph, right?"
- Attorney Bostwick: "That's Newton, yeah"
- Judge Joseph: "That's the new one, yeah. Yep. Um, it's hard to tell the skin tone based on the photograph that you have. Um, it's not a very clear photograph. Um, it does show

similar facial hair, but, uh, I mean the...I don't, I don't know about height, weight, or anything in, in... I can't make a determination about the features. What I'll do is I'll give you additional time today to see if we can figure out if he's the same person that Pennsylvania seeks on that."

- Attorney Bostwick: "Okay."
- Judge Joseph: "Sir, there's a warrant out of Pennsylvania for somebody with your name. It's the Commonwealth's contention that you are the person that Pennsylvania has the warrant for based on a fingerprint. When any person is brought before the Court on what we call a fugitive complaint, you have a right to a hearing to determine if you are the proper person or not. If you are the correct person, my decision is whether to hold you for the warrant, and allow Pennsylvania to come, and bring you back to Pennsylvania or to release you and allow you to go to Pennsylvania on your own. But the first issue that I have to determine is whether or not you're the same person. So what I'm going to do is allow your attorney a little bit extra time today, to make that determination."
- Attorney Bostwick: "I'd, I'd also ask the Court, Your Honor, if I could move to get a copy of the Triple I ... to me."
- Judge Joseph: "Of course, yes. Um, I'm, I'm going to allow counsel to have a copy of the Triple I, if we have it." [12:08:27]
- P.O. Rhonda Smith: "We're not supposed to give out copies of the Triple I..."
- Judge Joseph: "We can make it available for her to see."
- P.O. Rhonda Smith: "...we can make it available to look at."
- Judge Joseph: "Yes. We-, we're here in the courthouse anyway, so you can certainly see it."
- Attorney Bostwick: "Okay."
- Judge Joseph: "Okay, thank you. And, could you give it to counsel too, if she needs to make a phone call, um, not make a copy of it but give it to counsel so she can take it wherever she needs to take it today to get whatever information she needs." [12:08:55]
- P.O. Rhonda Smith: "Yes, Your Honor."
- Judge Joseph: "Thank you."
- Attorney Bostwick: "Your Honor, I mean, I've gotten copies before in the past ..."
- Judge Joseph: "For now, well, at least for now, you have access to it while we're here today and if we need to further make that provision, we can do that ... Okay, thank you."
- Clerk Okstein: *[inaudible]* counsel ... "
- Judge Joseph: "Commonwealth, with respect to the new charges is there going to be a request?"
- ADA Jurgens: "No, Your Honor"
- Judge Joseph: "Okay."
- ADA Jurgens: [12:09:29] "Well, not the drug possession –
- Judge Joseph: "The possession that –

- ADA Jurgens: -- if they're treated separately, I am asking he is being held without..."
- Judge Joseph: "Right, on the fugitive"
- ADA Jurgens: "... but if he's not, I would have a bail request --"
- Judge Joseph: "- Okay."
- ADA Jurgens: "- for that part of it."
- Clerk Okstein: [12:09:45] "Okay, so further call?"
- Judge Joseph: "Further call."
- Clerk Okstein: "Further call."

[ends at 12:09:52 pm]

- Clerk Okstein: "Do you have one more person down there?"
- CO MacGregor: "I have two more people. Two more girls --"
- Clerk Okstein: "Who's the second?"
- CO MacGregor: "Pamela Hogdgon --"
- Clerk Okstein: "And Kr-, Cosme"
- CO MacGregor: "Crystal Cosme ..."

[2:48:13 pm]

- Clerk Okstein: "Mr. Court Officer, could you bring up the next, uh, Mr., uh, Perez?"
- CO MacGregor: "Alright."
- Clerk Okstein: "Judge, the next case will be Commonwealth versus Jose Medina Perez. Attorney David Jellinek has filed an appearance on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon."
- Atty David Jellinek: "Good afternoon. David Jellinek on behalf of Mr. Perez. May we approach briefly?"
- Judge Joseph: "Yes. Please."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "Do you want to wait for your client? Or do it"
- Atty Jellinek: "No. Sidebar."
- Judge Joseph: "We're going to sidebar."

[recording ends at 2:48:47 p.m.]

[next recording starts at 2:48:48 p.m.]

- Judge Joseph: "[Inaudible] is dismissed, so it's my understanding that ICE is gonna"
- Atty Jellinek: "[Inaudible] ... so there's the fugitive --"
- Judge Joseph: "but there's no warrant -- yes."
- Atty Jellinek: "... there is no ... can tie this to him."
- ADA Jurgens: "eh-, I, I don't think it's him."

- Judge Joseph: "Okay."
- Atty Jellinek: "ICE is convinced that this guy. I went over to ICE, they say there's a biometric match. I went through it and did the research. There's 13 FBI numbers connected to this social. So something's bad *[inaudible]*. My client denies that it's him. ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal... .. and hope that we can avoid ICE."
- ADA Jurgens: "I don't think arguing ICE is really my ..."
- Atty Jellinek: "Right."
- ADA Jurgens: -- my, my ...
- Judge Joseph: "*[Inaudible]* ... the other alternative is if you need more time to figure this out - hold until tomorrow ..."
- Atty Jellinek: "*[Inaudible]*"
- Judge Joseph: "Then it's a different ..."
- ADA Jurgens: "There is a detainer attached to my paperwork. But I, I feel like that's separate and apart from what my role is."
- Atty Jellinek: "There is an ICE detainer. So if he's bailed out ... *[inaudible]* ... ICE will pick him up - "
- Judge Joseph: " - ICE is gonna get him?"
- Atty Jellinek: "*[Inaudible]*"
- Judge Joseph: "What if we detain him --"
- Atty Jellinek: "Are we on the record?"
- Judge Joseph: "Larry, can we go off the record for a moment?" [2:50:02]
- Clerk Okstein: "What's that?"
- Judge Joseph: "Are we off the record?"
- Clerk Okstein: "No, we're on the record."
- Atty Jellinek: "Can we go off the record for a minute?"

[recording ends at 2:50:05 p.m.]

[next recording starts at 2:50:57 p.m.]

- Clerk Okstein: "Judge, we're back on the record on Mr., uh, Jose Medina Perez. Attorney Jellinek on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon, Mr. Jellinek."
- Atty Jellinek: "Good afternoon."
- Atty Jellinek: "After some extensive research into the various FBI numbers *[inaudible]* social security numbers, as well as obtaining a photo from Pennsylvania, we don't believe this gentleman is the same gentleman as on the fugitive-from-justice warrant."
- ADA Jurgens: "Your Honor, with the information that I have I don't think that there is enough tying him to the Pennsylvania warrant. The great deal of other out-of-state records -- I do believe that some of them, uh, belong to this individual. But that is not what's at issue here."
- Judge Joseph: "OK."

- ADA Jurgens: "So at this point I would dismiss, um, the –"
- Judge Joseph: "The fugitive?"
- ADA Jurgens: "- count one, -"
- Judge Joseph: "OK."
- ADA Jurgens: "- um, and there's not a bail request for the counts 2 and 3. But I would ask that, for a pretrial conference date on those."
- Judge Joseph: "OK."
- Atty Jellinek: "Absolutely."
- Judge Joseph: "That's fine."
- Atty Jellinek: "I would ask that he, uh – I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may."
- Judge Joseph: "That's fine. Of course."
- Atty Jellinek: "Thank you. Uh-"
- Clerk Okstein: "I'm sorry. You said, Commonwealth, no bail request on counts."
- ADA Jurgens: "Yes."
- Clerk Okstein: "So, do you want me to arraign him?"
- ADA Jurgens: "Yes, please."
- Judge Joseph: "- Yes."
- Atty Jellinek: "Please."
- Clerk Okstein: "So Mr. Perez, at the Commonwealth's request, Count One, Fugitive from Justice on a Court Warrant, has been dismissed. With respect to, uh, Counts 2 and 3, it's alleged by the Newton Police Department that on March 30, 2018, you did possess a Class B and E substance in violation of Mass General Law chapter 94C, section 34."
- Atty Jellinek: "Could we have, uh, May 29 for pretrial?"
- Clerk Okstein: "May 29th?"
- Atty Jellinek: "Please."
- Judge Joseph: "Sir, I'm going to enter a plea of 'not guilty' on your behalf. Attorney Jellinek has filed his appearance to represent you in this matter. Are you privately retained?"
- Atty Jellinek: "Yes."
- Judge Joseph: "OK. Sir, you are entitled to request an examination to determine whether you're a drug-dependent person who would benefit from treatment. If you choose to exercise this right you must do so in writing within five days, and your attorney can further explain that to you."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "All right, Judge."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "[Inaudible]"
- Atty Jellinek: "All set, Mr. Clerk?"
- Judge Joseph: "Wait just a second." [2:53:22]
- Clerk Okstein: "There was a representative from, uh, ICE here in the Court ... due to visit [inaudible]" [2:53:34]
- Judge Joseph: "That's fine. I'm not going to allow them to come in here. But he's been released on this."

- P.O. Ricky Hymon: "Your Honor, are we still doing \$150 attorney's fee?"
- Judge Joseph: "Um, no, his – he's privately, Mr. Jellinek is privately retained."
- Judge Joseph: "And, what date would you like?"
- Atty Jellinek: "May 29th, please."
- Clerk Okstein: "So, M-, Mr. Perez, your, your case has been continued to May 29, 2018 for pretrial conference. Please be advised that if you're charged with any new criminal offense while this case is pending, you could be held for up to 90 days without bail pending resolution of this matter. We will see you back on May 29th, 2018." [2:54:31]
- Court Officer MacGregor: "He's released, Mr. Clerk?"
- Clerk Okstein: "What's that?"
- Court Officer MacGregor: "He's released?"
- Clerk Okstein: "He is."
- Atty Jellinek: "Yep."
- Judge Joseph: "He is. Um, Mr. Jellinek asked if the interpreter can accompany him downstairs, um, to further interview him -
- Atty Jellinek: "Yes, please --"
- Judge Joseph: "- and I've allowed that to happen."
- Atty Jellinek: "Thank you." [2:54:50]
- Atty Jellinek: "Thank you, Your Honor."
- Judge Joseph: "You're welcome."
- Clerk Okstein: "Thank you. Judge, that's – uh, we're all done for now."

[recording ends at 2:55:00 p.m.]



4/2/2018 Newton District Court recording transcript excerpts

[10:34:06 am]

- Clerk Larry Okstein: "Calling the matter of Commonwealth versus Jose Medina Perez. Mr. Interpreter, this is the arrest that I believe requires an, an interpreter."
- Clerk Okstein: "Judge, this is an arrest [*inaudible*]. Does Mr. Perez qualify for a court-appointed ...?"
- Probation Officer Ricky Hymon: "[*Inaudible*]. He, he's marginally indigent." [10:34:38]
- Judge Shelley Joseph: "150?"
- PO Ricky Hymon: "150."
- Clerk Okstein: "So, Mr. Perez, it's alleged by the Newton Police Department that on March 30, 2018, you were a fugitive, fugitive from justice on a court warrant in violation of Mass General Law, chapter 276, section 20, uh, and that, uh, you did possess Class B drug in violation of Mass General Law, chapter 94C. 94, C, section 34, and that you also possessed Class E substance, in violation of Mass General Law, chapter 94C, section 34."
- [*inaudible overlapping voices*]
- Judge Joseph: [10:35:48] "Sir, I'm going to enter a plea of 'not guilty' on your behalf."
- Clerk Okstein: "Attorney Bostwick, I believe, is our duty today. She --"
- Judge Joseph: "You have the right to an attorney in this matter."
- Clerk Okstein: "Attorney Bostwick."
- Judge Joseph: "You can hire an attorney. You can represent yourself. I'm also informed by the Probation Department that you do qualify for court-appointed counsel at the fee of \$150. Would you like me to appoint an attorney to represent you?"
- Male interpreter: "See, I'm not allowed to represent you."
- Defendant: "Yes."
- Judge Joseph: "Um, I'm sorry, who's our duty attorney?"
- Clerk Okstein: "Judge, Att-, Attorney Bostwick. She's headed into the courtroom right this second, Judge."
- Judge Joseph: "OK. Commonwealth, do you have any information about the fugitive matter?"
- ADA Shannon Jurgens: "Yes, Your Honor. Um, the Newton Police reached out to Pennsylvania --"
- Judge Joseph: "Let's wait for counsel to come in." [10:36:42]
- Judge Joseph: "Good morning, counsel. Would you accept an appointment?"
- Atty Bostwick: "Sure."
- Judge Joseph: "This is a matter to which, um, Mr. Perez has, um, just been arraigned for possession of Class B, possession of Class E, and being a fugitive for justice out of Pennsylvania. And the Commonwealth was just going to indicate what information they have with respect to the fugitive matter."
- ADA Jurgens: "Yes, Your Honor. It is, um, for a, uh, what they call a DUI charge in Pennsylvania, and Pennsylvania is willing to extradite. So we are asking, um, that Mr. Medina-Perez be held without bail. Um, I'm asking for a three-week date, um, and we can nolle pros it or. I guess we'll have to work out the new charges here in Massachusetts, but."

- Judge Joseph: "I'm going to give counsel an opportunity to speak with him. Um, is there any question of identification?"
- ADA Jurgens: "I believe it was a fingerprint hit, Your Honor. So, no."
- Judge Joseph: "If you could just provide that information to counsel as well. And we'll just give this a further call."
- Atty Bostwick: "Thank you."
- Clerk Okstein: "So, further call."
- Judge Joseph: "Thank you."

[ends 10:37:47 a.m.]

[12:04:38 p.m.]

- Clerk Okstein: "Judge, calling the matter of Commonwealth versus Jose Me-, Medina Perez, Docket 1812CR149, Attorney Bostwick."
- Clerk Okstein: *[inaudible]*, Judge?"
- Judge Joseph: "Thank you."
- Judge Joseph: *[12:05:04]* "Is there an issue of ID?"
- Attorney Bostwick: "Your Honor I think, I haven't, I've gone through a fair amount of the paperwork..."
- Judge Joseph: "Do you need a further call or...?"
- Attorney Bostwick: "Well, I'm happy to show the Court what I have in terms of, this is for the Pennsylvania warrant and I think it's...I don't think it's him."
- ADA Jurgens: "Your Honor that is the photo that is attached to the warrant from, the warrant is, um, eight years old, um, and it, it was the FB-, it is, uh ... PCF number was a fingerprint hit for the warrant."
- Judge Joseph: "I can't tell by the photograph."
- Attorney Bostwick: "I, I guess Your Honor if I could have a further call because I am trying to get some information from his employer..."
- Judge Joseph: "Sure, of course."
- Attorney Bostwick: "...that they may have to verify certain things ..."
- Judge Joseph: "Yeah."
- Attorney Bostwick: "um, and I might need a few minutes to do that. But I would just say based on the photo on the Pennsylvania warrant, Your Honor, I don't think it's him."
- Judge Joseph: "I mean, th-, the photograph that you showed certainly shows an individual who is heavier. Um, it's hard to tell from the photograph about the, this is the new one? This is, this is the one that came... No, but this is the, this is the recent photograph, right?"
- Attorney Bostwick: "That's Newton, yeah"
- Judge Joseph: "That's the new one, yeah. Yep. Um, it's hard to tell the skin tone based on the photograph that you have. Um, it's not a very clear photograph. Um, it does show

similar facial hair, but, uh, I mean the...I don't, I don't know about height, weight, or anything in, in... I can't make a determination about the features. What I'll do is I'll give you additional time today to see if we can figure out if he's the same person that Pennsylvania seeks on that."

