

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EMMANUEL ANDRO,

Plaintiff,

v.

TOWN OF BROOKLINE, DANIEL C. O'LEARY,
MICHAEL JOHN MCCARTHY, PAUL CAMPBELL,
JENNIFER PASTER, ILYA D. GRUBER,
RUSSELL T. LLOYD, JOSEPH CAPUCCIO,
DOREEN GALLAGHER, RAY RICHARDS,
MATTHEW BARONAS, KELLY CHAMBLISS,
PATRICK DOBER, BROOKLINE DOES 1-10,
MICHAEL W. MORRISSEY, PAMELA FRIEDMAN,
ERICA L. MARATHAS, STEVEN G. NELSON,
NORFOLK DOES 11-20, SEAN GALLAGHER,
TODD THURLOW, FRANCK SAPIA,
ROBERT MCNEICE, WILLIAM CHAMBERS,
CHRISTOPHER MILLEY, JAY GILBERT,
I.C.E. DOES 21-30, STEVEN W. TOMPKINS,
SUFFOLK DOES 31-40, NORFOLK COUNTY,
and the UNITED STATES.

Defendants

C.A. No.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF AND MONETORY DAMAGES**

Plaintiff Emmanuel Andro ("Plaintiff" or "Mr. Andro"), hereby alleges as follows,
by and for his Complaint against the defendants named herein.

Introduction

1. Mr. Andro is a European citizen who's been in the United States since May 2005.
On March 14th 2014, Mr. Andro was a victim of domestic violence. On March 17th 2014, Mr.

Andro's domestic partner filed a restraining order against Mr. Andro. Less than an hour later, the Brookline Police arrested Mr. Andro. While in jail, he was charged with violating a restraining order and was questioned about his national origin. During his arraignment the next day, after securing a court-appointed attorney and a release on personal recognizance pursuant to state laws, Mr. Andro was imprisoned again due to an I.C.E. detainer lodged against him, although he was a victim of domestic violence. Massachusetts' state officials violated Mr. Andro's constitutional rights by illegally detaining him, by denying him due process and by discriminating against him.

2. Instead of being released on personal recognizance, he was imprisoned based on an "immigration detainer," a document sent from federal immigration officials to Massachusetts' officials requesting that the Massachusetts officials detain him without arrest warrant or judicial order. The Norfolk District Attorney violated Mr. Andro's right to equal protection and while Mr. Andro was placed in I.C.E. custody, he was denied due process.

3. Federal and State policies and procedures relating to immigration detainers, rather than adequately protecting against unconstitutional conduct, actually caused Mr. Andro's illegal detention. By illegally detaining him, Massachusetts authorities discriminated against him and violated the rules of Equal Protection. On March 25th 2014, while in I.C.E. custody, I.C.E. agents denied Mr. Andro access to a court hearing scheduled in Brookline.

4. To ensure that no illegal seizure occurs and to remedy his past injuries, Mr. Andro bring this action for damages and injunctive relief under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, 42 U.S.C. § 1983, the authority of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Administrative Procedure Act, 5 U.S.C. §§ 701 to 706, Massachusetts State Law

(Commonwealth of Massachusetts Constitution Articles I, VII and XIII) and Federal Tort Claims Act (FTCA).

5. This case challenges the constitutionality of the detention requirement imposed in 8 C.F.R. § 287.7 and challenges under the Administrative Procedures Act the validity of 8 C.F.R. § 287.7, the federal statute which authorizes the issuance of immigration detainers and the federal regulation governing the practice and procedure for immigration detainers.

6. This case challenges the legality of the practices by Massachusetts officials of denying people equal protection at the request of I.C.E. to detain immigrants while they have been ordered released on personal recognizance pursuant to state laws. The practice by Massachusetts officials of illegally detaining immigrants victim of domestic violence discriminates against victims and creates a bias in favor of non-immigrant abusers. This case challenges the practices of I.C.E. denying detainees due process, challenges the practices by the Brookline Police Department of profiling arrestees, challenges the discrimination practices by the Norfolk District Attorney's Office against non citizens victim of domestic violence and challenges the violations of Mr. Andro's equal protection rights under VAWA by the Brookline Housing Authority.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over Plaintiff's claims under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983 pursuant to 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights), and Article III of the U.S. Constitution. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202 (declaratory relief). The Court has supplemental jurisdiction over Plaintiff's state law

claims under 28 U.S.C. § 1367. Plaintiff also brings this action to the Court pursuant to the Administrative Procedure Act 5 U.S.C. §§ 703.

8. In March and October 2014, Mr. Andro filed administrative complaints with the Office of Civil Rights and Civil Liberties of the Department of Homeland Security. The Office confirmed that it “*is not able to obtain any legal remedies or damages.*” Mr. Andro also filed a complaint with the Massachusetts Commission Against Discrimination. Mr. Andro has therefore exhausted his administrative remedies for purposes of his claims against the United States under the FTCA. *See* 28 U.S.C. §§ 2675, 1346.

9. Venue is proper in this District under 28 U.S.C. § 1402(b) because the acts at issue in this lawsuit occurred within the District.

Parties

10. Plaintiff **Emmanuel Andro** is and was at all times relevant to this Complaint a resident of Massachusetts. At the time he was assaulted, Mr. Andro was living with his domestic partner in Brookline, MA in an apartment leased by the Brookline Housing Authority.

11. Mr. Andro was born in France and holds both French and Spanish citizenship.

Brookline Defendants

12. Defendant **Town of Brookline** is a political subdivision of the Commonwealth of Massachusetts that can sue and be sued in its own name. Defendant Town of Brookline operates and is responsible for the Brookline Police Department and the Brookline Housing Authority. As such, it is responsible for formulating, implementing, and/or allowing policies that improve public safety, build trust between law enforcement and immigrant communities, protect families and defend constitutional rights. Defendant town of Brookline

is also responsible for ensuring that its housing authority complies with all applicable legal requirements imposed by VAWA, including and not limited to ensuring the physical safety of victims of domestic violence, providing and maintaining housing opportunities for victims of domestic violence and maintaining the safety and well-being of said victims.

13. Despite an increase in the number of states and localities (293 as of Nov. 2014) that are refusing to do the federal government's job of enforcing broken immigration laws, Brookline policymakers keep targeting immigrants (sometimes individuals with no record of criminal conviction and/or victims of domestic abuse) to be detained illegally. Nationwide, 14% only of I.C.E. detainers (data provided for FY 2012 and for the first four months of FY 2013) result in the apprehension of "target[ed] individuals who pose a serious threat to public safety or national security." To achieve this result, detainers are being issued against immigrants and U.S. citizens alike in violation of people's constitutional rights with complicit assistance from local enforcement agencies, including Brookline Police Department.

14. On information and belief, Defendant town of Brookline has extended no restriction to its law enforcement department for detaining individuals without probable cause and handing them over to Immigration and Customs Enforcement. On information and belief, Defendant Town of Brookline has not set any limitations prohibiting local police from reporting alleged immigrants to I.C.E. and/or honoring detainer requests. Defendant has not set any measures requesting police to comply with the law by obtaining charging documents before detaining individuals. On information and belief, Defendant has been detaining people using local resources without compensation from the federal government. On information and belief, Defendant Town of Brookline has and had at all relevant times

the power and authority to change policies or customs (as did Amherst, Somerville, Cambridge, Boston and Northampton) to ensure that foreign-born residents are guaranteed equal treatment under U.S. Constitution and applicable federal and state law and regulations. At all relevant times to this Complaint, Defendant Town of Brookline acted or failed to act under color of state and federal law.

15. Defendant **Daniel C. O'Leary** was at all times relevant to this Complaint the Brookline Chief of Police. He is sued in his individual and official capacity. Defendant O'Leary is responsible for the Brookline Police Department. On information and belief, Defendant O'Leary has and had at all relevant times the power and authority to change policies or customs, to ensure that foreign-born residents are guaranteed equal treatment under U.S. Constitution and applicable federal and state law and regulations. Defendant O'Leary's department was aware of Mr. Andro's victim status as early as March 14th 2014 and was requested victim certification in July 2015. Defendant O'Leary acted or failed to act under color of state and federal law.