- Attorney Bostwick: "Okay."
- Judge Joseph: "Sir, there's a warrant out of Pennsylvania for somebody with your name. It's the Commonwealth's contention that you are the person that Pennsylvania has the warrant for based on a fingerprint. When any person is brought before the Court on what we call a fugitive complaint, you have a right to a hearing to determine if you are the proper person or not. If you are the correct person, my decision is whether to hold you for the warrant, and allow Pennsylvania to come, and bring you back to Pennsylvania or to release you and allow you to go to Pennsylvania on your own. But the first issue that I have to determine is whether or not you're the same person. So what I'm going to do is allow your attorney a little bit extra time today, to make that determination." [12:08:12]
- Attorney Bostwick: "I'd, I'd also ask the Court, Your Honor, if I could move to get a copy of the Triple I .. -cause nobody will give this to me without-"
- Judge Joseph: "Of course, yes. Um, I'm, I'm going to allow counsel to have a copy of the Triple I, if we have it." [12:08:27]
- P.O. Rhonda Smith: "We're not supposed to give out copies of the Triple I..."
- Judge Joseph: "We can make it a-, available for her to see."
- P.O. Rhonda Smith: "...we can make it available to look at."
- Judge Joseph: "Yes. We-, we're here in the courthouse anyway, so you can certainly see it."
- Attorney Bostwick: "Okay."
- Judge Joseph: "Okay, thank you. And, could you give it to counsel too, if she needs to make a phone call, um, not make a copy of it but give it to counsel so she can take it wherever she needs to take it today to get whatever information she needs." [12:08:55]
- P.O. Rhonda Smith: "Yes, Your Honor."
- Judge Joseph: "Thank you."
- Attorney Bostwick: "I mean, I-, I've gotten copies in the past ..."
- Judge Joseph: "For now, well, at least for now, you have access to it while we're here today and if we need to further make that provision, we can do that ... Okay, thank you."
- Clerk Okstein: "... counsel [inaudible]..."
- Judge Joseph: "Commonwealth, with respect to the new charges is there going to be a request?"
- ADA Jurgens: "No, Your Honor"
- Judge Joseph: "Okay."
- ADA Jurgens: [12:09:29] "Well, not the drug possession –"
- Judge Joseph: "The possession that –"

- ADA Jurgens: -- if they're treated separately, I am asking he is being held without..."
- Judge Joseph: "Right, on the fugitive"
- ADA Jurgens: "... but if he's not, I would have a bail request --"
- Judge Joseph: "- Okay."
- ADA Jurgens: "- for that part of it."
- Clerk Okstein: [12:09:45] "Okay, so further call?"
- Judge Joseph: "Further call."
- Clerk Okstein: "Further call."

[ends at 12:09:52 pm]

- Clerk Okstein: "Do you have one more person down there?"
- CO MacGregor: "I have two more people. Two more girls --"
- Clerk Okstein: "Who's the second?"
- CO MacGregor: "Pamela Hogdgon --"
- Clerk Okstein: "And Cr-, Cosme"
- CO MacGregor: "Crystal Cosme ..."

[2:48:13 pm]

- Clerk Okstein: "Mr. Court Officer, could you bring up the next, uh, Mr., uh, Perez?"
- CO MacGregor: "Alright."
- Clerk Okstein: "Judge, the next case will be Commonwealth versus Jose Medina Perez. Attorney David Jellinek has filed an appearance on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon."
- Atty David Jellinek: "Good afternoon. David Jellinek on behalf of Mr. Perez. May we approach briefly?"
- Judge Joseph: "Yes. Please."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "Do you want to wait for y- your client? Or do it"
- Atty Jellinek: "No. Sidebar."
- Judge Joseph: "We're just going to go sideb-."

[recording ends at 2:48:47 p.m.]

[next recording starts at 2:48:48 p.m.]

- Judge Joseph: "[Inaudible] is dismissed, so it's my understanding that ICE is here"
- Atty Jellinek: "[Inaudible] ... so there's the fugitive --"
- Judge Joseph: "If there's no warrant --"
- ADA Jurgens: "-Yes."
- Atty Jellinek: "... there isn't [inaudible] that we can tie this to him."

- ADA Jurgens: "eh-, I, I don't think it's him."
- Judge Joseph: "Okay."
- Atty Jellinek: "-ICE is convinced that this guy. I went over to ICE, they say they have a biometric match. I went through it and did the research. There's 13 FBI numbers connected to this social. So something's bad with the *[inaudible]*. My client denies that it's him. ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal... .. and hope that he can avoid ICE."
- ADA Jurgens: "I don't think arguing ICE is really my ..."
- Atty Jellinek: "Right."
- ADA Jurgens: "-- my, my ..."
- Judge Joseph: "*[Inaudible]* ... the other alternative is if you need more time to figure this out - hold until tomorrow ..."
- Atty Jellinek: "*[Inaudible]*"
- Judge Joseph: "Then it's a different ..."
- ADA Jurgens: "There is a detainer attached to my paperwork. But I, I feel like that's separate and apart from what my role is."
- Atty Jellinek: "There is an ICE detainer. So if he's bailed out from Billerica ... *[inaudible]* ... ICE will pick him up - "
- Judge Joseph: " - ICE is gonna get him?"
- Atty Jellinek: "*[Inaudible]*"
- Judge Joseph: "What if we detain him -"
- Atty Jellinek: "Are we on the record?"
- Judge Joseph: "Larry, can we go off the record for a moment?" [2:50:02]
- Clerk Okstein: "What's that?"
- Judge Joseph: "Are we off the record?"
- Clerk Okstein: "No, we're on the record."
- Atty Jellinek: "Can we go off the record for a minute?"

[recording ends at 2:50:05 p.m.]

[next recording starts at 2:50:57 p.m.]

- Clerk Okstein: "Judge, we're back on the record on Mr., uh, Jose Medina Perez. Attorney Jellinek on behalf of Mr. Perez."
- Judge Joseph: "Good afternoon, Mr. Jellinek."
- Atty Jellinek: "Good afternoon."
- Atty Jellinek: "After some extensive research into the various FBI numbers *[inaudible]* social security numbers, as well as obtaining a photo from Pennsylvania, we don't believe that this gentleman is the same gentleman as on the fugitive-from-justice warrant."
- ADA Jurgens: "Your Honor, with the information that I have I don't think that there is enough tying him to the Pennsylvania warrant. The great deal of other out-of-state

records – I do believe that some of them, uh, belong to this individual. But that is not what's at issue here."

- Judge Joseph: "OK."
- ADA Jurgens: "So at this point I would dismiss, um, the –"
- Judge Joseph: "The fugitive?"
- ADA Jurgens: "- count one, -"
- Judge Joseph: "OK."
- ADA Jurgens: "- um, and there's not a bail request for the counts 2 and 3. But I would ask that, for a pretrial conference date on those."
- Judge Joseph: "OK."
- Atty Jellinek: "Absolutely."
- Judge Joseph: "That's fine."
- Atty Jellinek: "I would ask that he, uh – I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may."
- Judge Joseph: "That's fine. Of course."
- Atty Jellinek: "Thank you. Uh-"
- Clerk Okstein: "I'm sorry. You said, Commonwealth, no bail request on counts."
- ADA Jurgens: "Yes."
- Clerk Okstein: "So, do you want me to arraign him?"
- ADA Jurgens: "Yes, please."
- Judge Joseph: "- Yes."
- Atty Jellinek: "Please."
- Clerk Okstein: "So Mr. Perez, at the Co- Commonwealth's request, Count One, Fugitive from Justice on a Court Warrant, has been dismissed. With respect to, uh, Counts 2 and 3, it's alleged by the Newton Police Department that on March 30th, 2018, you did possess a Class B and E substance in violation of Mass General Law chapter 94C, section 34."
- Atty Jellinek: "Could we have, uh, May 29 for pretrial?"
- Clerk Okstein: "May 29th?"
- Atty Jellinek: "Please."
- Judge Joseph: "Sir, I'm going to enter a plea of 'not guilty' on your behalf. Attorney Jellinek has filed his appearance to represent you in this matter. Are you privately retained?"
- Atty Jellinek: "Yes."
- Judge Joseph: "OK. Sir, you are entitled to request an examination to determine whether you're a drug-dependent person who would benefit from treatment. If you choose to exercise this right you must do so in writing within five days, and your attorney can further explain that to you."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "All right, Judge."
- Atty Jellinek: "Thank you."
- Clerk Okstein: "[Inaudible]"
- Atty Jellinek: "All set, Mr. Clerk?"
- Judge Joseph: "Wait just a second." [2:53:22]

- Clerk Okstein: "There was a representative from, uh, ICE here in the Court ... [inaudible] to, to visit the lock-up." [2:53:34]
- Judge Joseph: "That's fine. I'm not gonna allow them to come in here. But he's been released on this."
- P.O. Ricky Hymon: "Your Honor, are we still doing \$150 attorney's fee?"
- Judge Joseph: "Um, no, his – he's privately, Mr. Jellinek's privately retained."
- Judge Joseph: "And, what date would you like?"
- Atty Jellinek: "May 29th, please."
- Clerk Okstein: "So, M-, Mr. Perez, your, your case has been continued to May 29, 2018 for pretrial conference. Please be advised that if you're charged with any new criminal offense while this case is pending, you could be held for up to 90 days without bail pending resolution of this matter. We will see you back on May 29th, 2018." [2:54:31]
- Court Officer MacGregor: "He's released, Mr. Clerk?"
- Clerk Okstein: "What's that?"
- Court Officer MacGregor: "He's released?"
- Clerk Okstein: "He is."
- Atty Jellinek: "Yep."
- Judge Joseph: "He is. Um, Mr. Jellinek asked if the interpreter can accompany him downstairs, um, to further interview him -
- Atty Jellinek: "Yes, please --"
- Judge Joseph: "- and I've allowed that to happen."
- Atty Jellinek: "Thank you." [2:54:50]
- Atty Jellinek: "Thank you, Your Honor."
- Judge Joseph: "You're welcome."
- Clerk Okstein: "Thank you. Judge, that's – uh, we're all done for now."

[recording ends at 2:55:00 p.m.]

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 19-cr-10141-LTS
)	
SHELLEY M. RICHMOND JOSEPH, and)	
WESLEY MACGREGOR,)	
)	
Defendants)	

MOTION TO DISMISS COUNTS 1-3 AND
DEFER PROSECUTION AS TO COUNT 4

The United States of America, by and through its undersigned counsel, hereby moves, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, to dismiss Counts 1-3 of the Indictment in this case in accordance with an agreement reached with Massachusetts state District Court Judge Shelley Richmond Joseph under which she has attested to a statement of relevant facts and agreed to refer herself to the Massachusetts Commission on Judicial Conduct: the forum that is designed to investigate and address alleged misconduct by state judicial officers and to make final recommendations on discipline to the Supreme Judicial Court of Massachusetts. A separate agreement has been reached to defer prosecution against retired Massachusetts Court Officer Wesley MacGregor on Count 4 of the Indictment. Those agreements, which resolve the pending federal criminal charges against both defendants, are attached hereto as Exhibit A (as to Joseph) and Exhibit B (as to MacGregor). An affidavit attesting to the fact that Judge Joseph has referred herself to the Massachusetts Commission on Judicial Conduct is attached as Exhibit C. Both defendants, through counsel, consent to the requested dismissals.

The government has conducted a full review of the evidence, the applicable law, and all relevant equitable and prudential factors pertinent to this matter. Based on this review, the United

States has concluded that dismissal of the above-referenced counts is in the interests of justice, consistent with the Principles of Federal Prosecution set forth in Justice Manual § 9-27.22. Among other factors, respect for comity and federalism as between the state and federal judicial systems, as well as the availability of an alternative forum capable of adequately and proportionately addressing the alleged conduct, strongly favors dismissal.

Judge Joseph's actions on April 2, 2018, needlessly obscured the events surrounding the release of a Massachusetts state court defendant who was also the subject of an ICE civil detainer. *See United States v. Joseph*, 26 F.4th 528, 531-32 (1st Cir. 2022). Those actions contributed to the ambiguity of the factual record. But that ambiguity, any potential violations of Massachusetts state court policies, and the question of whether Judge Joseph's actions potentially undermined public confidence in the integrity and impartiality of a state court proceeding, are, in this case, best addressed by state judicial oversight, rather than federal criminal prosecution. Judge Joseph's agreement to refer herself to the Judicial Conduct Commission will allow for that oversight, as the Commission will have the ability to fully consider Judge Joseph's recent factual admissions as part of its review, along with the public allegations and filings made in this case.

Mr. MacGregor, who has already been subject to discipline for his conduct, has resigned his position as a Court Officer and is no longer employed by the Massachusetts state court system, has entered into a deferred prosecution agreement with respect to Count 4: the single count of perjury with which he is charged. The United States has determined that the deferred prosecution agreement entered with Mr. MacGregor represents a fair and balanced resolution of this matter and is likewise in the interest of justice.

For all of the foregoing reasons, the United States respectfully requests that the Court grant its motion to dismiss Counts 1-3 of the Indictment and defer prosecution as to Count 4.

Respectfully submitted,

ZACHARY A. CUNHA
UNITED STATES ATTORNEY
Acting Under Authority
Conferred by 28 U.S.C. § 515

By: /s/ William Abely
WILLIAM ABELY
Criminal Chief
AMANDA STRACHAN
Deputy Criminal Chief
U.S. Attorney's Office
for the District of Massachusetts

September 22, 2022

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 19-cr-10141-LTS
)	
SHELLEY M. RICHMOND JOSEPH,)	
)	
Defendant)	

AGREEMENT

This Agreement (the “Agreement”) is made between the United States Attorney’s Office for the District of Massachusetts (the “USAO”) and the defendant, Shelley M. Richmond Joseph (“Joseph”).