16. Defendant **Russell T. Lloyd**, ID #991593 was at all times relevant to this Complaint a Brookline Police Officer. He is sued in his individual and official capacity. According to Defendant Lloyd, a III query informed Brookline Police that Mr. Andro "had been arrested on 12/10/2010 by the Immigration and Naturalization Service." Such arrest never occurred and Mr. Andro never admitted to it contrary to Defendant Lloyd's report. On information and belief, Defendant Lloyd violated Plaintiff's constitutional rights by using Plaintiff's national origin as a probable cause to report to I.C.E.

17. Mr. Andro was not informed of any detainer and was not given any notice of action, against Department of Homeland Security instructions (D.H.S. form I-247). Plaintiff

rights were also violated when Defendant Lloyd failed to inform Plaintiff of his right to consular notification under Article 36 of the Vienna Convention. Defendant Lloyd acted or failed to act under color of state and federal law.

18. Defendant **Ilya D. Gruber** ID #88737 was at all times relevant to this Complaint a Brookline Police Sergeant. He is sued in his individual and official capacity. Defendant Gruber was assisting Defendant Lloyd in his reporting. Defendant Gruber acted or failed to act under color of state and federal law.

19. Defendant **Michael John McCarthy** ID #42750 was at all times relevant to this Complaint a Brookline Police Lieutenant and the direct supervising Officer of Defendants Lloyd and Gruber. He is sued in his individual and official capacity. On belief and information, Defendant McCarthy was supervising Plaintiff's booking and relied on the findings of Defendant Lloyd to order Defendant Cappuccio to run an I.C.E. query. Defendant McCarthy called I.C.E. in Vermont. Defendant McCarthy acted or failed to act under color of state and federal law.

20. Defendant **Joseph Cappuccio** was at all times relevant to this Complaint a Brookline Police Dispatcher and assisted in Plaintiff's booking at the Brookline Police station. He is sued in his individual and official capacity. Defendant Cappuccio acted or failed to act under color of state and federal law.

21. Defendant **Doreen Gallagher** was at all times relevant to this Complaint a Victim Advocate from the Brookline Police Department. She is sued in her individual and official capacity. On information and belief, Defendant Doreen Gallagher discriminated against Mr. Andro. Defendant Gallagher violated Mr. Andro's equal protection right by denying Mr. Andro's victim privileges. This denial triggers a bias from the Brookline Police Department

in favor of Mr. Andro's non-immigrant abuser in the case Commonwealth v. Sanderson where Plaintiff is a victim. Defendant Gallagher acted or failed to act under color of state and federal law.

22. Defendant **Paul Campbell** was at all times relevant to this Complaint a Police Lieutenant in charge of the Office of Professional Responsibility for the Brookline Police Department. He is sued in his individual and official capacity. Defendant Campbell answered a service complaint from Plaintiff against Defendant D. Gallagher for disclosing personal information without Plaintiff's consent. During a conference held on November 10th 2014, Defendant Campbell endorsed and condoned Doreen Gallagher's decision to discriminate against Mr. Andro. Defendant Campbell dismissed and declined to answer a later complaint filed for misconduct based on discrimination. Defendant Campbell acted or failed to act under color of state and federal law.

23. Defendant **Jennifer Paster** was at all times relevant to this Complaint a Police Sergeant assisting Defendant Campbell in his November 10th 2014 conference duties. She is sued in her individual and official capacity. Defendant Paster acted or failed to act under color of state and federal law.

24. Defendant **Ray Richards** was at all times relevant to this Complaint a Brookline Police Housing Officer. Defendant Richards failed to provide Police assistance as ordered by Court for Plaintiff to gain access to his belongings. He thwarted court order by providing a no trespass order from the Brookline Housing Authority. He is sued in his individual and official capacity. Defendant Richards acted or failed to act under color of state and federal law.

25. Defendant **Patrick Dober** was at all times relevant to this Complaint the Executive Director of the Brookline Housing Authority. On information and belief, Defendant Dober has and had at all relevant times the power and authority to change policies or customs, to ensure that foreign-born residents of the Housing Authority are guaranteed equal treatment under U.S. Constitution and applicable federal and state law and regulations, including and not limited to V.A.W.A. Defendant Dober acted or failed to act under color of state and federal law.

26. Defendant **Matthew Baronas** was at all times relevant to this Complaint the Assistant Executive Director of the Brookline Housing Authority. On information and belief, Defendant Baronas has and had at all relevant times the power and authority to check and ensure that foreign-born residents of the Housing Authority are guaranteed equal treatment under U.S. Constitution and applicable federal and state law and regulations, including and not limited to V.A.W.A. Defendant Baronas acted or failed to act under color of state and federal law.

27. Defendant **Kelly Chambliss** was at all times relevant to this Complaint a Property Manager for the Brookline Housing Authority. Defendant Chambliss was managing the Colonel E. Floyd apartment buildings, including 36 Marion Street where Plaintiff resided. On information and belief, Defendant Chambliss has and had at all relevant times the authority to ensure that foreign-born residents at the Colonel E. Floyd compound are guaranteed equal treatment under U.S. Constitution and applicable federal and state law and regulations, including and not limited to V.A.W.A. Defendant Chambliss acted or failed to act under color of state and federal law.

28. Defendants “**Brookline Does 1-10**” are individuals whose identities are not currently known to Plaintiff. Upon information and belief, they were at all times agents, employees, officers or otherwise representatives of the Brookline Police Department and the Brookline Housing Authority, and as such were operating under color of state law. They are sued in their individual and official capacities.

29. At all times relevant to this Complaint, Defendants Russell T. Lloyd, Ilya D. Gruber, Michael John McCarthy, Joseph Cappuccio, Doreen Gallagher, Paul Campbell, Jennifer Paster, Ray Richards, Patrick Dober, Matthew Baronas, Kelly Chambliss and Brookline Does 1-10 were acting within the scope and course of their employment with the Brookline Police Department, the law enforcement agency of the town of Brookline, and/or the Brookline Housing Authority.

U.S. Defendants

30. Defendant **Sean Gallagher** is the Field Office Director of the Boston Field Office for I.C.E.’s Enforcement and Removal Operations (E.R.O.). The Boston Field Office is located at 10 New England Executive Park, Burlington MA 01803. Defendant Gallagher is sued in his individual and official capacity. On information and belief, Defendant Sean Gallagher is and was at all relevant times responsible for all apprehensions, detentions & removal operations, and for formulating, implementing, approving, and/or allowing policies and/or customs applicable to I.C.E.’s enforcement activities in the Commonwealth of Massachusetts, including I.C.E.’s investigation of detainees in the custody of Massachusetts authorities; its issuance of immigration detainers with respect to such persons; its acquisition of custody over such persons; and its subsequent detention and treatment of such persons. On information and belief, Defendant S. Gallagher is and was at all relevant times

responsible for ensuring that I.C.E.'s policies, customs, practices and activities in these areas accord with the U.S. Constitution and applicable federal law and regulations.

31. On information and belief, Defendant Gallagher's duties and responsibilities include the administration of personnel, budget, procurement, records administration, security, training, and liaison with other Federal, State and Local law enforcement agencies. On information and belief, Defendant Gallagher is and was responsible for training and supervising his staff, and has the power and authority to change policies or customs, to ensure that individuals detained because of I.C.E. requests or other actions are detained pursuant to and in accordance with the U.S. Constitution and applicable federal law and regulations. At all times relevant to this complaint, Defendant Gallagher failed to act under color of federal law.

32. Defendant **Todd Thurlow** is and was at all relevant times the Assistant Field Office Director for I.C.E.'s Enforcement and Removal Operations, therefore working under Defendant Gallagher's supervision at the Boston Field Office in Burlington. He is sued in his individual and official capacity. On information and belief, Defendant Thurlow was at all relevant times responsible for formulating, implementing, approving, and/or allowing policies and/or customs applicable to I.C.E.'s enforcement activities in Massachusetts, including I.C.E.'s investigation of detainees in the custody of Massachusetts authorities; its issuance of immigration detainers with respect to such persons; its acquisition of custody over such persons; and its subsequent detention and treatment of such persons. On information and belief, Defendant Thurlow is and was at all relevant times also responsible for training and supervising his staff and had the power and authority to change policies or customs, to ensure that individuals detained because of I.C.E. requests or other actions are

detained pursuant to and in accordance with the U.S. Constitution and applicable federal law and regulations. At all times relevant to this Complaint, Defendant Thurlow acted or failed to act under color of federal law.

33. Defendant **William Chambers** was at all relevant times to this Complaint employed by I.C.E. Defendant Chambers maintains an office at the Suffolk County House of Corrections. He is sued in his individual and official capacity. Defendant Chambers kept Mr. Andro from attending a Court hearing in Brookline, in violation of Plaintiff's due process. At all times relevant to this Complaint, Defendant Chambers acted or failed to act under color of federal law.

34. Defendant **Christopher Milley** was at all relevant times to this Complaint a Deportation Officer employed by I.C.E.'s Enforcement and Removal Operations in Burlington. He is sued in his individual and official capacity. Defendant Milley informed Mr. Andro over a phone call placed by Defendant Chambers on March 25, 2014 that Plaintiff "will not be attending any more hearings in this country", in reference to Plaintiff's request to attend a court hearing in Brookline. Defendant Milley also discriminated against Plaintiff by denying Plaintiff to file D.H.S. form I-246; the application was attached to a fee waiver request. Defendant also coerced Plaintiff in an interview with Defendant Gilbert. At all times relevant to this Complaint, Defendant Milley acted or failed to act under color of state and federal law.

35. Defendant **Jay Gilbert** was at all times relevant to this Complaint a Deportation Officer employed by I.C.E.'s Enforcement and Removal Operations in Burlington. He is sued in his individual and official capacity. Defendant Gilbert coerced Plaintiff in an interview with Defendant Milley and asked Plaintiff to "come back with \$155.00", denying

Plaintiff's right to file D.H.S. form I-246. At all relevant times to this Complaint, Defendant Milley acted or failed to act under color of state and federal law.

36. Defendant **Franck Sapia** was at all times relevant to this Complaint an agent employed by I.C.E.'s Enforcement and Removal Operations in Burlington. He is sued in his individual and official capacity. Defendant Sapia joined Defendants Milley and Gilbert in discriminating against Plaintiff by denying him the right to file D.H.S. form I-246. At all relevant times to this Complaint, Defendant Sapia acted or failed to act under color of state and federal law.

37. Defendant **Robert McNeice** was at all times relevant to this Complaint a Deportation Officer employed by I.C.E.'s Enforcement and Removal Operations in Burlington. He is sued in his individual and official capacity. On information and belief, Defendant McNeice filled out a detainer form (D.H.S. form I-247) and transported Plaintiff from Brookline to Burlington. At all relevant times to this Complaint, Defendant McNeice acted or failed to act under color of state and federal law.

38. Defendants "**I.C.E. Does 21-30**" are individuals whose identities are not currently known to Plaintiff, and whose actions caused Mr. Andro's violation of his rights. Upon information and belief, they were at all relevant times agents, employees, officers or otherwise representatives of I.C.E. They are sued in their individual and official capacities.

39. At all times relevant to this Complaint, Defendants Gallagher, Thurlow, Chambers, Milley, Gilbert, Sapia and I.C.E. Does 21-30 were acting within the scope and course of their employment with I.C.E., an executive agency of the United States.

Norfolk Defendants

40. Defendant **Norfolk County** is a political subdivision of the Commonwealth of Massachusetts that can sue and be sued in its own name. By maintaining the unconstitutional policy or custom resulting from 8 C.R.F. § 287.7, Norfolk County caused a deprivation of Plaintiff's rights under the Fourth or Fourteenth Amendments. At all relevant times to this Complaint, Defendant Norfolk County acted or failed to act under color of state and federal law.

41. Defendant **Michael Morrissey** was at all relevant times to this Complaint elected District Attorney for Norfolk County. He is sued in his individual and official capacity. The Norfolk District Attorney's Office is responsible for the prosecution of criminal offenses that occur within the twenty-seven cities and towns of Norfolk County, including Brookline. The Office represents the Commonwealth of Massachusetts in all matter of prosecution and as such has a fiduciary duty for victims of domestic violence. By accepting contributions from employees, Defendant Morrissey failed to avoid the very appearance of conflicts of interest or impropriety and failed to maintain standards of equal protection and fairness of trial in violation of Mr. Andro's constitutional rights. At all relevant times to this Complaint, Defendant Morrissey acted or failed to act under color of state and federal law.

42. Defendant **Pamela Friedman** was at all times relevant to this Complaint an employee for the District Attorney. Defendant Friedman is employed as the Chief of the Victim Witness unit of the Norfolk County District Attorney's Office. She is sued in her individual and official capacity. Defendant Friedman denied Plaintiff victim's privilege thus creating a bias or discrimination against Mr. Andro in the prosecution of his case. At all relevant times to this Complaint, Defendant Friedman acted or failed to act under color of state and federal law.

43. Defendant **Erica L. Marathas** was at all times relevant to this Complaint a victim advocate for the Norfolk District Attorney. Defendant Marathas was the first victim advocate met by Plaintiff after Mr. Andro was assaulted by his live in partner. She is sued in her individual and official capacity. Defendant Marathas failed to properly inform Mr. Andro of his rights after he was assaulted. At all relevant times to this Complaint, Defendant Marathas acted or failed to act under color of state and federal law.

44. Defendant **Steven G. Nelson** was at all times relevant to this Complaint a victim advocate for the Norfolk District Attorney. Defendant Nelson was the victim advocate assigned to Plaintiff after Mr. Andro was released from I.C.E. unlawful incarceration. Defendant Nelson is sued in his individual and official capacity. Defendant Nelson discriminated against Mr. Andro by failing to advocate for Mr. Andro's victim rights in violation of the Massachusetts Victim Bill of Rights. At all relevant times to this Complaint, Defendant Nelson acted or failed to act under color of state and federal law.

45. Defendants "**Norfolk Does 11-20**" are individuals whose identities are not currently known to Plaintiff. Upon information and belief, they were at all times agents, employees, officers or otherwise representatives of the Norfolk County, and as such were operating under color of state law. At all times relevant to this Complaint, Defendants Michael Morrissey, Pamela Friedman, Erica L. Marathas, Steve Nelson and Norfolk Does 11-15 were acting within the scope and course of their employment with Norfolk County.

Suffolk Defendants

46. Defendant **Steven W. Tompkins** is and was at all relevant times the Sheriff of Suffolk County. He is sued in his individual and official capacity. Defendant Tompkins operates, supervises, and manages the South Bay House of Correction. Defendant Tompkins

is responsible for formulating, implementing, or allowing policies and/or customs applicable to the South Bay House of Correction, including that all detainees are lawfully detained under the U.S. Constitution and applicable laws. Defendant Tompkins is responsible for training and supervising staff, and also has the power and authority to change policies or customs, to ensure that those detainees are held in accordance with the U.S. Constitution and applicable laws. By detaining Mr. Andro for 17 days without verifying if I.C.E. had any probable cause to do so, Defendant Tompkins violated Mr. Andro's constitutional rights. At all times relevant to this Complaint, Defendant Tompkins acted or failed to act under the color of state law.

47. Defendants Suffolk Does 31-40 are individuals whose identities are not currently known to Plaintiff and who by their actions caused Mr. Andro's violation of his rights. Upon information and belief, they are and were at all relevant times agents, employees, officers or otherwise representative of the South Bay House of Correction where Mr. Andro was detained. They are sued in their individual and official capacities.

Facts

Defendants unlawfully imprisoned Mr. Andro

48. Mr. Andro was born in France and hold both French and Spanish citizenship. Mr. Andro has lived in the United States since 2005. Mr. Andro met his former partner David M. Sanderson in 2008.

49. Mr. Andro speaks English, French and Spanish. He speaks English with an accent. Although his name appears to be Hispanic, it is of Celtic origin.

50. On Friday March 14 2014, Mr. Andro's domestic partner David M. Sanderson assaulted Plaintiff. Mr. Andro called 911 to prevent an escalation of violence and requested assistance. On information and belief, Mr. Sanderson was arrested and charged the same day with assault and battery.