Joseph acknowledges that the USAO has independently developed evidence during its investigation and that a Grand Jury sitting in the District of Massachusetts returned an indictment in this case; Joseph does not challenge the validity of the Grand Jury’s action.

Term of the Agreement

1. This Agreement is effective for a period, running from the date on which it is signed until the date the conditions below are satisfied (the “Term”).

Cooperation with Massachusetts Commission on Judicial Conduct

2. Joseph agrees that within thirty days of the effective date of this agreement, she will formally refer herself to the Massachusetts Commission on Judicial Conduct and will thereafter cooperate fully in any investigation or proceeding into her conduct that has been or may be initiated or conducted by the Massachusetts Commission on Judicial Conduct, until any such investigation or proceeding is closed or concluded. Such referral shall include a stipulation by Joseph to the accuracy of the facts set forth in the attached Statement of Facts (“Statement”). The parties agree

that the attached agreed-upon statement of facts may not represent all relevant facts. Joseph agrees that she will: (1) not contest the accuracy of the Statement; (2) not object to the consideration, or admissibility into evidence, of the Statement in any investigation or proceeding that has been or may be initiated or conducted by the Massachusetts Commission on Judicial Conduct; and (3) attest in writing, under penalty of perjury, to her compliance with the conditions of this Paragraph at the time of her submission to the Massachusetts Commission on Judicial Conduct. Joseph further agrees that the Indictment, and any other public filings on the docket in this case shall be available to the Massachusetts Commission on Judicial Conduct. Except as expressly provided herein, nothing in this paragraph shall be read to impair Joseph's ability to otherwise defend or contest any proceeding before, or sanction imposed by, the Massachusetts Commission on Judicial Conduct, including any appeals.

Dismissal of Prosecution

3. If Joseph complies with her obligation under Paragraph 2 of this Agreement to refer herself to the Massachusetts Commission on Judicial Conduct, and provides sworn attestation of her self-referral, the USAO will file an assented-to motion for dismissal of the Indictment no later than thirty days after receiving the attestation; such dismissal shall be without prejudice to the United States ability to re-present the indictment in the event of a material breach of Joseph's obligations under Paragraph 2.

4. The USAO and Joseph understand that the Court must approve the dismissal of the charges in the Indictment.

Agreement Binding Only on Joseph and USAO

5. This Agreement is binding only on Joseph and the USAO and does not bind any other component of the U.S. Department of Justice, any federal agency, or any state or local law enforcement or administrative authority, including, but not limited to, the Massachusetts

Commission on Judicial Conduct and the Massachusetts Supreme Judicial Court. Further, the waivers and other agreements made by Joseph herein shall not be binding on Joseph in any civil or criminal proceeding initiated by any person or entity other than the USAO or Joseph.

6. Nothing in this Agreement restricts in any way the ability of the USAO to proceed against any individual or entity not a party to this Agreement.

Miscellaneous

7. Joseph and the USAO agree that this Agreement, including the Statement, shall be made available to the public.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. Signatures transmitted by facsimile or email shall be deemed to be original signatures for all purposes.

9. This Agreement, including the Statement, constitutes the entire agreement between the parties, and supersedes any prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations, or agreements have been made other than those set forth in this Agreement. This Agreement may be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

10. Joseph is aware that 18 U.S.C. § 3006A, the so-called “Hyde Amendment,” authorizes courts in criminal cases to award to certain prevailing defendants’ attorneys’ fees and other litigation expenses. In executing this agreement, Joseph voluntarily and knowingly waives any claim Joseph might assert under this statute.


Advice of Counsel

11. Joseph acknowledges the following: she has read and understands the terms and provisions of this Agreement; she has had a full and complete opportunity to consult with legal

counsel and to ask any questions about the terms and provisions of this Agreement and her agreements and waivers stated herein are knowing and voluntary and are made with the advice of counsel; and she is satisfied with the legal representation provided by her legal counsel.

AGREED.

ZACHARY A. CUNHA
UNITED STATES ATTORNEY
Acting Under Authority Conferred by 28
U.S.C. § 515

By: 
WILLIAM ABELY
Criminal Chief
AMANDA STRACHAN
Deputy Criminal Chief
U.S. Attorney's Office
for the District of Massachusetts

Date: 9-20-22


SHELLEY M. RICHMOND JOSEPH

Date: 9-13-22


THOMAS M. HOOPES, ESQ.

ELIZABETH N. MULVEY, ESQ.
DOUGLAS S. BROOKS, ESQ.

Date: 9-15-22

Statement of Facts

1. Shelley Richmond Joseph (“Joseph”) was appointed as a Massachusetts District Court Judge on November 2, 2017, and thereafter was assigned to sit at various district courts, including Newton District Court, in accordance with a monthly assignment schedule.

2. Joseph was the only judge sitting at Newton District Court on April 2, 2018.

3. Joseph knew that criminal defendants in Newton District Court custody were kept in the lockup area in the basement of the courthouse and were brought upstairs by a court officer to the courtroom for their court appearances. The normal custom and practice in Newton District Court, subject to certain exceptions, was that a defendant would be released from custody into the courtroom. This courtroom had only one public entry/exit, which led to the courthouse lobby.

4. The Massachusetts Rules of Court, which prescribe rules for all state district courts, including the Newton District Court, provided, in pertinent part, that “all courtroom proceedings,” which includes sidebar conferences, were required to be electronically recorded.

5. On or about November 10, 2017, the Executive Office of the Massachusetts Trial court issued guidance to all Massachusetts state judges, clerks and other courthouse personnel titled, “Policy and Procedures Regarding Interactions with the U.S. Department of Homeland Security,” (“DHS Policy”). The DHS Policy instructed, in pertinent part, that (1) “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;” (2) “DHS officials may enter a courthouse and perform their official duties;” (3) “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; and (4) “[t]o 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.”

6. One of the cases that Joseph heard on April 2 was Commonwealth v. A.S. Joseph knew that A.S. was initially being held on a warrant as a fugitive from Pennsylvania and had been charged with two counts of narcotics possession in violation of Massachusetts law. She also knew that A.S. was being held in the downstairs lockup area of the courthouse.

7. Joseph also knew that Immigration and Customs Enforcement (“ICE”), which is part of the U.S. Department of Homeland Security, intended to take custody of A.S. pursuant to a civil immigration detainer. The detainer stated that ICE had probable cause to believe that A.S. was a deportable alien based on a final order of removal previously issued against him.

8. Joseph knew that an ICE officer was present in the courthouse waiting to take

custody of A.S. if he was released from state custody. Joseph directed a court clerk to request that the ICE officer remain outside the courtroom in accordance with the practice of the presiding justice in Newton District Court. This direction was contrary to the DHS policy, which reflects, consistent with Supreme Court precedent and constitutional guarantees, that courthouses and courtrooms are public spaces and open to the public absent extraordinary circumstances not present here.

9. When A.S.'s case was recalled that afternoon, his defense attorney asked for a sidebar. At sidebar, the prosecutor stated that she no longer believed that this defendant was the same person subject to the Pennsylvania charge and thus that she was dismissing the fugitive warrant and not seeking to detain the defendant on the remaining Massachusetts narcotics charges. The defense attorney stated that an ICE officer was waiting outside the courtroom with an immigration detainer for A.S. and would pick up A.S. if Joseph released A.S. After hearing this information, Joseph stated, among other things, "ICE is gonna get him? What if we detain him?" The defense attorney asked if the sidebar was being recorded and asked to go off the record. Contrary to Massachusetts Rules of Court, Joseph directed the court clerk to turn off the recording device.

10. After the recorder was turned off, there was a 52 second off-the record sidebar conference with Joseph, the defense attorney and the prosecutor present. In the course of this conference, the defense attorney asked Joseph to allow A.S., who had been escorted up to the courtroom by a court officer, to go back downstairs.

11. After the off-the record portion of the sidebar, the defense attorney asked, on the record, if he could go downstairs with A.S. and an interpreter so that they could speak. The defense attorney also stated that his client had property downstairs. Joseph stated on the record that she was granting the defense attorney's request. The clerk reminded the Judge on the record that ICE agents were present and seeking to take the defendant into custody.

12. The defense attorney and the interpreter accompanied A.S. downstairs to the lockup area. Shortly thereafter, a court officer used his key card to open the door to the sallyport and released A.S. out the back door

13. The ICE officers learned about A.S.'s release after it happened. A.S. was not taken into ICE custody on April 2, 2018.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

WESLEY MACGREGOR,

Defendant

)
)
) Criminal No. 1:1-cr-1-141-LTS
)
)
)
)

DEFERRED PROSECUTION AGREEMENT

This Deferred Prosecution Agreement (the "Agreement") is made between the United States Attorney's Office for the District of Massachusetts (the "USAO") and the defendant, Wesley MacGregor ("MacGregor").

1. MacGregor acknowledges that the USAO has independently developed evidence that could be sufficient to establish beyond a reasonable doubt that MacGregor violated federal law as described in Count 4 of the Indictment.

Term of the Agreement

2. This Agreement is effective for a period of six months from the date on which the Information is filed (the "Term"). If the Court rejects this Agreement, all provisions of this Agreement shall be deemed null and void, and the Term shall be deemed not to have begun.

Deferral of Prosecution As to Count 4

3. If MacGregor complies with all his material obligations under this Agreement for the full Term, the USAO will file a dismissal of Count 4 of the Indictment as to him no later than thirty days after the Term expires.

4. Absent a material breach by MacGregor of his obligations under this Agreement, the USAO will bring no additional charges against MacGregor relating to the conduct forming the basis for the Indictment.

5. This Agreement does not protect MacGregor from prosecution for any crimes except those arising out of the conduct described in the Indictment. This Agreement does not apply to any individual other than MacGregor.

6. The USAO and MacGregor understand that the Court must approve the deferral of prosecution set out and agreed to in this Agreement in accordance with 18 U.S.C. § 3161(h)(2). Specifically, for purposes of the Speedy Trial Act, the Court must approve the delay of a trial on the Indictment to allow MacGregor sufficient time to demonstrate his good conduct by complying with Paragraph 10 of this Agreement.

Dismissal of Counts 1-3

7. Within thirty days after execution of this agreement by all parties, the USAO will file an assented-to motion for dismissal of Counts 1-3 of the Indictment as to MacGregor; such dismissal shall be without prejudice to the United States' ability to re-present the indictment in the event of a material breach of MacGregor's obligations under Paragraph 10.

8. The USAO and MacGregor understand that the Court must approve the dismissal of the charges in the Indictment.

Breach of the Agreement

9. If, during the Term, MacGregor (a) commits any violation of federal criminal law, (b) fails to comply with his obligations herein, or (c) otherwise fails to perform or fulfill completely each of his obligations under this Agreement, MacGregor will thereafter be subject to prosecution for Count 4 of the Indictment.

10. Determination of whether MacGregor has breached this Agreement and whether to pursue prosecution of MacGregor will be in the USAO's sole discretion. If the USAO determines that MacGregor has breached this Agreement, it will give MacGregor written notice before instituting any prosecution resulting from such breach. Within thirty days after receiving such notice, MacGregor will have the opportunity to make a presentation to the USAO to demonstrate that: (a) no breach occurred, (b) the breach was not a knowing breach and could not have been avoided with the exercise of due diligence, or (c) the breach has been cured. The USAO will consider any such presentation in determining whether to pursue prosecution of MacGregor.

11. MacGregor agrees that the consequences for a breach set forth in this Agreement are remedies to which the USAO is entitled in the event of a breach and shall survive the termination of this Agreement in the event of a breach. MacGregor agrees that the USAO's remedies for a breach are not limited to those set forth in this Agreement. MacGregor further agrees that, in the event of a breach, MacGregor nevertheless will be bound by his waivers of legal, equitable, and constitutional rights set forth in this Agreement, and those provisions will survive even in the event of a breach.

Agreement Binding Only on MacGregor and USAO

12. This Agreement is binding only on MacGregor and the USAO and does not bind any other component of the U.S. Department of Justice, any federal agency, or any state or local law enforcement or administrative authority. Further, the waivers and other agreements made by MacGregor herein shall not be binding on MacGregor in any civil or criminal proceeding initiated by any person or entity other than the USAO.

13. Nothing in this Agreement restricts in any way the ability of the USAO to proceed against any individual or entity not a party to this Agreement.

Miscellaneous

14. MacGregor and the USAO agree that this Agreement shall be made available to the public.

15. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. Signatures transmitted by facsimile or email shall be deemed to be original signatures for all purposes.

16. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations, or agreements have been made other than those set forth in this Agreement. This Agreement may be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

17. MacGregor is aware that 18 U.S.C. § 3006A, the so-called "Hyde Amendment," authorizes courts in criminal cases to award to certain prevailing defendants' attorneys' fees and other litigation expenses. In exchange for concessions the U.S. Attorney made in this Agreement, MacGregor voluntarily and knowingly waives any claim MacGregor might assert under this statute.


Advice of Counsel

18. MacGregor acknowledges the following: he has read and understands the terms and provisions of this Agreement; he has had a full and complete opportunity to consult with legal counsel and to ask any questions about the terms and provisions of this Agreement; he fully understands the nature of the crime alleged against him in the Indictment, the maximum

penalties and Sentencing Guidelines provisions applicable to the offense, and penalties potentially applicable to him; he has discussed with counsel the charge against him, possible defenses he might have, and whether he should go to trial; his agreements and waivers stated herein are knowing and voluntary and are made with the advice of counsel; and he is satisfied with the legal representation provided by his legal counsel.

AGREED.

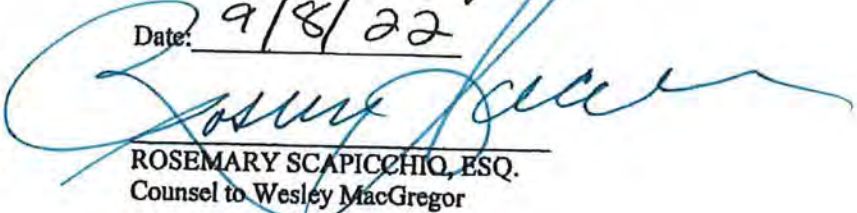
ZACHARY CUNHA
UNITED STATES ATTORNEY
Acting under Authority Conferred by
28 U.S.C. § 515

By: 
WILLIAM ABELY
Criminal Chief
AMANDA STRACHAN
Deputy Criminal Chief

Date: 9-20-22


WELSEY MACGREGOR

Date: 9/8/22


ROSEMARY SCAPICCHIO, ESQ.
Counsel to Wesley MacGregor

Date: 9/8/22

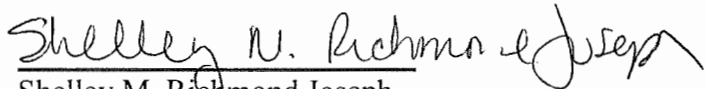
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:19-cr-10141-LTS
)	
)	
SHELLEY M. RICHMOND JOSEPH)	

ATTESTATION OF SHELLEY RICHMOND JOSEPH

I hereby attest that I have complied with paragraph 2 of the Agreement (“Agreement”) with the United States Attorney’s Office (“the USAO) and myself dated September 20, 2022, by formally referring myself to the Massachusetts Commission on Judicial Conduct (“the CJC”) and by providing the CJC with a copy of the Agreement and Statement of Facts contained within the Agreement, including my stipulation to the accuracy of the same.