51. As a victim of domestic violence, Mr. Andro visited Defendant Marathas, a Victim Witness Advocate with the Brookline Court. Defendant Marathas and Norfolk Does 11-20 informed Plaintiff that he was within his rights to request medical supervision for Mr. Sanderson and that this could be advocated in a hearing on Monday March 17 2014. At no point in the conversation Defendant Marathas informed Mr. Andro that an alleged domestic violence abuser could retaliate against his victim by filing frivolous restraining order pursuant to M.G.L. 209A and mentioned the availability of such order against his abuser.

52. On March 17 2014, Mr. Sanderson filed a restraining order against Plaintiff and less than an hour later, the Brookline Police showed up at Plaintiff's door to evict him. Defendants Lloyd and Gruber arrested plaintiff and transported him to the police station to be booked into custody. During the booking process, Plaintiff was charged with violating a restraining order. Along with Defendants McCarthy and Cappuccio, they questioned Mr. Andro's national origin yet did not afford him any phone call to his consular representatives in violation of art. 36 of the Vienna Convention. Mr. Andro was not brought before a judge or a neutral adjudicator on March 17th, but instead was held until the morning of March 18th. During this time, Mr. Andro was stripped of his clothing, was jailed in below room temperatures and experience severe back pains that resulted in his transportation to Beth Israel Hospital to seek medical attention.

53. A formal complaint filed a few days later with the Brookline Police regarding the conditions of his incarceration was ignored.

54. Mr. Andro's conviction of violating a restraining order is being appealed. The restraining order filed by his former live in partner against him was vacated on April 8th 2014.

55. After questioning Mr. Andro's national origin on Monday March 17th 2014, unbeknownst to Plaintiff, Defendants McCarthy, Gruber, Lloyd, Cappuccio and Brookline Does 1-10 reported Mr. Andro's information to I.C.E. and secured a detainer from Defendant McNeice. On information and belief, they never notified Mr. Andro that they were sending his information to I.C.E.

56. On information and belief, Defendant McNeice endorsed the immigration detainer without dating and signing and faxed it to the Brookline Police Department. On information and belief, Defendant McNeice issued the immigration detainer against Mr. Andro with the intention and expectation that the detainer would prevent Mr. Andro's release from police custody.

57. Defendant McNeice issued the detainer without probable cause.

58. Instead, Defendant McNeice assumed without sufficient legal cause that Mr. Andro should be detained. On information and belief, he made this assumption based on Mr. Andro's ethnicity, and/or national origin (as indicated by his place of birth, Spanish-sounding name, and/or other information transmitted from the Brookline Police Department).

59. No I.C.E. official interviewed Mr. Andro before the detainer was issued.

60. No charging document such as a warrant or a judicial order was attached to the detainer.

61. The immigration detainer faxed to Brookline Police provided Mr. Andro's name in the field labeled "[n]ame of alien," stated that his "[n]ationality" was "France," and stated that D.H.S. "[d]etermined that there is reason to believe the individual is an alien subject to removal from the United States." Yet as a reason D.H.S. would have to detain Mr. Andro, the box "other" is checked with the mention "field request."

62. The detainer further requests that the Brookline Police maintain custody of Mr. Andro "[f]or a period not to exceed 48 hours" and that he be provided with "[a] copy of the detainer." Mr. Andro never received copy of the detainer, against D.H.S. instructions. None of the defendants notified him of any detainer before he was arraigned on Tuesday March 18 2014.

63. The detainer further notifies that "[i]f the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the I.C.E. Law Enforcement Support Center at (802) 872-6020." The Brookline Police and the District Attorney's Office failed to notify D.H.S. that Mr. Andro was a victim of domestic violence and that his "status as a witness" in Commonwealth of Massachusetts v. David M. Sanderson might be relevant to the Prosecution.

64. By neglecting to report this matter to D.H.S., Brookline Police and the Norfolk District Attorney's Office demonstrated in violation of due process a singular lack of interest for Mr. Andro's victim rights in favor of the defendant in "Commonwealth of Massachusetts v. David M. Sanderson." Both Defendants Brookline Police and Norfolk

District Attorney' Office showed a distinctive bias against Mr. Andro by failing to maintain equal protection standards in prosecutorial matters.

65. On Tuesday March 18 2014, Mr. Andro was brought before Judge Mary Dacey White of the Brookline District Court.

66. During Plaintiff arraignment, based on Plaintiff criminal record (or lack thereof), Plaintiff was released on his own recognizance. The policy mandating the release of arrested defendants on personal recognizance is bottomed on the belief that defendants should be burdened with the fewest restrictions on their pretrial liberty that will adequately assure their presence at trial. Any person charged with an offense, other than an offense punishable by death, is required by law to be released on his personal recognizance pending trial unless the person setting the terms of release determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

67. Despite this policy, Brookline Police requested to enforce an I.C.E. detainer without probable cause in violation of Mr. Andro's constitutional rights and despite the Police Department and District Attorney's Office awareness that Mr. Andro was a victim of domestic violence a few days prior.

68. This was the first time Mr. Andro learned that an immigration detainer had been lodged against him.

69. Mr. Andro's status as a victim of domestic violence was ignored during the arraignment session despite Defendant Marathas in the courtroom.

70. At this time, Mr. Andro was eligible for release from criminal custody and should have been released because no lawful authority existed for any continued detention. Yet

despite the judge order that he be released, Brookline and Norfolk Defendants refused to release Mr. Andro solely because of the immigration detainer that I.C.E. had issued.

71. By depriving Mr. Andro of his liberty, Brookline and Norfolk Defendants effected an unreasonable seizure of Mr. Andro in violation of the Fourth Amendment.

72. Brookline and Norfolk Defendants also deprived Mr. Andro of his liberty by failing to provide him with a copy of the detainer and with an opportunity to respond to the allegations (if any) in the immigration detainer.

73. Later that same day, according to police report, Defendant McNeice and I.C.E. Does 21-30 picked up Mr. Andro in Brookline and unbeknownst to Plaintiff, transported him into custody to Burlington, MA.

74. Mr. Andro was handcuffed, shackled and placed into the back of a van. Mr. Andro was not secured by seatbelt during trips to and from I.C.E. Boston Field Office in Burlington. The van was operated recklessly and dangerously, with deliberate indifference to Mr. Andro's and eventually other passengers' safety, and caused Mr. Andro to slide and hit fixtures (and/or other passengers). Because of the van reckless operation, Mr. Andro feared for his life and was physically injured.

75. While in custody in Burlington, Mr. Andro was shown a video that provided information about relief that victims of crime may seek while in I.C.E. custody. Mr. Andro then notified I.C.E. Does 21-30 that he was a victim of domestic violence. This information was ignored.

76. From Burlington, Mr. Andro was transported to South Bay House of Correction. In total, the immigration detainer caused him to be detained illegally and unconstitutionally

for 18 days and 17 nights. During his detention, Mr. Andro wrote several complaints about the conditions of his detention.

77. The conditions of Mr. Andro's confinement were punitive and caused him serious harm.

78. While jailed at South Bay House of Correction, Mr. Andro was denied access to basic services, such as access to the law library. Mr. Andro reported several issues to South Bay House of Correction officials and to his I.C.E. jailors.

79. As a result of his imprisonment, Mr. Andro suffered the above-described physical pain and injuries, as well as emotional distress. During his imprisonment, Mr. Andro felt scared, anxious, nervous, stressed, humiliated, and depressed and still has difficulty sleeping. After his release, he experiences a lasting fear of other people, especially law enforcement officials, and was afraid to go about his daily activities.

80. Upon his release from detention pursuant to a writ of Habeas Corpus, the Brookline Police and the Brookline Housing Authority prevented Mr. Andro from gaining access to his belongings.

81. The District Attorney violated the Massachusetts Victim Bill of Rights by failing to inform Mr. Andro of the proceedings in "Commonwealth of Massachusetts v. Sanderson" and did not make contact with Mr. Andro before July 2014 through a new Victim Witness Advocate (Defendant Nelson).

82. In October 2014, based on a body of evidence against the Norfolk District Attorney's Office, Mr. Andro filed a complaint with the Massachusetts Commission Against Discrimination alleging serious misconducts by Defendants Morrissey, Friedman, Marathas and Nelson.