Signed under the penalties of perjury this 22nd day of September, 2022.


Shelley M. Richmond Joseph

APPENDIX F

CourtView Justice Solutions

Newton District Court

You are not in your home site!**Criminal Case Summary****1812CR000149 Commonwealth vs. Peguero Peguero, Oscar Manuel OKA Medina-Perez, Jose****Case Information**

Site Newton District Court

File Date 04/02/2018

Case Status Closed Case Status Date 06/28/2022 SCR Elapsed Days 442

Case Disposition [Dismissed](#) Case Disposition Date 06/28/2022 Category

Session

Judge

Track

Party Information: 1

Party Name	Party Alias(es)	Party Type	XREF-ID	Attorney(s)	Attorney Phone
Peguero Peguero, Oscar Manuel	Medina-Perez, Jose	Defendant	44501468	Perullo, Esq., Joseph M	(617)423-0030

Alert Information: 1

Case Party	Alert Type	Issue Date	Served Date	Recalled Date
Peguero Peguero, Oscar Manuel	Default Warrant	05/29/2018		12/09/2021

Case Schedule: 7 Displaying 7 Records

Date	Start Time	Event Type	Session	Notes	Result	Result Reason
06/28/2022	02:00 PM	1 of Pretrial Probation as Disposition Until	Administrative Session	0	Held - No future event	
03/28/2022	10:00 AM	1 of Motion to suppress	Pretrial Session	1	Not Held	
02/08/2022	09:00 AM	1 of Pretrial Hearing	Pretrial Session	0	Held-PT	
12/10/2021	09:00 AM	1 of Hearing to Review Status	Arraignment Session	0	Review Completed	
12/09/2021	02:00 PM	1 of Default Removal Hearing	Arraignment Session	0	Held - Default Removed - CR	
05/29/2018	09:00 AM	1 of Pretrial Hearing	Pretrial Session	0	Defendant defaulted-FI to Appear	
04/02/2018	08:15 AM	1 of Arraignment	Arraignment Session	0	Held - Personal Recog. Release	

Service Summary: 0**Party Charges: 3**[Peguero Peguero, Oscar Manuel](#)

	Count	Code	Description	Degree of Offense	Disposition	Disposition Date	Disposition Judge	Sentenced
	1	276/20A-0	FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A	Misdemeanor - 100 days or less incarceration	Dismissed - Request of Commonwealth	04/02/2018	Joseph, Hon. Shelley M	
	Count	Code	Description	Degree of Offense	Disposition	Disposition Date	Disposition Judge	Sentenced
	2	94C/34/C-0	DRUG, POSSESS CLASS B c94C §34	Misdemeanor - more than 100 days incarceration	Dismissed - After Pretrial Probation	06/28/2022	Heffeman, Hon. Mary E	
	Count	Code	Description	Degree of Offense	Disposition	Disposition Date	Disposition Judge	Sentenced
	3	94C/34/I-0	DRUG, POSSESS CLASS E c94C §34	Misdemeanor - 100 days or less incarceration	Dismissed - After Pretrial Probation	06/28/2022	Heffeman, Hon. Mary E	

Financial: 9 Displaying 9 Records A/R Amount Due: 00 Non-A/R Amount

Due: 00 Holding Money Balance On-Hand: .00

Due: 00

Receipt #	Date	Received From	Amount Paid								
31390	11/22/2019	Medina-Perez, Jose	50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CHECK</td><td>50.50</td></tr></table>		Payment		CHECK	50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>50.50</td></tr></table>		Fee		Certificates/Copies/Summons	50.50
Payment											
CHECK	50.50										
Fee											
Certificates/Copies/Summons	50.50										
30143	04/26/2019	Medina-Perez, Jose	50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CREDIT CARD</td><td>50.50</td></tr></table>		Payment		CREDIT CARD	50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>50.50</td></tr></table>		Fee		Certificates/Copies/Summons	50.50
Payment											
CREDIT CARD	50.50										
Fee											
Certificates/Copies/Summons	50.50										
30142	04/26/2019	Medina-Perez, Jose	-50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CHECK</td><td>-50.50</td></tr></table>		Payment		CHECK	-50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>-50.50</td></tr></table>		Fee		Certificates/Copies/Summons	-50.50
Payment											
CHECK	-50.50										
Fee											
Certificates/Copies/Summons	-50.50										
30141	04/26/2019	Medina-Perez, Jose	50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CHECK</td><td>50.50</td></tr></table>		Payment		CHECK	50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>50.50</td></tr></table>		Fee		Certificates/Copies/Summons	50.50
Payment											
CHECK	50.50										
Fee											
Certificates/Copies/Summons	50.50										
30138	04/26/2019	Medina-Perez, Jose	50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CREDIT CARD</td><td>50.50</td></tr></table>		Payment		CREDIT CARD	50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>50.50</td></tr></table>		Fee		Certificates/Copies/Summons	50.50
Payment											
CREDIT CARD	50.50										
Fee											
Certificates/Copies/Summons	50.50										
30128	04/25/2019	Medina-Perez, Jose	50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CREDIT CARD</td><td>50.50</td></tr></table>		Payment		CREDIT CARD	50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>50.50</td></tr></table>		Fee		Certificates/Copies/Summons	50.50
Payment											
CREDIT CARD	50.50										
Fee											
Certificates/Copies/Summons	50.50										
29235	12/05/2018	Medina-Perez, Jose	50.50								
<table><tr><th colspan="2">Payment</th></tr><tr><td>CHECK</td><td>50.50</td></tr></table>		Payment		CHECK	50.50	<table><tr><th colspan="2">Fee</th></tr><tr><td>Certificates/Copies/Summons</td><td>50.50</td></tr></table>		Fee		Certificates/Copies/Summons	50.50
Payment											
CHECK	50.50										
Fee											
Certificates/Copies/Summons	50.50										

Receipt #	Date	Received From	Amount Paid
29226	12/04/2018	Medina-Perez, Jose	50.50

Payment
CREDIT
CARD 50.50

Fee
Certificates/Copies/Summons 50.50

29198	11/29/2018	Medina-Perez, Jose	50.50
-----------------------	------------	--------------------	-------

Payment
CHECK 50.50

Fee
Certificates/Copies/Summons 50.50

Ticklers: 0

DCM: 0

Linked Case(s) : 0

Docket Entries: 54 Displaying 54 Records

Date	Ref	Journal Book	Docket Text	Judge	Amount Due	Image
04/02/2018			Charges Disposed:: Charge # 1 FUGITIVE FROM JUSTICE ON COURT WARRANT c276 §20A On: 04/02/2018 Judge: Henry H Shultz Probable Cause Found Charge # 2 DRUG, POSSESS CLASS B c94C §34 On: 04/02/2018 Judge: Henry H Shultz Probable Cause Found Charge # 3 DRUG, POSSESS CLASS E c94C §34 On: 04/02/2018 Judge: Henry H Shultz Probable Cause Found			
04/02/2018			Complaint issued upon new arrest.			
04/02/2018			Event Resulted Judge: Joseph, Hon. Shelley M The following event: Arraignment scheduled for 04/02/2018 08:15 AM has been resulted as follows: Result: Held - Personal Recog. Release	Joseph, Hon. Shelley M		
04/02/2018	1		Defendant arraigned before Court, advised of right to counsel. Judge: Joseph, Hon. Shelley M	Joseph, Hon. Shelley M		
04/02/2018			At arraignment, defendant reports that s/he will retain private counsel. Judge: Joseph, Hon. Shelley M	Joseph, Hon. Shelley M		
04/02/2018			Plea of Not Guilty entered on all charges. Judge: Joseph, Hon. Shelley M	Joseph, Hon. Shelley M		
04/02/2018			Bail revocation warning (276/58) given to the defendant Judge: Joseph, Hon. Shelley M	Joseph, Hon. Shelley M		
04/02/2018			Released on Personal Recognizance Judge: Joseph, Hon. Shelley M	Joseph, Hon. Shelley M		
04/02/2018	2		Appearance filed On this date David Jellinek, Esq. added as Private Counsel for Defendant Jose Medina-Perez			
04/11/2018			Interpreter requested for next court date. Judge: Joseph, Hon. Shelley M	Joseph, Hon. Shelley M		
05/29/2018			Event Resulted: Pretrial Hearing scheduled on: 05/29/2018 09:00 AM Has been: Defendant defaulted- FI to Appear Hon. Mary E Heffernan, Presiding Appeared: Staff.	Heffernan, Hon. Mary E		
05/29/2018	3					

Date	Ref	Journal Book	Docket Text	Judge	Amount Due	Image
			Default Warrant ordered to issue. Judge: Heffernan, Hon. Mary E	Heffernan, Hon. Mary E		
05/29/2018			Default warrant recall fee assessed. Default Warrant issued on 05/29/2018 for Medina-Perez, Jose Dismissed Type: Waived judges order. Dismissed Date: 07/07/2022 Dismissed Amount: 50.00 Dismissing Clerk / Judge: Heffernan, Hon. Mary E Comments: remitted on 03/28/2022 Dismissed By: HELBERG		0.00	
11/29/2018			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 29198 Date: 11/29/2018		0.00	
11/29/2018			Fee for Postage for CD/Tape Recordings		0.00	
12/03/2018			Charges Disposed:: Charge # 1 FUGITIVE FROM JUSTICE ON COURT WARRANT c276 \$20A On: 04/02/2018 Judge: Hon. Shelley M Joseph Dismissed - Request of Commonwealth			
12/04/2018			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 29226 Date: 12/04/2018		0.00	
12/04/2018			Fee for Postage for CD/Tape Recordings		0.00	
12/05/2018			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 29235 Date: 12/05/2018		0.00	
12/05/2018			Fee for Postage for CD/Tape Recordings		0.00	
04/25/2019			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 30128 Date: 04/25/2019		0.00	
04/25/2019			Fee for Postage for CD/Tape Recordings		0.00	
04/26/2019			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 30138 Date: 04/26/2019		0.00	
04/26/2019			Fee for Postage for CD/Tape Recordings		0.00	
04/26/2019			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 30141 Date: 04/26/2019 Reverse Receipt: 30141 Date: 04/26/2019 Reverse by: 30142 Receipt Reversal Reason: PAYMENT TENDER ERROR, INCORRECT TENDER Reverse Amount: 50.50 Receipt: 30143 Date: 04/26/2019		0.00	
04/26/2019			Fee for Postage for CD/Tape Recordings		0.00	
11/22/2019			Fee for 90 min CD/Tape recording of proceedings assessed. Receipt: 31390 Date: 11/22/2019		0.00	
11/22/2019			Fee for Postage for CD/Tape Recordings		0.00	
12/09/2021			Warrant recalled: Default Warrant cancelled on 12/09/2021 for Medina-Perez, Jose			
12/09/2021			Event Resulted: Default Removal Hearing scheduled on: 12/09/2021 02:00 PM Has been: Held - Default Removed - CR Hon. Jennifer D Queally, Presiding	Queally, Hon. Jennifer D		
12/09/2021			Defendant before Court on Warrant, Warrant recalled as served. Judge: Queally, Hon. Jennifer D	Queally, Hon. Jennifer D		
12/09/2021	4		Defendant is ordered committed without bail because OTHER REASON: to Middlesex Jail returnable for 12/10/2021 09:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: * DEFENDANT HELD WITHOUT BAIL DUE TO IDENTITY ISSUES * ** DEFENDANT TO BE BROUGHT TO COURT ON 12/10/21 ** Judge: Queally, Hon. Jennifer D	Queally, Hon. Jennifer D		
12/10/2021	5					

Date	Ref	Journal Book	Docket Text	Judge	Amount Due	Image
			Commonwealth's motion to amend complaint (defendants name filed with the following, if any, supporting documents:	Heffernan, Hon. Mary E		
12/10/2021	6		Appearance filed On this date David Jellinek, Esq. dismissed/withdrawn as Private Counsel for Defendant Jose Medina-Perez			
12/10/2021	7		Appearance filed On this date Joseph M Perullo, Esq. added as Private Counsel for Defendant Jose Medina-Perez			
12/10/2021			Event Resulted: Hearing to Review Status scheduled on: 12/10/2021 09:00 AM Has been: Review Completed Hon. Mary E Heffernan, Presiding	Heffernan, Hon. Mary E		
12/10/2021			Motion to amend the complaint ALLOWED.	Heffernan, Hon. Mary E		
12/10/2021			Released on Personal Recognizance Judge: Heffernan, Hon. Mary E	Heffernan, Hon. Mary E		
12/10/2021			Interpreter requested for next court date.			
02/08/2022			Event Resulted: Pretrial Hearing scheduled on: 02/08/2022 09:00 AM Has been: Held-PT Hon. Michael Fabbri, Presiding	Fabbri, Hon. Michael		
02/08/2022	8		Pretrial conference report filed. Judge: Fabbri, Hon. Michael	Fabbri, Hon. Michael		
02/08/2022			Interpreter requested for next court date.			
02/14/2022	9		Defendant's motion to Suppress Evidence and Statements filed with the following, if any, supporting documents: affidavit in support of motion			
03/28/2022	10		Defendant's motion to Pre-Trial Probation filed with the following, if any, supporting documents:			
03/28/2022			Event Resulted: Motion to suppress scheduled on: 03/28/2022 10:00 AM Has been: Not Held Hon. Mary E Heffernan, Presiding	Heffernan, Hon. Mary E		
03/28/2022			Defendant placed on pre-trial probation conditions under C276§ 87 as follows:Other condition(s): No new offenses Judge: Heffernan, Hon. Mary E	Heffernan, Hon. Mary E		
03/28/2022			Order of pretrial conditions of release under G.L. c.276 § 87 filed.	Heffernan, Hon. Mary E		
03/28/2022			Judicial finding regarding assessment or waiver of monies in criminal case filed. Judge: Heffernan, Hon. Mary E	Heffernan, Hon. Mary E		
03/31/2022			CIMG UPDATE: ID: 48454788, Oscar Manuel Peguero Peguero, 03/02/1979 To ID: 44501468, Jose Medina-Perez			
06/28/2022			Event Resulted: Pretrial Probation as Disposition Until scheduled on: 06/28/2022 02:00 PM Has been: Held - No future event Hon. Mary E Heffernan, Presiding	Heffernan, Hon. Mary E		
06/28/2022			Charges Disposed:: Charge # 2 DRUG, POSSESS CLASS B c94C §34 On: 06/28/2022 Judge: Hon. Mary E Heffernan Dismissed - After Pretrial Probation Charge # 3 DRUG, POSSESS CLASS E c94C §34 On: 06/28/2022 Judge: Hon. Mary E Heffernan Dismissed - After Pretrial Probation			
06/28/2022						