In Massachusetts, I.C.E. officials and state officials routinely collaborate to issue unlawful immigration detainers

83. On information and belief, Mr. Andro's experience is not unique and occurs with regularity in Massachusetts.

84. While in detention, Mr. Andro met several detainees whose conditions of apprehension and consequent detention were very shoddy. Detainees who were not provided with a copy of their detainer by local law enforcement, and/or who were issued a detainer lacking probable cause, and/or whose due process and equal protection rights were violated.

85. On information and belief, I.C.E. Defendants and state authorities routinely collaborate to issue and enforce immigration detainers against people based on their race, ethnicity, and/or country of origin, without sufficient investigation into their immigration status and who are detained without probable cause to believe that they are subject to removal.

86. On information and belief, during processing after a person is arrested and/or during the booking process, Brookline Defendants regularly ask arrestees questions such as "Where were you born?" These questions have the foreseeable effect of wrongfully targeting foreign-born people for immigration detainers on the basis of their race, ethnicity, and/or national origin. In addition, on information and belief, the Brookline Defendants subject certain arrestees to additional questioning about their immigration status, and/or refer them to I.C.E. for consideration of whether to issue a detainer, based on their appearance, country of birth, English language ability, and/or Spanish or Spanish-sounding surnames. I.C.E. Defendants, Brookline and Norfolk Defendants know or should know that these practices are discriminatory in purpose or effect.

87. On information and belief, when an arrestee answers these questions by providing a foreign country of birth, has a foreign-sounding last name, speaks English with an accent, and/or appears to be Hispanic, the Brookline Defendants often communicate his or her name and other demographic information to I.C.E. Defendants.

88. On information and belief, upon receiving this information from the Brookline Defendants, I.C.E. Defendants often fail to sufficiently investigate the arrestee's immigration background before issuing an immigration detainer. On information and belief, I.C.E. Defendants issue such detainers without probable cause to believe that the individual is subject to removal by I.C.E. On information and belief, I.C.E. Defendants issue detainers without a sufficient investigation to determine whether arrestees who are perceived to be "foreign" (based on their place of birth, race or ethnicity, foreign-sounding last names, and/or English language ability) are perhaps U.S. citizens. Defendants play a game of chance knowing that this could adversely affect individuals on the basis of their race, ethnicity, and/or national origin by causing them to be unlawfully detained. *See Galarza v. Szalczyk*.

89. Upon information and belief, at all times relevant to this Complaint, neither I.C.E., nor Brookline nor Norfolk Defendants presented arrestees with evidence such as an arrest warrant or a judicial order to legally detain individuals issued an immigration detainer.

90. I.C.E. Defendants intend and expect immigration detainers to prevent release of the named individuals once their local or state custody has come to an end in accordance with the mandatory language in the detainer form.

91. The applicable federal regulation makes clear, however, that the immigration detainer is merely a “request,” not a legally enforceable command.

92. Despite this status of request, I.C.E. continues to obfuscate this issue leading local and state officials to believe that they are required to continue detaining individuals on the basis of immigration detainers even after their local custody has come to an end.

93. Unlike criminal warrants, immigration detainers are not based upon a probable cause determination by a neutral judicial officer. Rather, they are notices issued by I.C.E. itself.

94. On information and belief, at all times relevant to this Complaint, I.C.E.’s practice was to issue detainers even where probable cause was lacking. In fact, form I-247 specifically purports to authorize detention based solely upon the fact that “[t]here is reason to believe the individual is an alien subject to removal from the united States.”

95. On information and belief, at all times relevant to this Complaint, Brookline and Norfolk Defendants had a policy of enforcing all immigration detainers received from I.C.E., and thus routinely agreed to imprison named individuals on less than probable cause. On information and belief, at all times relevant to this Complaint, Brookline and Norfolk Defendants had a policy or practice of disregarding or neglecting to request any available evidence, i.e. charging documents showing that individuals named in detainers are subject to arrest warrant or judicial orders of detention.

96. On information and belief, at all times relevant to this Complaint, Brookline and Norfolk Defendants had no training and no policies in place to prevent unlawful detentions based on wrongly issued immigration detainers. Nor did they have any training or policies in place regarding the treatment of individuals subject to detainers.

Defendants S. Gallagher, Thurlow, O'Leary, Tompkins are liable as supervisors for the violation of Mr. Andro's rights under the Fourth, Fifth and Fourteenth Amendments

97. At all times relevant to this Complaint, Defendants S. Gallagher and Thurlow knew or should have known that their subordinates, including Defendant McNeice, regularly issued immigration detainers without conducting sufficient investigation (since subordinates even lodge detainers against U.S. citizens, *See Morales v. Chadbourne*) including and not limited to obtaining charging documents and without probable cause to believe that the subject of the immigration detainer was a subject to removal and detention; and issued immigration detainers with the intention and expectation that they would cause the individual to be detained, in violation of the Fourth Amendment.

98. Defendants S. Gallagher and Thurlow knew or should have known that their subordinates, including Defendant McNeice, regularly issued immigration detainers without providing the charging documents that present evidence mandating subjects' detention, thereby violating the Due Process Clause.

99. Defendants S. Gallagher and Thurlow knew or should have known that their subordinates, including Defendant McNeice, routinely failed to sufficiently investigate arrestees' immigration status because of their foreign place of birth and/or perceived race or ethnicity, thereby subjecting these individuals to adverse treatment on the basis of their race, ethnicity, and/or national origin in violation of the Equal Protection Clause.

100. Defendants S. Gallagher and Thurlow formulated, implemented, encouraged, or willfully ignored these policies and customs with deliberate indifference to the high risk of violating Mr. Andro's constitutional rights under the Fourth and Fifth Amendments.

101. Defendants S. Gallagher and Thurlow had the power and authority to change these policies or customs by, for instance, training officers such as Defendant McNeice to

perform a timely and adequate investigation into individuals' immigration status before issuing detainers and provide all charging documents mandating an individual's detention. Yet neither Defendant S. Gallagher nor Defendant Thurlow changed these harmful policies and customs, thereby causing the violation of Mr. Andro's constitutional rights.

102. At all relevant times to this Complaint, Defendant O'Leary knew or should have known that his subordinates including Defendants Lloyd, Gruber, McCarthy, Cappuccio and Brookline Does 1-10 regularly received immigration detainers from I.C.E. that were improperly motivated, without probable cause to believe that the arrestee was subject to detention and removal. Defendant O'Leary knew or should have known that his subordinates routinely continued detaining the subjects of such detainers even after all lawful bases for detention had expired, in violation of the Fourth Amendment.

103. Defendant O'Leary knew or should have known that his subordinates regularly acted on immigration detainers without providing the subjects with notice of action (D.H.S. form I-247) and any charging documents, thereby violating the due Process Clause.

104. Defendant O'Leary knew or should have known that his subordinates routinely reported detainees' information to I.C.E. and failed to inquire into the basis of detainers solely because of the detainees' foreign sounding names, English language ability, appearance, and/or responses to processing or booking questions (e.g., "Where were you born?") that target individuals born abroad, including naturalized U.S. citizens.

105. Defendant O'Leary failed to implement any policies or provide any training to his subordinates regarding the treatment of individuals held solely on the purported authority of immigration detainers.

106. Defendant O'Leary formulated, implemented, encouraged or willfully ignored these policies and customs (or lack of policies and customs) with deliberate indifference to the high risk of violating Mr. Andro's constitutional rights under the Fourth and Fourteenth Amendments.

107. Defendant O'Leary had the power and the authority to change these policies or customs, but he did not, thereby causing the violation of Mr. Andro's constitutional rights.

108. At all relevant times to this Complaint, Defendant Tompkins knew or should have known that his subordinates including Suffolk Does 21-30 detain individuals without probable cause for an agency (namely I.C.E.) that issue unlawful detainers. Defendant Tompkins knew or should have known that his subordinates routinely kept detaining subjects of such detainers even after all lawful bases for detention had expired, in violation of the Fourth Amendment.

109. Defendant Tompkins knew or should have known that his subordinates regularly failed to act on requests from detainees to be provided access to Court hearings, thereby violating the due Process Clause.

110. Defendant Tompkins failed to implement any policies or provide any training to his subordinates regarding the treatment of individuals held solely on the purported authority of immigration detainers.