Date	Ref	Journal Book	Docket Text	Judge	Amount Due	Image	
			All charges disposed - No future events - Defendant discharged. Judge: Heffernan, Hon. Mary E	Heffernan, Hon. Mary E			
06/28/2022			Docket report of court proceedings to date Judge: Heffernan, Hon. Mary E	Heffernan, Hon. Mary E			
07/07/2022			Docket report of court proceedings to date				
Trackable Items: 0							

Copyright © 2023 CourtView Justice Solutions, Inc., an equivalent company

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Number 2019-22

RESPONSE TO FORMAL CHARGES

GENERAL STATEMENT

Judge Shelley M. Richmond Joseph denies the conclusory allegations of the unnumbered introductory paragraph of the Formal Charges, which do not delineate the specific conduct alleged to violate each—or any—Rule. Judge Joseph has committed no misconduct, and certainly no willful judicial misconduct. She has attempted at all times to treat the parties before her, including Jose Medina-Perez, fairly and in accordance with the law and court policies, and to promote the fair administration of justice and public confidence in the independence, integrity, and impartiality of the judiciary. She has fully cooperated and responded truthfully to the inquiries of her judicial colleagues, supervisors, and judicial disciplinary authorities. To the extent that the incident involving Medina-Perez has attracted unfavorable media attention, that attention initially resulted from the actions of Attorney David Jellinek in secretly arranging with a court officer for his client to evade ICE. After the federal government began to investigate the event, David Jellinek falsely implicated Judge Joseph in order to obtain immunity for himself.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Judge Joseph received her *Juris Doctor* degree from New England School of Law in 1992. Judge Joseph was then admitted to the Massachusetts Bar and worked as an Assistant Attorney General with the Office of the Attorney General for Massachusetts (“Attorney General’s Office”) from 1993 to 2000. After leaving the Attorney General’s Office, Judge Joseph worked for six months as an associate in a civil law firm. From October of 2000 until her judicial appointment, she practiced with the Law Office of

Joseph & Joseph in Newton, Massachusetts. While at the Law Office of Joseph & Joseph, Judge Joseph specialized in criminal defense, hearings before the registry of motor vehicles, and restraining orders.

RESPONSE No. 1

Judge Joseph agrees that Paragraph 1 sets out a brief, but incomplete, summary of her professional background.

2. Judge Joseph was sworn in as a Massachusetts District Court Judge on November 2, 2017, and she began her training and orientation as a judge on November 3, 2017.

RESPONSE NO. 2

Judge Joseph agrees that Paragraph 2 is accurate.

3. In accord with the practice of the Administrative Office of the District Court (“AODC”), Judge Joseph’s training and orientation included approximately four weeks sitting with a series of other judges to observe a variety of types of courtroom proceedings.

RESPONSE NO. 3

Judge Joseph agrees that Paragraph 3 is accurate.

4. In accord with the policy of the Executive Office of the Trial Court (“EOTC”), Judge Joseph’s training also included the assignment of a mentor judge to assist her. As of the time of the assignment of Judge Joseph’s first mentor, her mentor had served continuously as a District Court Judge since 2000. In May of 2019, her mentorship assignment was transferred to another judge, who had served as a District Court judge continuously since 2005. Judge Joseph was then assigned to sit primarily in the court where her mentor was First Justice, and her mentor observed her regularly and provided close supervision and training. That assignment continued until February of 2019, when she was transferred to a different region and assigned a different mentor.

RESPONSE NO. 4

Judge Joseph agrees that she was assigned a mentor judge, whose identity changed over time as described in Paragraph 4 of the Amended Statement of Allegations. Judge Joseph does not recall receiving close supervision or training from any mentor judge, but regularly consulted with colleagues about questions that arose in different courthouses.

5. The AODC’s initial orientation program for new judges, and the training materials provided to Judge Joseph during that initial training period, did not specifically address the topic of recording of courtroom proceedings. Judge Joseph did not undertake on her own to familiarize herself with rules applicable to the District Court. At the time of the

events that are the subject of this complaint, she was unaware of District Court Special Rule 211, which requires that all District Court proceedings be recorded.

RESPONSE NO. 5

Judge Joseph agrees that Paragraph 5 is accurate. Judge Joseph believed, based on her observations and experience during her legal practice prior to her judicial service, that District Court judges sometimes conduct unrecorded discussions at sidebar during courtroom proceedings. Judge Joseph believes that her own observations and experience were consistent with District Court practice as described by other judges.

6. The AODC's training program for new judges also did not specifically provide judges with guidance regarding how to handle ICE detainees, the presence of ICE agents in courthouses, or responding to circumstances in which ICE agents might seek to take custody of a person in a courthouse.

RESPONSE NO. 6

Judge Joseph agrees that Paragraph 6 is accurate.

7. In response to the Court's decision in Lunn v. Commonwealth, 477 Mass. 517 (2017), on November 10, 2017, the Chief Justice of the Trial Court and the Court Administrator issued EOTC Transmittal 17-13, entitled "Policy and Procedures Regarding Interactions with the Department of Homeland Security" (the "Lunn policy"). On that same date, EOTC sent Transmittal 17-13 by email to all Trial Court judges, clerks, department heads, and other management personnel, to provide guidance to all Trial Court personnel (a copy of the Lunn policy is attached as Appendix A).

RESPONSE NO. 7

Judge Joseph agrees that Paragraph 7 is accurate.

8. The Lunn policy provides the following specific guidance for circumstances in which an Immigration and Customs Enforcement ("ICE") agent seeks to take custody of a person in a courthouse:

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 OHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.

RESPONSE NO. 8

Judge Joseph agrees that Paragraph 8 is accurate though incomplete as to its recitation of material sections of the Lunn policy.

9. When the Lunn policy was emailed to all Trial Court judges on November 10, 2017, Judge Joseph was at an early stage of her orientation as a judge. She received access to her official judicial email account no later than November 24, 2017. The Lunn policy may or may not have been sent to her email account, depending on when her email address was added to the Trial Court's distribution list for judges.

RESPONSE NO. 9

Judge Joseph agrees that Paragraph 9 is accurate. Judge Joseph does not recall receiving the Lunn policy at that time, and was unable to locate it among her orientation and training resources when she looked for guidance on April 2, 2018.

10. The District Court held an educational conference for all District Court judges on December 13, 2017, but Judge Joseph was unable to attend this conference because of a death in her family. Among the materials provided to judges at the conference was an "Updated Immigration Benchcard" (attached as Appendix B). This Benchcard instructed all District Court judges to refer to the Lunn policy "[f]or guidance on 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, and how Trial Court staff should respond when officials from DHS enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer" Judge Joseph does not recall whether she received the materials that were distributed at the conference.

RESPONSE NO. 10

Judge Joseph agrees that the first sentence of Paragraph 10 is accurate. Since she did not attend the training, she does not know what was provided to judges at the conference, and therefore cannot respond to the second and third sentences.

11. On January 16, 2018, the Chief Justice of the District Court issued District Court Transmittal No. 1222 (attached as Appendix C). AODC emailed the transmittal to the official judicial email address of all District Court judges. That document described the updated Benchcard that had been distributed to judges at the December 13, 2017,

conference, and referred to an attached electronic copy of the Benchcard. District Court Transmittal No. 1222 also referred to the Lunn policy as a source of “additional guidance.” Judge Joseph received transmittal No. 1222 by email on or about the date it was issued.

RESPONSE NO. 11

Judge Joseph agrees that Paragraph 11 is accurate. Judge Joseph is in possession of her original bench card on immigration issues, which is laminated, and appears in many ways similar to the “updated” distribution. She does not believe that she was ever aware that there were two different bench cards. Judge Joseph does not claim that any of the allegations against her resulted from the content of any bench card(s).

12. On April 2, 2018, Judge Joseph was assigned to preside over a courtroom in the Newton Division of the District Court department (“Newton District Court”). Judge Joseph was the only judge sitting in the Newton District Court on April 2, 2018. She had sat in that Court previously and had done so as the only judge in the courthouse on dates when no matters were scheduled. This was the first time she had sat there alone with a list of scheduled matters.

RESPONSE NO. 12

Judge Joseph agrees that Paragraph 12 is accurate.

13. On April 2, 2018, the matters that Judge Joseph presided over included criminal charges against a man using the name, Jose Medina-Perez (“Defendant”).¹ A copy of a transcript of a series of hearings in the Commonwealth v. Medina-Perez matter on April 2, 2018, is attached as Appendix D. This transcript does not include a brief third call of the case that occurred before the lunch recess, and it does not include certain non-substantive comments that Judge Joseph recalls. In all other respects this transcript accurately reflects the content of the recorded hearings conducted in the case in the morning and afternoon.

RESPONSE NO. 13

Judge Joseph agrees that Paragraph 13 is accurate. Judge Joseph agrees that the transcript does not include the “third call,” at which Medina-Perez’s then-counsel, Elizabeth Bostwick, stated that she had just sent a fax, or a “fourth call” two minutes later, at which time Attorney Bostwick requested that the next call of the case be delayed until 2:15 p.m. because she had a medical appointment. Based on these statements, Judge Joseph believed that Attorney Bostwick was actively investigating Medina-Perez’s situation, and

¹ The Newton District Court docket for Commonwealth v. Medina-Perez (attached as Appendix F) identifies the defendant as Jose Oscar Manuel Medina-Perez. This document will refer to him as Mr. Medina-Perez or, in the context of the District Court proceeding, as “the defendant.”

expected that Attorney Bostwick would appear for her client in the afternoon session. Judge Joseph was therefore surprised and somewhat puzzled by the sudden and unexplained appearance of David Jellinek as private counsel in place of the bar advocate, Attorney Bostwick, for the afternoon session.

14. At approximately 10:34 a.m., on April 2, 2018, the Commonwealth v. MedinaPerez matter came before Judge Joseph for arraignment on a charge of being a fugitive from justice based on a warrant issued in a case in Pennsylvania, and two counts of controlled substance violations. The court provided a Spanish language interpreter (the “interpreter”) to assist the defendant in understanding the courtroom proceedings.

RESPONSE NO. 14

Judge Joseph agrees that Paragraph 14 is accurate.

15. When the Commonwealth v. Medina-Perez matter was first called at approximately 10:34 a.m., Judge Joseph appointed the bar advocate (“bar advocate”) assigned to Newton District Court on that day to represent the defendant. The prosecutor handling the matter advised Judge Joseph that she was not seeking bail on the controlled substance charges but would request that the defendant be held without bail on the Pennsylvania warrant. The case was then recessed and put on for a second call.

RESPONSE NO. 15

Judge Joseph agrees that Paragraph 15 is accurate, and that she appointed the duty bar advocate, Elizabeth Bostwick, to represent Medina-Perez.

16. After the first call but before the final afternoon call of the Commonwealth v. Medina-Perez matter, Judge Joseph learned that ICE agents were present at the Newton District Court with a civil immigration detainer that authorized the ICE agents to take custody of the defendant if he were released from Massachusetts state custody. The detainer stated that ICE had probable cause to believe that the defendant was a deportable alien based on a final order of removal previously issued against him.²

RESPONSE NO. 16

Judge Joseph agrees that on second call, the bar advocate, Attorney Bostwick, expressed her opinion that the photograph accompanying the Pennsylvania warrant was not that of the defendant, Medina-Perez, who maintained that he was not the person sought by the warrant. Attorney Bostwick requested time to obtain information from the defendant’s

² The ICE agents also had a warrant of removal for the defendant, stating that the defendant was subject to removal from the United States based upon a final order by a designated official, and that any Immigration Officer with the United States Department of Homeland Security was commanded to take custody of the defendant for removal from the United States.

employer and to review the “Triple I” form, which Judge Joseph granted. The Commonwealth indicated that it was continuing to request that the defendant be held without bail on the fugitive warrant from Pennsylvania. At the third call before lunch, Attorney Bostwick stated that she had just sent a fax. At a fourth call two minutes later, she asked for additional time over the lunch break because both she and the interpreter had appointments. Judge Joseph granted the request and indicated that she would hold the Medina-Perez case until 2:15 or 2:30 to accommodate Attorney Bostwick’s schedule.

17. While the Commonwealth v. Medina-Perez matter was recessed, the First Assistant Clerk, who was serving as the session clerk, brought to Judge Joseph’s attention that an ICE agent was present in the courtroom, and that the Newton District Court had a policy that ICE agents be directed to wait outside the courtroom. After contacting AODC for information about any applicable Trial Court policy, and learning the content of the Lunn policy, Judge Joseph asked the session clerk to give direction to the ICE agent in accord with the Newton District Court policy. The clerk did so, and the ICE agent waited in the public lobby on the first floor or outside the building.

RESPONSE NO. 17

Judge Joseph agrees that the first two sentences of Paragraph 16 are accurate. Specifically, it was during the lunch recess that she first learned about the Newton District Court policy that the ICE agents were present and should be directed to wait outside the courtroom. She called the Executive Office of the Trial Court for guidance, and the Lunn policy was read to her. In consultation with the EOTC, she was advised that the Newton District Court policy, as established by the Newton District Court Presiding Justice, was not inconsistent with the Trial Court’s Lunn policy and could be followed. Judge Joseph then advised the session clerk that she would adhere to the Newton District Court policy. With respect to the third and final sentence of Paragraph 17, Judge Joseph has no knowledge of the location of the ICE agents at any time or what conversation occurred between the clerk and the ICE agents, as she neither saw nor spoke with any ICE agent on April 2, 2018.

18. During the recess, persons associated with the defendant in the Commonwealth v. Medina-Perez matter retained private counsel for him, and that attorney entered an appearance.³

³ This defense attorney graduated from an ABA-accredited law school in 2000 and has been a member of the Massachusetts Bar since 2001. At the time of the April 2, 2018 incident, defense counsel had been practicing exclusively criminal defense in his own private practice for approximately nine to ten years. That private criminal defense work included approximately nine to ten years of regular appearances representing criminal defendants in the Newton District Court. Prior to his private practice, defense counsel worked as a criminal defense attorney for the Massachusetts Committee for Public Counsel Services, where he was a Superior Court certified attorney for approximately five years. Defense counsel is also the author of a published practice guide to Massachusetts criminal law.

RESPONSE NO. 18

Judge Joseph has no information about how or when the appointed bar advocate, Attorney Bostwick, who had been advocating effectively for Medina-Perez, and who immediately before the lunch recess had expressed her intention to return for further call at 2:15 p.m., came to be replaced with David Jellinek.

19. The final hearing before Judge Joseph in the matter began at approximately 2:48 p.m. At some point before that hearing, the defendant attorney had formulated a plan with the court officer that the defense attorney intended to permit Mr. Medina-Perez to avoid the ICE agents. As part of that plan, the court officer indicated that he could release Mr. Medina Perez through the sally-port door in the lockup if the defense attorney could arrange for the defendant to return to the lockup after his court proceedings. During this final call of the matter, the defendant, the prosecutor, and the newly-retained defense attorney appeared before Judge Joseph in the courtroom. Defense counsel asked for a sidebar conference. Judge Joseph granted that request and conducted a recorded sidebar conference with the defendant's attorney and the prosecutor. An interpreter was present for the defendant and had some access to the sidebar conference. In the course of this conference, the prosecutor advised that she no longer believed that the defendant was the same person subject to the Pennsylvania warrant, and thus that she would move to dismiss the fugitive from justice charge and would not seek bail on the remaining Massachusetts controlled substances charges.

RESPONSE NO. 19

Judge Joseph agrees that the first sentence of Paragraph 19 is accurate. With regard to the second and third sentences of Paragraph 19, Judge Joseph has no first-hand information about the time and manner in which David Jellinek formed his agreement with the court officer. Judge Joseph was unaware of any such agreement, and first learned about an agreement when she was given access to David Jellinek's federal grand jury testimony, in which he admitted making that agreement. Judge Joseph agrees that the fourth, fifth and sixth sentences of Paragraph 19 are accurate. With respect to the seventh sentence of Paragraph 19, it is not accurate that the interpreter had "access" to the sidebar conference, as he was located next to Medina-Perez. Medina-Perez was in the glass-enclosed custody dock on the other side of the courtroom from the sidebar, and the interpreter was standing outside the glass, inches from Medina-Perez. Judge Joseph agrees that the final sentence of Paragraph 19 is accurate, in that the prosecutor for the first time, and without any explanation, recanted the position regarding the defendant's identity that she had taken repeatedly in the morning. The prosecutor now stated, apparently after a conversation with David Jellinek, that she did not believe the defendant was the person subject to the Pennsylvania warrant and said she would dismiss the fugitive of justice charge.

20. The sidebar conference included discussion of whether the defendant was the person who was the subject of the ICE detainer, and the presence of the ICE agents who, at that time, were still waiting in the front area of the courthouse to take the defendant into custody if he were released from state custody. Defense counsel told Judge Joseph, “ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal, . . . and hope that we can avoid ICE.”

RESPONSE NO. 20

Judge Joseph agrees that Paragraph 20 includes selected statements from the sidebar conference, although the entire transcript is important to establish the context and sequence of the discussion and later events. Judge Joseph had no knowledge about where the ICE agents were located, and had not directed them where they should wait.

21. After hearing this information, Judge Joseph said, “the other alternative is if you need more time to figure this out – hold until tomorrow.” Defense counsel explained that “if he’s bailed out . . . ICE will pick him up.” Judge Joseph responded, “ICE is gonna get him?” . . . What if we detain him?” The quality of the recording is insufficient to allow a listener to evaluate the tone of these comments and questions.

RESPONSE NO. 21

Judge Joseph agrees that first two sentences of Paragraph 21 include selected statements from the sidebar conference, although the entire transcript is important to establish the context and sequence of the discussion and later events. Judge Joseph is unable to determine whether “[t]he quality of the recording is insufficient to allow a listener to evaluate the tone of these comments and questions.”

22. At that point, defense counsel asked, “Are we on the record?” Judge Joseph then said to the session clerk, “can we go off the record for a moment?” After she repeated that request, the session clerk turned off the courtroom recording system. Judge Joseph did not ask defense counsel for any explanation of his request to confer off the record and did not consider any reason or justification for doing so. In violation of District Court Special Rule 211, Judge Joseph conducted an unrecorded conference with counsel regarding the case, lasting approximately 52 seconds. The unrecorded conference occurred at sidebar, with the prosecutor and defense counsel present, outside the hearing of others present in the courtroom.

RESPONSE NO. 22

Judge Joseph agrees that the first two sentences of Paragraph 22 include selected statements from the sidebar conference, although the entire transcript is important to establish the context and sequence of the discussion and later events. With respect to the

third sentence of Paragraph 22, Judge Joseph agrees that she did not know why David Jellinek asked to go off the record, but that given the complicated and somewhat puzzling sequence of events, including the unexpected change of counsel and the prosecutor's abrupt reversal of her position on whether the defendant was the person sought by the fugitive warrant, Judge Joseph did not consider the request alarming or unusual. With respect to the fourth sentence of Paragraph 22, Judge Joseph agrees that she unknowingly violated District Court Special Rule 211, which was inconsistent with her prior experiences as a lawyer. With respect to the final sentence of Paragraph 22, Judge Joseph agrees that the three people who could hear the unrecorded conference were she herself, the prosecutor and David Jellinek. The courtroom clerk was near the sidebar, but Judge Joseph does not know whether he heard what was said.

23. Judge Joseph's statements on the record, particularly her questions "ICE is gonna get him?" and "What if we detain him?" would give a reasonable observer the impression that she sought to assist defense counsel in identifying a means for the defendant to avoid ICE. Judge Joseph's willingness to conduct an unrecorded sidebar conversation with counsel, in violation of District Court Special Rule 211, added to the basis for that impression.

RESPONSE NO. 23

Judge Joseph disagrees either that her statements as quoted in Paragraph 23 conveyed an intention to "assist defense counsel in identifying a means for the defendant to avoid ICE" or that she subjectively had any such intention. As she had tried to do throughout the day, Judge Joseph did intend to permit both of Medina-Perez's counsel sufficient time to represent their client properly, and she did not want ICE to take custody of Medina-Perez if it was determined that he was not the person subject to the detainer. Given the preceding events, Judge Joseph's intention was to make sure that Medina-Perez's counsel, who had repeatedly insisted that the ICE detainer did not pertain to his client, had a reasonable opportunity to investigate his belief that his client was not the subject of the detainer and to present ICE with any further information he was able to obtain to establish that ICE was mistaken about his client's identity. Her suggestion was intended to explore a course of action that would cause the defendant to be held without bail in state custody until the morning to permit defense counsel a reasonable opportunity to make that inquiry. Judge Joseph further disagrees that any inference of improper motive should be drawn from the unrecorded conference, as the record prior to that point reflects no indication that Jellinek planned to engineer his client's escape, and would have given her no reason to expect that Jellinek—in the presence of the assistant district attorney and perhaps the clerk—was about to suggest that any party take improper actions to assist his client's escape. Further, Judge Joseph's experience with unrecorded sidebar and lobby conferences, over twenty-five years as a practicing lawyer, led her to believe that this was an occurrence with no sinister meaning.

24. During the unrecorded conference, defense counsel asked Judge Joseph to allow the defendant to return downstairs to the lockup area after he was released from state custody, and to allow defense counsel to accompany him there, along with the interpreter.

RESPONSE NO. 24

Judge Joseph disagrees with the first sentence of Paragraph 24. She agrees that she was asked by defense counsel to permit him to speak with his client in the downstairs lockup with the assistance of the interpreter before he was released, which Judge Joseph expected to be into ICE custody. In view of 111E rights read by Judge Joseph in open court but otherwise unexplained, as well as the multiple legal issues facing the defendant and his impending move to ICE custody, she believed such communication to be essential to attempt to protect Medina-Perez's right to counsel. She was not confident that the ICE agents would either delay their seizure of Medina-Perez to permit an attorney-client conference, or permit the conference to take place once they had taken him into their custody. She therefore thought it was reasonable to allow the conference to occur before he was released to ICE, and the lockup was the only practical place for such a conference.

25. Defense counsel informed Judge Joseph that, if she permitted him to return to the downstairs lockup area with the defendant and the interpreter, he thought his client could be released through the rear sally-port exit of the courthouse. Knowing that the ICE agents were, at her direction, still waiting for the defendant in a different location in the front area of the courthouse, Judge Joseph allowed defense counsel's request.

RESPONSE NO. 25

Judge Joseph denies that David Jellinek stated that he thought his client would be released through the rear sally-port exit of the courthouse. Judge Joseph had no knowledge about where the ICE agents were located, and had not directed them where they should wait. Judge Joseph has no knowledge about what conversations occurred between the clerk and the ICE agents after she told the clerk that she would adhere to the Newton District Court policy prohibiting the ICE agents from entering the courtroom. Judge Joseph agrees that she allowed David Jellinek's request to accompany his client and the interpreter to the lockup.

26. Judge Joseph responded to these statements from defense counsel in a manner that, in the context of her above-described conduct, caused defense counsel to reasonably believe that Judge Joseph had granted him permission to try to help the defendant avoid being taken into custody by ICE, including by granting defense counsel's request to return to the lockup area with the defendant and the interpreter, after the defendant had been released from state custody.

RESPONSE NO. 26

Judge Joseph denies the allegations in Paragraph 26. Judge Joseph specifically denies that she had any knowledge of the plan that David Jellinek had formed with the court officer, or that she did or said anything that would cause David Jellinek to form a belief—reasonable or unreasonable—that she was aware of or had acquiesced to his secret plan to have Medina-Perez released from the downstairs lockup.

27. From her discussion with defense counsel during the unrecorded sidebar conference, Judge Joseph understood that defense counsel intended to continue to help the defendant avoid being taken into custody by ICE that day.

RESPONSE NO. 27

Judge Joseph denies the allegations in Paragraph 27. Judge Joseph believed that she had, by suggesting that the defendant be held without bail overnight, offered David Jellinek reasonable time to pursue legal means to help the defendant avoid ICE custody by further investigating his identify and convincing ICE, if he could, that Medina-Perez was not the subject of the detainer. Since David Jellinek rejected this suggestion, Judge Joseph reasonably assumed that he intended to confer with his client and formulate a plan for his continued defense once he was in ICE custody. Judge Joseph specifically denies that David Jellinek communicated to her his secret plan, apparently previously concocted with the court officer, to evade ICE through illegal means, or that she said or did anything that would cause him to form that belief.

28. When the courtroom recorder was turned on again at approximately 2:51 p.m., the hearing in the Commonwealth v. Medina-Perez matter continued in open court. The prosecutor indicated that her intention was to dismiss the fugitive from justice charge, and not to seek bail on the Massachusetts charges.

RESPONSE NO. 28

Judge Joseph agrees that Paragraph 28 is accurate.

29. The defendant's attorney then stated, "I would ask that he, uh - I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may." Judge Joseph responded, "That's fine. Of course." After the defendant was arraigned and advised of certain statutory rights, the session clerk reminded the participants of the presence of ICE representatives "to visit the lockup." Judge Joseph responded, "That's fine. I'm not gonna allow them to come in here. But he's been released on this."

RESPONSE NO. 29

Judge Joseph agrees that Paragraph 29 is accurate

30. After the judge set a date for pretrial conference, a court officer asked whether the defendant had been released. The session clerk confirmed that the defendant had been ordered released. Judge Joseph then reiterated that the defendant's attorney had "asked if the interpreter can accompany him downstairs, um, to further interview him – and I've allowed that to happen

The proceeding in the Commonwealth v. Medina-Perez matter then concluded at approximately 2:54 p.m.

RESPONSE NO. 30

Judge Joseph agrees with the first paragraph of Paragraph 30, and that the content of the discussions of the recorded and unrecorded sidebar conferences was placed on the record in open court. Judge Joseph agrees that she proceeded to arraign Medina-Perez and to give him statutory warnings, including the Chapter 111E rights which she said his attorney would further explain to him. She further confirmed with the clerk that the ICE agents could "visit the lockup" but, in accordance with the Newton District Court policy, could not enter the courtroom. She assumed that ICE would reach the lockup either through the public stairwell or the sallyport entrance, based on the court officers' determination in accordance with the Lunn policy of what was best. Judge Joseph agrees with the second paragraph of Paragraph 30.

31. Judge Joseph's statements after the record resumed, referencing her decision to allow defendant and defense counsel to go down to the lockup area after defendant's release from custody, and referencing the ICE officer's exclusion from the courtroom, further added to defense counsel's reasonable impression that Judge Joseph had granted permission for defense counsel to pursue efforts to have the defendant to exit the courthouse through a rear exit in an effort to avoid ICE.

RESPONSE NO. 31

Judge Joseph denies the allegations of Paragraph 31, and specifically that she did or said anything that would cause David Jellinek to form a belief—reasonable or unreasonable—that she was aware of or had acquiesced to his secret plan to have Medina-Perez released from the downstairs lockup before ICE agents could take custody of him. Judge Joseph believed that permitting defense counsel to go to the lockup to speak with his client was essential to assure the protection of Medina-Perez's right to counsel, because she was not confident that the ICE agents would either delay their seizure of Medina-Perez to permit an attorney-client conference, or permit the conference to take place once they had taken him into their custody, and therefore thought it was reasonable to ensure that the conference would occur before he was released to ICE. Further, her response to the clerk's inquiry about the ICE agents specifically approved the request to have ICE go to the lockup—where she knew David

Jellinek and Medina-Perez were headed—and permitted that to happen, as long as the agents complied with the Newton District Court policy by remaining outside the courtroom.

32. Judge Joseph's decision to allow defendant and his counsel to go downstairs to the lockup area after the defendant had been released from state custody assisted defense counsel's plan for the defendant to exit the courthouse through a rear exit and avoid being taken into custody by the ICE agents who, at Judge Joseph's direction and pursuant to the Newton District Court policy, were still waiting outside the courtroom.

RESPONSE NO. 32

Judge Joseph agrees that the unintended effect of her assent to allow defense counsel and the interpreter to accompany Medina-Perez to the lockup was to assist defense counsel's plan, but denies that she had any knowledge of that plan, that she intended to assist that plan, or that she intended to permit anything other than the retrieval of the defendant's property and an opportunity for him to confer with counsel before he was taken into ICE custody, after which attorney-client communication might be difficult or impossible. Judge Joseph disagrees with the final clause of Paragraph 32, as she had no contact or communication with the ICE agents, had no idea where the agents were located at the time Medina-Perez left the courtroom, and had not directed the agents to wait in any particular location outside the court room.