111. Defendant Tompkins formulated, implemented, encouraged or willfully ignored these policies and customs (or lack of policies and customs) with deliberate indifference to the high risk of violating Mr. Andro's constitutional rights under the Fourth and Fourteenth Amendments.

112. Defendant Tompkins had the power and the authority to change these policies or customs, but he did not, thereby causing the violation of Mr. Andro's constitutional rights.

113. As a direct and proximate result of the conduct of Defendants, Mr. Andro suffered substantial damages, including physical pain and suffering, emotional distress and harm, embarrassment, lost wages, other financial losses, and lost liberty.

114. Defendant's actions deprived Mr. Andro of his liberty and thus amounted to an unreasonable seizure of his person.

115. Defendant's actions deprived Mr. Andro of his liberty with reckless indifference to the absence of any lawful basis for detention.

116. Defendants' actions were arbitrary and capricious and had no legitimate or rational basis.

117. Defendants' actions were based on Mr. Andro's race, ethnicity, and/or national origin.

118. Defendants' actions failed to provide Mr. Andro with due process of law.

119. At all times relevant to this complaint, Defendants' conduct was deliberately indifferent to and in willful, reckless and callous disregard of Mr. Andro's rights under federal and state law.

120. Because of Defendants' conduct, Mr. Andro reasonably fears that he could be subject once again to an invalid immigration detainer in the future, because of the procedurally and constitutionally flawed system I.C.E., Brookline and Norfolk Defendants have in place for issuing and lodging unlawful immigration detainees.

121. No remedy at law is adequate to ensure that Mr. Andro will not be subjected to an invalid immigration detainer or to unlawful detention in Massachusetts in the future.

COUNT I

**Fourth Amendment and Due Process (*Bivens*)
(Unreasonable seizure)**

Plaintiff v. Defendants McNeice, Thurlow, S. Gallagher and I.C.E. Does 21-30

122. The foregoing allegations are repeated and incorporated as if fully set forth herein.

123. The Fourth Amendment to the U.S. Constitution prohibits: “unreasonable searches and seizures.”

124. On March 17th 2014, Defendant McNeice under policies and customs set by Defendants Thurlow and Gallagher issued a detainer request against Mr. Andro while Mr. Andro was under custody of the Brookline Police. On March 18th 2014, the Commonwealth of Massachusetts ordered Mr. Andro released on personal recognizance. Yet the detainer issued the day before by Defendant McNeice prevented Mr. Andro’s release and succeeded in causing a deprivation of Mr. Andro’s liberty. Despite securing his release on personal recognizance, Mr. Andro was illegally held at the request of Brookline Police and subsequently detained for 17 days by I.C.E.

125. Under the Fourth Amendment, Mr. Andro’s seizure must be either based on a warrant or if warrantless supported by probable cause. *See Kerr v. California*, 374 U.S. 23, 34-35 (1963). Because an ICE detainer is not a warrant, Mr. Andro’s seizure should have been supported by probable cause to pass constitutional muster.

126. The detainer shows no probable cause to support its issuance. The detainer specifically stated that Mr. Andro should be held solely at the personal request of Defendant McNeice. A personal or “Field Office” request is not enough to establish probable cause because the Fourth Amendment does not permit seizures for mere arbitrary requests.

127. Defendant McNeice's detainer only indicates that Plaintiff is a national of France. The detainer does not show that D.H.S. "*had initiated removal proceedings and served a Notice to Appear or other charging document*", nor that D.H.S. "*had served a warrant of arrest for removal proceedings*", nor that D.H.S. "*had obtained an order of deportation or removal from the United States*". If the detainer was issued only to verify Mr. Andro's immigration status, then the detainer raises constitutional concerns. *See Arizona v. United States*, 132 S.Ct. 2492, 2509 (2012)

128. There was no probable cause for the state or federal governments to detain Mr. Andro.

129. Upon information and belief, Defendant McNeice and I.C.E. Does 21-30 seized Mr. Andro and transported him to I.C.E./E.R.O. jail in Burlington without probable cause. Mr. Andro had been ordered released on his personal recognizance because he was unlikely to default on any future hearings. This unreasonable seizure actually led to the opposite. I.C.E. later denied Mr. Andro access to the court for a hearing scheduled on March 27, 2014.

130. This detention based on D.H.S. form I-247 constituted an unreasonable seizure in violation of Mr. Andro's Fourth amendment rights as well as an unlawful deprivation of Mr. Andro's liberty in violation of Due Process.

COUNT II

Fifth Amendment and 8 U.S.C. § 1357 (*Bivens*) (Procedural Due Process)

Plaintiff v. Defendants Chambers, Milley, Thurlow, S. Gallagher and I.C.E Does 21-30

131. The foregoing allegations are repeated and incorporated as if fully set forth herein.

132. The Fifth Amendment to the U.S. Constitution provides: “No person shall be... deprived of life, liberty or property, without due process of law...”

133. By failing to follow I.C.E.’s own governing statutes and regulations, by depriving Mr. Andro of due process, Defendants Chambers, Milley, Gilbert, Sapia, Thurlow, Gallagher and I.C.E. Does 21-30 harmed Plaintiff, thwarted State court, obstructed justice and offended the rule of law in violation of the Due Process Clause of the Fifth Amendment.

134. Defendants violated Mr. Andro’s Fifth Amendment right to Due Process as follows:

a. Defendants Chambers and Milley denied Plaintiff access to a court hearing scheduled on March 27th 2014;

b. Defendants Chambers and I.C.E. Does 21-30 failed to allow in a timely fashion Plaintiff’s call to his attorney in violation of M.G.L. 276 §33A. Once he was authorized to give the call, Defendants Chambers and I.C.E. Does 21-30 monitored Plaintiff’s call to his attorney. Defendants Chambers and I.C.E. Does 21-30 stood in the same room where Mr. Andro was making a call to his attorney. When Plaintiff asked his jailors why he was not allowed a private and confidential phone call to his counsel, Defendant Chambers and Defendants I.C.E. Does 21-30 answered that making such call was “ a privilege and not a right and that *Plaintiff* should be grateful to be allowed to make such call.”

c. Defendants Sapia, Milley and Chambers denied Mr. Andro the filing of D.H.S. form I-246

COUNT III

**Fifth Amendment (*Bivens*)
(Equal Protection)**

Plaintiff v. Defendants McNeice, Milley, Gilbert, Sapia, Thurlow, S. Gallagher

135. The foregoing allegations are repeated and incorporated as if fully set forth herein.

136. By issuing a detainer against Mr. Andro solely on the basis of his ethnicity, national origin, and/or foreign-sounding name, Defendant McNeice under the supervision of Defendants Thurlow and Gallagher targeted Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin.

137. Using Mr. Andro's nation of birth as a sole permissible basis for his loss of liberty does not pass constitutional muster. *Diaz-Bernal v. Myers*, 758F. Supp. 2d 106, 135 (d. Conn 2010) (seizing a person "solely on the basis of race or national origin, ... violate[s] clearly established constitutional rights"); *Sow v. Fortville Police Dep't*, 636 F.3d 293, 303 (7th Cir. 2011) (finding that targeting a person based on their national origin violates the Equal Protection Clause).

138. Mr. Andro's constitutional rights were violated when Defendant McNeice under supervision of Defendants Thurlow and Gallagher acted with a discriminatory purpose. Mr. Andro was categorized because he is foreign born and was treated differently based on this impermissible characteristic.

139. Defendants Milley, Gilbert, Sapia denied Mr. Andro's filing of D.H.S. form I-246. The form was attached to a fee waiver request. Instead of denying the fee waiver or the application, defendants denied Plaintiff to file his application in violation of the agency's

own governing rules and regulations. Mr. Andro was coerced to leave the federal building without opportunity to file his application.

140. Defendants targeted Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin.

COUNT IV

**Fourth and Fourteenth Amendment (42 U.S.C. § 1983)
(Unreasonable seizure; Deprivation of Liberty and Due Process)
Plaintiff v. Defendants O’Leary, Lloyd, Gruber, McCarthy, Cappuccio,
Brookline Does 1-10, Tompkins, Suffolk Does 31-40.**

141. The foregoing allegations are repeated and incorporated as if fully set forth herein.

142. The Fourth Amendment to the U.S. Constitution prohibits: “unreasonable searches and seizures.” The Fourth Amendment’s guarantees are applied to the States through the Fourteenth Amendment. *See Wolf v. Colorado*, 338 U.S. 25, 40 (1949).

143. On March 17th 2014, Defendants Lloyd, Gruber, McCarthy, Cappuccio, Brookline Does 11-20 under the supervision of Defendant O’Leary caused a detention request to issue against Mr. Andro. Although Plaintiff was ordered released on personal recognizance, his “new” detention the next morning based on an I.C.E. detainer constitutes a new seizure and must meet all of the Fourth Amendment requirements. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005). A finding of probable cause would require specific “facts and circumstances sufficient to warrant a prudent [person] in believing” that Mr. Andro should be detained. *See Gerstein v. Pugh*, 420 U.S. 103, 111 (1975). The only fact that the state had

in deciding whether to detain Mr. Andro was that he was born in another country (as are 17 million of United States citizens).

144. The unsigned and undated detainer showed Mr. Andro was born in France. Defendant McNeice from the Boston Field Office issued the arbitrary detainer as a “FIELD REQUEST” with no further explanation. The request (namely D.H.S. form I-247) with no attached order of deportation, no warrant of arrest for removal proceedings, no notice to appear in immigration court, in short with no charging document, was no acceptable probable cause for detention.

145. A detainer is not facially valid without probable cause or it raises constitutional concerns. Detention based on a mere request and on someone’s foreign place of birth therefore raises constitutional concerns. Massachusetts authorities had no probable cause to keep detaining Mr. Andro. The Commonwealth of Massachusetts was faced with a facially invalid request to detain Mr. Andro. The request was lodged solely based on Plaintiff’s country of birth.

146. Defendants O’Leary, Lloyd, Gruber, McCarthy, Cappuccio, Brookline Does 1-10, Tompkins and Suffolk Does 31-40 caused Mr. Andro to be detained in jail for 17 days after he was entitled to release and after any authority to detain him on criminal charges ceased, since Mr. Andro had secured his release on personal recognizance.

147. “The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968)).

148. Defendants thereby effected unreasonable seizure and deprivation of liberty in violation of Mr. Andro's rights under the Fourth and Fourteenth Amendments.

COUNT V
Fourteenth Amendment (42 U.S.C. § 1983)
(Due Process)
Plaintiff v. Defendants O'Leary, Lloyd, Gruber, McCarthy, Cappuccio,
Brookline Does 1-10, Tompkins, Suffolk Does 31-40.

149. The foregoing allegations are repeated and incorporated as if fully set forth herein.

150. The Fourteenth Amendment to the U.S. Constitution provides: "No State shall... deprive any person of life, liberty, or property, without due process of law..."

151. A procedural due process claim lies when an individual is deprived of a cognizable liberty (or property) interest without being afforded notice and an opportunity to be heard. *See Roberts v. Maine*, 48 F.3d 1287, 1292 (1st Cir. 1995) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Pre-deprivation process may be required when the deprivation of a detainee's liberty interests is not "unpredictable" (*Zinerman v. Burch*, 494 U.S. 113, 136 (1990)) and if the government is in a "position to provide for predeprivation process."

152. Ordinarily, a pre-deprivation hearing must have minimal procedural protections such as a notice of the accusations against the individual: Mr. Andro received none (copy of the detainer was never given to him). No charging evidence against him (i.e. order of deportation, warrant of arrest for removal proceedings, notice to appear in immigration court) was presented and the Plaintiff did not have an opportunity to respond.

153. Mr. Andro was not allowed an opportunity to contest the detainer before being detained. He was deprived of a hearing due to Norfolk County's policy of treating I.C.E. detainers as mandatory under all circumstances. However, I.C.E. detainers are not mandatory. Federal regulations clearly label I.C.E. detainers as "requests." Subsection (d) of 8 C.F.R. § 287.7, titled "Temporary detention at Department request." The detainer is a *request* (emphasis added). Courts agree - a detainer is "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent." *Fex v. Michigan*, 507 U.S. 43, 44 (1993). The language of both the regulations and case law indicates that detainers are not mandatory. Authorities of the Commonwealth of Massachusetts including Norfolk County authorities should have reasonably concluded as such.

154. I.C.E.'s detainer was erroneously treated as mandatory grounds for imprisonment; it was incumbent on the Commonwealth of Massachusetts to put due process protections in place to avoid erroneous deprivations of liberty. The Commonwealth detained Mr. Andro without offering any opportunity to contest the I.C.E. detainer. Instead the Commonwealth blindly complied with a request that showed no probable cause.

155. Defendants O'Leary, Lloyd, Gruber, McCarthy, Cappuccio, Brookline Does 1-10, Tompkin, Suffolk Does 31-40 violated Mr. Andro's Due Process rights under the Fourteenth Amendment by imprisoning him on less than probable cause and without providing him with copy of the detainer (D.H.S. form I-247) or an opportunity to respond.

COUNT VI

Fourteenth Amendment (42 U.S.C. § 1983)

(Equal Protection)

**Plaintiff v. Defendants O’Leary, Lloyd, Gruber, McCarthy, Cappuccio, D. Gallagher,
Richards, Campbell, Paster, Dober, Baronas, Chambliss, Brookline Does 1-10
Morrissey, Friedman, Marathas, Nelson, Norfolk 6-10**

156. The foregoing allegations are repeated and incorporated as if fully set forth herein.

157. The Fourteenth Amendment to the U.S. Constitution provides: “No State shall... deny to any person within its jurisdiction the equal protection of the laws.”

158. By causing Mr. Andro’s information to be reported to I.C.E. solely on the basis of his foreign-sounding name and/or English-language ability, Defendants O’Leary, Lloyd, Gruber, McCarthy, Cappuccio subjected Mr. Andro to adverse treatment based on his ethnicity and/or national origin, in violation of his right to equal protection under the Fourteenth Amendment.

159. By issuing a detainer against Mr. Andro solely on the basis of his ethnicity and/or national origin, Defendants Lloyd, Gruber, McCarthy, Cappuccio targeted Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin. Defendants treated Mr. Andro as presumptively subject to detention and removal on the basis of his national origin.

160. By denying Plaintiff’s victim certification, Defendant Gallagher discriminated against Mr. Andro based on his ethnicity, and/or national origin. Defendant Gallagher failed to use a discretionary power vested by Congress to prevent discrimination, thus targeting Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated

his right to be free from discrimination on the basis of national origin under the Fourteenth Amendment.

161. By honoring an I.C.E. detainer (a non binding request that was accompanied by neither a warrant, an affidavit of probable cause, nor a removal order), the Norfolk District Attorney and his Office set a course of discriminations against Mr. Andro, based on his national origin. Along with Defendant Gallagher, Defendants Morrissey and Friedman discriminated against Mr. Andro by denying him victim certification, thus targeting Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin under the Fourteenth Amendment.

162. By choosing Attorney Lynch as special prosecutor, Defendants Norfolk 11-20 elected to provide another accessory to discrimination, targeting Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin under the Fourteenth Amendment.

163. Defendant Nelson failed to provide support and assistance pursuant to the Massachusetts Victim Bill of Rights, thus targeting Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin.

164. By causing and promoting de facto Mr. Andro's in absentia status from the Brookline District Court in favor of a U.S. born litigant, by failing to seek the incriminating evidences against Mr. Andro's abuser, Defendants Gallagher, Morrissey, Friedman, Nelson and Norfolk County Does 11-20 subjected Mr. Andro to adverse treatment based on his

ethnicity and/or national origin, in violation of his right to equal protection under the Fourteenth Amendment.

165. Plaintiff presents evidence that both conscious and unconscious bias has permeated the Norfolk District Attorney's Office and the District criminal justice system. From arrest to Victim Advocacy, this bias works in favor of U.S. citizens, while noncitizens suffer. The inequality of treatment experienced by Plaintiff and based on his national origin allows Norfolk Defendants to go nolle prosequi on U.S. citizen perpetrators and getting off without any consequences. The Norfolk District Attorney's Office for instance favors certain categories of people (U.S. citizens) in its prosecutorial efforts, not only discriminating against a protected characteristic (one's national origin) but also undermining the core mission of the justice system to treat everyone fairly.