33. Immediately following the above-described proceeding, the same court officer who had inquired about the defendant's custody status escorted the defendant to the downstairs lockup area of the Newton District Court, accompanied by the defendant's attorney and the interpreter.

RESPONSE NO. 33

Judge Joseph agrees that Paragraph 33 is accurate.

34. Once inside the lockup area, the court officer used his security access card to open the rear sally-port exit of the courthouse and released the defendant out of the courthouse through the sally-port exit at approximately 3:01 p.m., on April 2, 2018.

RESPONSE NO. 34

Judge Joseph believes that Paragraph is accurate, but her belief is based on documents provided to her counsel by the federal government, and not on any direct or indirect personal knowledge.

35. The ICE agent, who, at the direction of Judge Joseph and in accord with practice in the Newton District Court, had been instructed to wait outside the courtroom, was unaware of the defendant's release out the rear sally-port exit. Because the defendant had been

released through the sally-port exit, the defendant succeeded in avoiding being taken into custody by the ICE agents waiting for him pursuant to the detainer and Warrant of Removal.

RESPONSE NO. 35

Judge Joseph disagrees that the first sentence of Paragraph 35 is accurate, as she, in accordance with the Newton District Court policy as conveyed to her, instructed the clerk to tell the ICE agents that they should wait outside the courtroom, but did not speak to the ICE agents herself and did not instruct them, directly or indirectly, where they should wait. Judge Joseph believes that the ICE agents were unaware that David Jellinek procured his client's escape out the sallyport door, and that Medina-Perez thereby succeeded in avoiding the ICE agents, but this belief is based on documents provided to her counsel by the federal government, and not on any direct or indirect personal knowledge. Judge Joseph also has no knowledge as to why the ICE agents did not "visit the lockup" where David Jellinek and Medina-Perez were headed, as the clerk had stated they wished to do and as she had agreed they could do.

36. On April 4, 2018, the First Justice of the Newton District Court met with Judge Joseph at the Newton District Court and asked Judge Joseph about events in the Commonwealth v. Medina-Perez matter on April 2, 2018.

Judge Joseph told the First Justice that she was not sure what to do about making sure that ICE could take custody of the defendant and that there was some confusion about the Pennsylvania fugitive charge. Judge Joseph advised the First Justice that the defendant was released on personal recognizance. Judge Joseph did not advise the First Justice that she had conducted part of the hearing off the record, nor did the First Justice inquire on the point, having received no information to indicate that any part of the proceeding had occurred off the record.

Judge Joseph was less than fully candid with the First Justice in this conversation, in failing to advise the First Justice that she had conducted part of the hearing off the record, and that during the off-the-record conversation she had granted defense counsel's request to return to the lock-up area with the defendant after his release from custody, and that defense counsel had said that he thought he could have his client released through the sally-port exit if he could return to the lock-up area.

RESPONSE NO. 36

Judge Joseph agrees that the first sentence of Paragraph 36 is accurate, except that this was not a planned occasion where they "met," but rather a brief conversation in the First Justice's lobby during a break in the day. Judge Joseph disagrees that the second sentence is accurate. During this brief conversation, Judge Joseph learned for the first time that Medina-Perez had not been taken into ICE custody, apparently because he was released out through the sally-port door. She had no additional information, and the

focus of the First Justice's questions seemed to be the court officer, with whom Judge Joseph had had no contact. They also briefly discussed Judge Joseph's unfamiliarity with the Newton District Court practice of excluding ICE from the courtroom and her effort to obtain the Lunn policy from the District Court Administrative Office, as well as the uncertainty about the defendant's identity. Judge Joseph told the First Justice that she had granted David Jellinek's request to speak with his client in the lockup with the assistance of the interpreter. Judge Joseph agrees that the third sentence of Paragraph 36 is accurate. Judge Joseph agrees that the fourth sentence of Paragraph 36 is accurate, in that she was unaware of Special Rule 211, and therefore did not believe there was anything about having gone off the record that was relevant to the discussion or to Medina-Perez's escape. Her belief was apparently shared by David Jellinek, who, unknown to Judge Joseph, had spoken with the First Justice *ex parte* without informing the First Justice that he had asked to go off the record or that any proceedings had been conducted off the record. As far as Judge Joseph is aware, David Jellinek did not at that time make the claim that he had informed Judge Joseph of his secret plan with the court officer or that he believed she had approved his scheme. Judge Joseph denies that she was not candid with the First Justice, as she truthfully responded to the First Justice's questions based on her limited understanding of the situation that had just been made known to her.

37. On a date within the next month, the Regional Administrative Justice ("RAJ") met with Judge Joseph at the Lowell District Court. The RAJ asked Judge Joseph about the off-the-record portion of the hearing in the Commonwealth v. Medina-Perez matter.

The RAJ advised Judge Joseph that it was the RAJ's understanding that a portion of the April 2, 2018 hearing in the matter had not been recorded. When the RAJ asked Judge Joseph what happened, Judge Joseph was less than fully candid, failing to answer that she had directed her session clerk to turn off the courtroom recorder.

Instead, Judge Joseph responded by implying that her unfamiliarity with the courtroom recording system may have caused a portion of the hearing not to be recorded, asking questions about how the courtroom recording equipment in the Newton District Court worked, referencing an experience in another courthouse where she had disconnected the recording system after learning that it was amplifying a sidebar conversation. She expressed concern about not wanting people in the audience to hear the discussion at sidebar relating to the defendant's identity.

Judge Joseph was less than fully candid in this conversation with the RAJ, in failing to explicitly acknowledge that she had conducted part of the hearing off the record, and in failing to advise the RAJ that during the off-the-record conversation she had granted defense counsel's request to return to the lock-up area with the defendant after his release from custody, and that defense counsel had said that he thought he could have his client released through the sally-port exit if he could return to the lock-up area.

The RAJ informed Judge Joseph about District Court Special Rule 211 and emphasized to her that all courtroom proceedings must be recorded.

RESPONSE NO. 37

Judge Joseph agrees that the first three sentences of Paragraph 37 are an accurate but incomplete summary of the discussion she had with the RAJ at the Lowell District Court in April 2018. The RAJ invited Judge Joseph to her chambers during the lunch recess, where they spoke while having lunch. Judge Joseph learned from the RAJ of the existence of Special Rule 211, which prohibited off-the-record proceedings. Judge Joseph told the RAJ that she was unaware of the rule prohibiting off-the-record proceedings, expressed her understanding of the rule and its purpose, and promised that she would observe the rule in all future proceedings.

Judge Joseph denies that she was less than fully candid, as she believed that the RAJ understood that Judge Joseph had directed that the conference take place off the record, and that it was that understanding that prompted the meeting and the discussion about Special Rule 211 and its purpose.

Judge Joseph acknowledged having been off the record on one other particular occasion in the Waltham District Court, where she asked for the recording to be turned off after being told that the contents of a sidebar discussion were being amplified throughout the courtroom where the gallery could hear. Judge Joseph explained that she did not understand why the recording system, which was the same as the Newton District Court, had permitted that amplification. She expressed concern about not wanting people in the audience to hear the discussion at sidebar relating to the defendant's identity. She denies that she intended to imply that her unfamiliarity with the system was the cause of her decision to agree to defense counsel's record to go off the record.

Judge Joseph denies that she was less than fully candid with the RAJ, as the RAJ clearly understood that Judge Joseph had conducted proceedings off the record, and, in Judge Joseph's mind, had asked to speak with her to inform her of the rule and its purpose. Further, although Judge Joseph does not remember every detail of the conversation with the RAJ, she would not have placed significance on the fact that she had granted defense counsel's request to speak to the defendant with the interpreter in the lock-up as part of the off-the-record conversation, since she placed that fact on the record when the recording resumed, and would have assumed that the RAJ was aware of that fact. Judge Joseph did not tell the RAJ that defense counsel had said that he thought that he could have his client released through the sally-port exit if he could return to the lock-up area because David Jellinek made no such statement. As far as Judge Joseph is aware, David Jellinek had not yet begun to tell people that Judge Joseph had approved his plan with the court officer, so there was neither a reason for Judge Joseph to deny it, or for the RAJ to inquire specifically about it. Certainly, the RAJ did not ask Judge Joseph if Jellinek had made such a statement.

38. The Chief Justice of the District Court and the RAJ met with Judge Joseph in the Chief Justice's office on May 8, 2018.

The Chief Justice expressed particular concern that the recording had been shut off, and that a defendant had been released from the back of the courthouse.

Judge Joseph responded by acknowledging that she had directed the session clerk to turn off the courtroom recording, and by apologizing for having done so.

When the Chief Justice asked Judge Joseph why she had directed that the courtroom recorder be shut off, Judge Joseph responded by explaining that she thought that the defendant's attorney wanted to speak to her off the record about the defendant's identity and about his charge from Pennsylvania. Judge Joseph indicated that the off-the-record discussion pertained to the defendant's identity. Judge Joseph did not disclose that the off-the-record discussion had included defense counsel's request that the defendant be allowed to return downstairs, accompanied by defense counsel and the interpreter, and his statement to the effect that he believed he could have the defendant released through the rear of the courthouse.

Judge Joseph's response to the Chief Justice's questions regarding the reasons for and the content of the off-the-record conversation were less than fully candid and were misleading.

Judge Joseph was less than fully candid with the Chief Justice in this conversation when she told the Chief Justice that the non-recorded conversation at sidebar was merely her and the defense counsel still talking about the out of state warrant for Mr. Medina-Perez from Pennsylvania.

Judge Joseph was also less than fully candid with the Chief Justice when, in response to a series of questions from the Chief Justice about whether she had anything to do with the defendant's release from the courthouse on April 2, 2018, or any responsibility for it, she strongly denied that she had anything to do with it, or responsibility for it, and did not tell him that, at the conclusion of the Medina-Perez hearing that day, she released the defendant from state custody but then allowed defense counsel, the interpreter, and the defendant to all return to the lockup area, which allowed the defendant to then leave the courthouse through the sallyport and avoid being taken into custody by ICE.

The Chief Justice asked Judge Joseph if she had anything to do with the defendant's release through a non-public exit of the Newton District Court on April 2, 2018. Judge Joseph denied having any role in or awareness of that result. This denial was false.

RESPONSE NO. 38

Judge Joseph agrees that the first two paragraphs of Paragraph 38 are accurate. With respect to the third paragraph, Judge Joseph believes that she expected the off-the-record conversation would provide further information about the prosecutor's sudden reversal of her previous position, which involved the Pennsylvania charges, and the overall question of the defendant's identity, which she does not understand to this day. Judge Joseph states that the discussion with the Chief Justice included defense counsel's request to be allowed to speak to his client in the lockup with the interpreter, but she is not clear about whether it was as part of the discussion about the conference off the record, or the larger description of events, as that request was made both off and on the record. Judge Joseph would not have placed significance on the fact that she had granted defense counsel's request to return to the lock-up as part of the off-the-record conversation, since she placed that fact on the record when the recording resumed, and the Chief Justice informed her that he had listened to the transcript and presumably heard that statement. Judge Joseph did not tell the RAJ that defense counsel had said that he thought that he could have his client released through the sally-port exit if he could return to the lock-up area because David Jellinek made no such statement. As far as Judge Joseph is aware, David Jellinek had not yet begun to tell people that Judge Joseph had approved his plan with the court officer, so there was neither a reason for Judge Joseph to deny it, or for the Chief Justice to inquire specifically about it. Certainly, the Chief Justice did not ask Judge Joseph if Jellinek had made such a statement, and Judge Joseph did not tell the Chief Justice that David Jellinek had made such a statement, because he did not. At the time Medina-Perez's hearing concluded, Judge Joseph believed that the ICE officers would take custody of the defendant, and had no inkling that there was a plan to have him released out the sally-port door. Her lack of knowledge is confirmed by the conduct of the prosecutor, who was present at the sidebar conference in which David Jellinek claims to have said that he intended to get his client released out the backdoor. After the Medina-Perez hearing concluded, the prosecutor went to the front public area of the courthouse, where she told the ICE agents that Medina-Perez would be coming out the courtroom door into that area and stood with them to await his arrival. Judge Joseph does not believe that the prosecutor would have lied to the ICE agents if she knew that David Jellinek had a plan to have his client released from the back door, and believes that the prosecutor's conduct confirms that neither the prosecutor nor Judge Joseph was aware of that plan.

Judge Joseph denies that she was less than fully candid with the Chief Justice. At the time of that meeting, Judge Joseph had no idea that David Jellinek would later claim that he had told her of his secret plan or that she had approved it, and therefore no reason to deny or even address that claim. She did permit David Jellinek to accompany his client and the interpreter to the lockup—a fact which was known to the Chief Justice from the recording—and thereby unwittingly assisted in Jellinek's plan. However, at the time of the meeting, that plan was not known either to Judge Joseph or to the Chief Justice. She also knew—and the record reflected—that she had agreed that the ICE agents could go to

the lock-up, where she assumed that they would take the defendant into custody in accordance with the Lunn policy. Having no understanding of why the ICE agents did not do what they had apparently intended to do, Judge Joseph believed that she had followed the Lunn policy, which was to permit the ICE agents to do their job.

Judge Joseph agrees that she told the Chief Justice that she had nothing to do with the defendant's release through a non-public exit of the Newton District Court on April 2, 2018, and that she denied having any role in or awareness of that result. Both statements were true. As noted above, her role did include granting David Jellinek's request to accompany his client to the lockup; however, that fact had been placed on the record and was known to all at the meeting, and Judge Joseph did not at the time understand that action to be improper in any way or to have contributed to the defendant's escape, as she thought that ICE would take custody of the defendant in the lockup. Further, her denial that she was aware "of the result" was true, as she was unaware of the defendant's escape until her conversation with the First Justice two days later. Her denial that she was aware of David Jellinek's secret agreement with the court officer was true, because she first learned of that agreement when her counsel received David Jellinek's federal grand jury testimony.

39. After investigation, a federal grand jury returned indictments against Judge Joseph and a court officer based on the events of April 2, 2018. On September 22, 2022, Judge Joseph entered into an agreement with the United States Attorney, in which she stipulated to certain facts regarding the events of April 2, 2018, and agreed to refer herself to the Commission on Judicial Conduct. Based on that agreement, the United States Attorney moved to discuss the charges against her, and the United States District Court so ordered on September 23, 2022. (A copy of the motion to dismiss, with attached agreement between Judge Joseph and the United States Attorney and agreement of facts, is attached hereto as Appendix E).

RESPONSE NO. 39

Judge Joseph agrees that Paragraph 39 is accurate.

40. The events in connection with the Medina-Perez case on April 2, 2018, including the unrecorded conference, the defendant's release through the non-public sallyport exit, and subsequent federal criminal charges against Judge Joseph and a court officer, have received substantial public attention through news media and other sources. The public attention to this incident has had the effect of undermining public confidence in the judiciary.

RESPONSE NO. 40

Judge Joseph agrees that the first sentence of Paragraph 40 is accurate. Judge Joseph is unable to offer an opinion on the effect of news media on public confidence, but notes

that the publicity was precipitated by many factors, but particularly by the false statements of David Jellinek, who subsequently received complete immunity for his actions in arranging for his client to avoid the ICE agents, and whose false statements continued to evolve, from the time of his initial *ex parte* approach to the First Justice of the Newton District Court through his multiple encounters with the United States Attorney's Office. Judge Joseph disagrees with the last sentence and further notes that she was reinstated to her position after the criminal charges were dismissed, and has sat as a judge for two years in the Boston Municipal Court with neither incident nor unfavorable publicity.

41. In the course of the Commission's investigation of this matter, Special Counsel conducted an interview of Judge Joseph, under oath, recorded by a court reporter, with Judge Joseph's counsel present.

In the course of that interview, when asked about events in the Medina-Perez case on April 2, 2018, Judge Joseph denied that defense counsel told her he thought that the defendant could be released out the back door and/or avoid being taken into custody by ICE if he could speak to the defendant downstairs.

She further denied that she had said or done anything to facilitate the defendant's avoidance of ICE, or that she said or did anything that day that could have led to defense counsel having a reasonable belief that she had assented to his plan to help the defendant avoid being taken into custody by ICE that day. These denials were false.

RESPONSE NO. 41

Judge Joseph agrees that Paragraph 41 is true, except for the final sentence, which is not true. Judge Joseph truthfully denied that defense counsel told her that the defendant could be released out the back door and/or avoid being taken into ICE custody because that did not happen. Judge Joseph truthfully stated that she could not think of anything that would have given David Jellinek the impression that he had Judge Joseph's "blessing for the plan to have his client released out the back." Judge Joseph is unable to address this allegation further because she was not informed either during that interview or in the present Formal Charges what "actions and statements" are alleged to have led defense counsel to have such a belief. Finally, the actions of the prosecutor, who told the ICE agents that Medina-Perez would be coming out the front door of the courtroom and waiting with them in the lobby for him to appear, confirm that David Jellinek was the only person other than the co-conspiring court officer who was aware of his plan, and neither Judge Joseph nor David Jellinek said or did anything that caused the prosecutor to believe that Jellinek intended to have his client avoid ICE by being released through the back door.

**FURTHER RESPONSE OF
JUDGE SHELLEY M. RICHMOND JOSEPH**

1. On November 2, 2017, I was sworn in as an Associate Justice of the Framingham District Court. I completed the four-week training and was assigned a mentor judge to assist me. I also regularly consulted with colleagues in different courthouses where I sat about issues or matters that arose in different courthouses.

2. April 2, 2018, I was a new judge, just four months after my training ended. I was assigned to sit in the Newton Division of the District Court. I was familiar with Newton District Court from having practiced there regularly as a defense attorney. My husband's parents came to watch me for the first time before going to their airport having visited for the holiday weekend. Nothing seemed out of ordinary during the morning session, even the Medina-Perez matter.

3. When the Commonwealth v. Medina-Perez case was first called at approximately 10:34 a.m., I appointed the duty bar advocate ("bar advocate") to represent the defendant. I also provided a Spanish language interpreter (the "interpreter") to assist in communication. The defendant came before me for arraignment on a charge of being a fugitive from justice based on a warrant issued eight years earlier for a drunk driving case in Pennsylvania, and two new counts of controlled substance violations in Massachusetts. The prosecutor handling the matter advised me that she was not seeking bail on the controlled substance charges but would request that the defendant be held without bail on the Pennsylvania warrant. The defendant denied that he was the same person subject to the Pennsylvania warrant and therefore the case was recessed and put on for a second call so that his attorney could investigate the question of identification. During the second call the prosecutor provided a copy of the booking photograph from Pennsylvania. The bar advocate expressed her opinion that the photograph accompanying the Pennsylvania warrant was not that of the defendant, Medina-Perez, who continued to maintain that he was not the person sought by the warrant. I also believed that the photograph was inconclusive as to whether or not it resembled the person before me. The duty defense attorney requested time to obtain information from the defendant's employer and to review the "Triple I" form. I again recessed the case and scheduled it for a third call to allow further time for the attorney to investigate her client's identification.

4. A copy of the transcript attached to the Commission's document as Appendix D is accurate but does not include a brief third call of the case that occurred before the lunch recess, at which Medina-Perez's attorney stated that she had just sent a fax regarding his identification, or a "fourth call" two minutes later, at which time the duty

defense attorney requested that the next call of the case be delayed after the lunch recess until 2:15 p.m. because she had a medical appointment. Based on these statements, I believed that the duty attorney was actively investigating Medina-Perez's identification, and I expected that she would appear for her client in the afternoon session. I went to lunch expecting Attorney Bostwick would provide additional information when I returned.

5. During the lunch recess I learned from the First Assistant Clerk, who was serving as the session clerk that day, that ICE agents were present at the Newton District Court with a civil immigration detainer that authorized the ICE agents to take custody of the defendant if he were released from custody. There had been no mention of ICE all morning.

6. The clerk explained to me that the presiding justice had a policy that ICE agents were not allowed in the courtroom and asked what I wanted to do concerning the agents. Upon learning this information, I questioned the constitutionality of the Newton District Court policy knowing that courtroom proceedings are open to the public and therefore spent the next hour looking for guidance. I searched my training materials, other materials in the judges' lobby, inquired with the First Assistant Clerk, and finally called the Executive Office ("EO") of the District Court for guidance. The *Lunn* policy was read to me by one of the EO's attorneys and subsequently emailed to me. I was advised that the Newton District Court policy was not inconsistent with the Trial Court's *Lunn* policy and could be followed. I advised the session clerk that I would adhere to the Newton District Court policy. I believe that the clerk directed the ICE agent to wait outside the courtroom. I never personally saw or spoke with any ICE agent on April 2, 2018.

7. The *Lunn* policy provides, in addition to the excerpt in Paragraph 7 above, that the detainee should be taken by ICE from the lockup, not from a public place. The lockup in the Newton District Court was downstairs, which is where Medina-Perez went when the final hearing ended. The policy states that, "[T]o 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."

8. During the lunch recess, I was informed that a new attorney had filed a general appearance of counsel as a private attorney to represent the defendant in the criminal matter, not a limited appearance for arraignment only.

9. I returned to the bench expecting that Medina-Perez would probably be held on the Pennsylvania fugitive of justice charge as the ADA had requested prior to lunch, but I was open to further argument.

10. Because I had needed time to research the Newton District Court and *Lunn* policies with the EOTC, the final hearing in the matter began late at approximately 2:48 p.m. The newly retained defense counsel, David Jellinek, asked for a sidebar conference, which was not an uncommon request, and I conducted a recorded sidebar conference with the him and the prosecutor. At the time of the sidebar conference, Medina-Perez was in the glass-enclosed custody dock on the other side of the courtroom from the sidebar, and the interpreter was standing outside the glass, inches from Medina-Perez. To my surprise, David Jellinek said in essence that he and the ADA now agreed that Medina Perez was *not* the person sought by Pennsylvania and thus that she would move to dismiss the fugitive from justice charge and would not seek bail on the remaining Massachusetts' controlled substances charges. He also added that he did not think Medina-Perez was the person named in the ICE detainer. He was concerned that ICE would take the defendant into custody – and be taking the wrong person.

11. Given the ADA's change of opinion as to Medina-Perez's identity, new defense counsel's argument, and my own concerns regarding his identity, I felt at the time that I had a responsibility to make a reasonable effort to try to determine Medina-Perez's true identity, or at least to allow the parties adequate time for a fuller further investigation, particularly given David Jellinek's having been in the case for an hour or so. I therefore suggested that we detain Medina-Perez overnight, believing that he would be transported to Billerica, held there, and returned to the Newton District Court the following morning. I thought that the plan would give everyone just a little more time to address the issue since Medina-Perez would be back in court in the morning.

12. For some reason that was inexplicable to me at the time, David Jellinek resisted what I thought was a good suggestion for his client; he claimed ICE might get him if I set bail and he was later released from Billerica. That made no sense to me because I did not intend to set bail for an overnight hold, but rather intended to detain him without bail, believing that he would be transported to Billerica, held there, and returned to the Newton District Court the following morning. I now understand that once I accepted the ADA's position that Medina-Perez was not the person sought by Pennsylvania, I did not have authority to hold him overnight for identification purposes post arraignment, but without that understanding, it seemed like a reasonable course to allow David Jellinek time to investigate while keeping Medina-Perez secure in state, not federal, custody.

13. Defense counsel then asked if we were on the record, which I took as a request to go off the record. In all my years as both a prosecutor and a defense attorney, especially in the BMC courts, judges often allowed requests to go off the record and I allowed this one without reservation, as I was unaware of District Court Special Rule 211. But, despite my own past experience concerning requests to go off the record, I realize and acknowledge that I violated a rule of the district court and accept responsibility for that.

14. During the 52 seconds off the record conversation, I do not recall the defense attorney saying anything more than what he said on the record, other than the request to accompany his client downstairs with the interpreter, which I put on the record afterwards. However, the prosecutor, who was present at sidebar both on and off the

record, told the ICE agents that she expected that Medina-Perez would be coming out the front door of the courtroom. At no time did I understand that the new defense attorney intended to have the defendant released through the back door if I permitted him to accompany the defendant to the lock up with the interpreter. To this day it is not clear to me what the defense counsel claims to have said that alerted me to his plan, but I did not hear or understand anything he said which revealed his scheme.

15. I do not believe that David Jellinek needed my approval to speak with his client with the interpreter's assistance in the lockup area as that occurs regularly. But I was not confident that the ICE agents would either delay their seizure of Medina-Perez to permit an attorney-client conference, or permit the conference to take place once they had taken him into their custody and I wanted to protect Medina-Perez's right to counsel by ensuring that the conference would occur before he was taken into ICE custody as I expected that Medina-Perez would be released on personal recognizance from the lock-up into ICE custody.

16. When the courtroom recorder was turned on again after the off-the-record sidebar, at approximately 2:51 p.m., the hearing in the Commonwealth v. Medina-Perez matter continued in open court. The prosecutor indicated that her intention was to dismiss the fugitive from justice charge, and not to seek bail on the Massachusetts charges.

17. The new defense attorney then stated, "I would ask that he, uh - I believe he has some property downstairs. I'd like to speak with him downstairs with the interpreter if I may." I agreed and said "That's fine. Of course." I then conducted the arraignment of Medina-Perez and gave him statutory warnings, including the Chapter 111E rights which I said his attorney would further explain to him. The session clerk confirmed that the defendant had been ordered released and I reiterated that the defendant's attorney had "asked if the interpreter can accompany him downstairs, um, to further interview him – and I've allowed that to happen."

18. In response to a reminder from the clerk that the ICE agents were present "to visit the lockup." I responded, "That's fine. I'm not gonna allow them to come in here. But he's been released on this" – meaning ICE could not come into the courtroom for that purpose, following the presiding justice's policy, but very clearly that Medina-Perez "was released," meaning he could be taken into custody in accordance with the *Lunn* policy from either of two other entrances to the lockup. The proceeding in the Commonwealth v. Medina-Perez matter then concluded at approximately 2:54 p.m. That is the last contact I had with the case that day. I assumed that the defendant was in the custody of ICE. I was not aware until two days later when I returned to the Newton District Court that he had not been taken into ICE custody.

19. When I later learned from the First Justice of the Newton District Court that Medina-Perez had been released out the back door, I still did not know that the defense attorney and the court officer had made a plan before the afternoon court session and executed the plan downstairs after the court appearance. The ICE agents had had

unobstructed access to the lockup entrance either through the public stairwell or the sally-port entrance; for whatever reason, they chose not to use it. It is my understanding that instead, they spoke with the prosecutor, who had also been present at both the recorded and unrecorded sidebar conferences. The prosecutor told the ICE agents that she expected Medina-Perez would come upstairs to the front door. The ICE agents and the prosecutor waited in that public area for Medina-Perez to appear. When he did not appear, the prosecutor went to inquire about his whereabouts and learned that he had been released from the sally-port entrance.

20. On April 3, 2018, the defense attorney approached the First Justice of the Newton District Court and spoke with her about the Medina-Perez case. He did not inform the First Justice that any proceedings had occurred off the record, revealed that he was notified of the escape but did not reveal his role in planning and assisting Medina-Perez's escape, and did not claim to her that I was aware of his plan to allow his client to avoid ICE. The First Justice also spoke with the session clerk about the previous day's events.

21. Over the following few weeks, I discussed the circumstances with three different senior judges: the Newton presiding justice, the regional justice and the chief justice. Each of the discussions were different. I was truthful with each, and answered different questions posed by each, since they all expressed different concerns consistent with their roles. None of them suggested that David Jellinek or anyone else had implicated me in Medina-Perez's escape. The Chief Justice, in particular, told me not to worry about this matter any further and that it was a good learning experience.

22. I continued to work as an associate justice of the district court until April 25, 2019 when a federal grand jury returned indictments against me and the court officer based on the events of April 2, 2018. David Jellinek was granted immunity for his involvement and testimony. I was suspended from my judicial duties.

23. On September 22, 2022, I entered into a joint agreement with the United States Attorney, in which I stipulated to uncontested facts regarding the events of April 2, 2018, and agreed to refer myself to the Commission on Judicial Conduct. Based on that agreement, the United States Attorney moved to dismiss the charges against me, and the United States District Court so ordered on September 23, 2022. (A copy of the motion to dismiss, with attached agreement between me and the United States Attorney and agreement of facts, is attached to the CJC statement of allegations as Appendix E).

24. Although I had no knowledge of David Jellinek's plan, and no intent to assist in Medina-Peter's escape, I regret the harm that my handling of the matter caused the reputation of the Massachusetts judiciary.

The Respondent
SHELLEY M. RICHMOND JOSEPH
By her Attorneys,

/s/ Michael B. Keating

MICHAEL B. KEATING
Meehan Boyle Black & Bogdanow, P.C.
100 Cambridge Street, Suite 2101
Boston, Massachusetts 02114
617 523-8300
mkeating@meehanboyle.com

/s/ Thomas M. Hoopes

THOMAS M. HOOPES
ELIZABETH N. MULVEY
Libby Hoopes Brooks & Mulvey, P.C.
260 Franklin Street, Suite 1920
Boston, Massachusetts 02110
617 338-9300
thoopes@lhbmlegal.com
emulvey@lhbmlegal.com