166. Using Mr. Andro's nation of birth as a sole permissible basis for his loss of liberty does not pass constitutional muster. *See Diaz-Bernal v. Myers*, 758F. Supp. 2d 106, 135 (d. Conn 2010) (seizing a person "solely on the basis of race or national origin, ... violate[s] clearly established constitutional rights"); *Sow v. Fortville Police Dep't*, 636 F.3d 293, 303 (7th Cir. 2011) (finding that targeting a person based on their national origin violates the Equal Protection Clause). Mr. Andro's rights were violated when he was detained after being ordered released on personal recognizance, because of his national origin and that the Brookline Police Department, Brookline Housing Authority and Norfolk County acted with a discriminatory purpose. Mr. Andro was categorized because he is foreign born and was treated differently based on this impermissible characteristic.

167. Defendants targeted Plaintiff illegally under the Equal Protection Clause of the Fifth Amendment and violated his right to be free from discrimination on the basis of national origin.

168. By depriving Mr. Andro access to his belongings, Defendants Dober, Baronas, Chambliss and Richards subjected Mr. Andro to adverse treatment and property loss, in violation of his right to due process of law.

COUNT VII

False Arrest / False Imprisonment

**Plaintiff v. Defendants O'Leary, Lloyd, Gruber, McCarthy, Cappuccio,
Brookline Does 1-10, Tompkins, Suffolk Does 31-40**

169. The foregoing allegations are repeated and incorporated as if fully set forth herein.

170. Defendants Lloyd, Gruber, McCarthy, Cappuccio, Brookline Does 1-10, Suffolk Does 31-40 inflicted personal injury on Mr. Andro by subjecting him to false arrest and imprisonment. They intentionally caused Mr. Andro's detention solely on the basis of an immigration detainer issued without legal justification.

171. There was no lawful justification for Mr. Andro's detention after the Brookline court issued an order of release on personal recognizance.

172. Mr. Andro was aware of his imprisonment and did not consent to it.

173. Defendant O'Leary and Tompkins intentionally, recklessly, and/or negligently established and/or enforced policies and practices that caused Mr. Andro to be unlawfully and tortuously detained. He also failed to enforce an order that would have prevented Mr. Andro's unlawful and tortious detention.

COUNT VIII

Negligence

Plaintiff v. Defendants O’Leary, McCarthy, Campbell, Paster, Gruber, Lloyd, Cappuccio, D. Gallagher, Richards, Brookline Does 1-10, Morrissey, Friedman, Nelson, Norfolk Does 11-20

174. The foregoing allegations are repeated and incorporated as if fully set forth herein.

175. Defendants O’Leary, McCarthy, Campbell, Gruber, Lloyd, Cappuccio, D. Gallagher, Richards, Brookline Does 1-10, Morrissey, Friedman, Nelson and Norfolk Does 11-20 have a duty to act with reasonable care and not subject individuals to personal injury during the course of their duties. Defendants have duties not to subject individuals to discriminatory treatment on the basis of national origin; unreasonable searches and seizures; or deprivation of liberty without due process. They also have duties to adequately train and supervise their subordinates and to establish and enforce policies and practices to prevent the occurrence of constitutional and tortious actions by their subordinates.

176. Defendants O’Leary, McCarthy, Campbell, Gruber, Lloyd, Cappuccio, D. Gallagher, Richards, Brookline Does 1-10, Morrissey, Friedman, Nelson, Norfolk Does 11-20 breached these duties and the breach was the proximate cause of Mr. Andro’s unlawful detention and resulting injuries.

COUNT IX

False Arrest / False Imprisonment

(Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346)

Plaintiff v. Defendant United States

177. The foregoing allegations are repeated and incorporated as if fully set forth herein.

178. Defendants S. Gallagher, Thurlow, McNeice and I.C.E. Does 21-30 intentionally caused Mr. Andro to be imprisoned on the basis of an immigration detainer issued (without legal justification.)

179. There was no lawful justification for Mr. Andro's detention after the Brookline District Court ordered him released on his own recognizance.

180. Mr. Andro was aware of his imprisonment and did not consent to it.

181. Defendants S. Gallagher, Thurlow, McNeice and I.C.E. Does 21-30 intentionally, recklessly, and or negligently established and or enforced policies and practices that caused Mr. Andro to be unlawfully and tortuously detained. They also failed to establish and/or enforce policies and practices that would have prevented Mr. Andro's unlawful and tortious detention.

182. Defendants S. Gallagher, Thurlow, Chambers, Milley, Gilbert, Sapia, McNeice and I.C.E. Does 21-30 were at all relevant times employees of the United States acting within the scope and course of their employment. Under the FTCA, Defendant United States is liable for these actions.

COUNT X
Negligence (Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346)
Plaintiff v. Defendant United States

183. The foregoing allegations are repeated and incorporated as if fully set forth herein.

184. I.C.E. officials have a duty to act with reasonable care and not subject individuals to personal injury during the course of their duties. I.C.E. officials have duties not to subject individuals to discriminatory treatment on the basis of ethnicity and/or national origin;

unreasonable search and seizures; or deprivation of liberty without due process. I.C.E. officials also have duties to adequately train and supervise their subordinates and to establish and enforce policies and practices to prevent the occurrence of unconstitutional and tortious actions by their subordinates.

185. Here I.C.E. agents breached these duties in the course and scope of their employment, and the breach was the proximate cause of Mr. Andro's unlawful detention and resulting injuries.

186. Defendants S. Gallagher, Thurlow, Chambers, Milley, Gilbert, Sapia, McNeice and I.C.E. Does 21-30 were at all relevant times employees of the United States acting within the scope and course of their employment. Under the FTCA, Defendant United States is liable for these actions.

COUNT XI
Declaratory Relief (5 U.S.C. § 706)

187. The Administrative Procedure Act provides Courts with jurisdiction to "hold unlawful and set aside agency action, findings, and conclusions found to be: arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right..." 5 U.S.C. § 706(2). The A.P.A. also authorizes review of agency action.

188. Arbitrary, capricious requests under 8 C.F.R. § 287.7 constitutes unlawful practices and are contrary to constitutional rights. The actions under the law is unlawful for it gives the appearance of judicial motivation to an executive agency (I.C.E.) arbitrary decision. The practice is inherently unconstitutional, particularly in light of the fabric of this

country, and the importance Congress has assigned to the protection of victims of domestic violence.

COUNT XII
Declaratory Relief (28 U.S.C. § 2201)
Plaintiff v. All Defendants

1. The foregoing allegations are repeated and incorporated as if fully set forth herein.
2. A ripe and justiciable controversy exists with regard to the circumstances and legality of Plaintiff's detention.
3. As a result, Plaintiff is entitled to a declaration in his favor pursuant to 28 U.S.C. § 2201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- a. Issue permanent injunctions against Brookline and Norfolk Defendants in their official capacities, prohibiting them from issuing detainers without arrest warrant or judicial order, or otherwise causing people to be illegally detained and discriminated.
- b. Issue permanent injunction against I.C.E. Defendants in their official capacities, prohibiting them from denying due process, discriminating against Mr. Andro on the basis of an arbitrary immigration detainer.
- c. Issue a judicial declaration that I.C.E. Defendants S. Gallagher, Thurlow, Chambers, Milley, Gilbert, Sapia, McNeice and I.C.E. Does 1-5 violated the constitution and federal law by:
 - i. Detaining Mr. Andro without providing an adequate notice or opportunity to respond;

- ii. Subjecting Mr. Andro to discriminatory treatment in violation of the Equal Protection Clause
 - iii. Using a detainer form that falsely described I.C.E.'s request that police officials detain Mr. Andro as mandatory; and
 - iv. Causing Mr. Andro to be detained solely on the basis of the detainer, without probable cause to believe he was a subject to detention
- d. Issue a judicial declaration that Massachusetts Defendants (.....) violated the Constitution by:
- i. Detaining Mr. Andro without providing an adequate notice or opportunity to respond;
 - ii. Subjecting Mr. Andro to discriminatory treatment in violation of the Equal Protection Clause; and
 - iii. Detaining Mr. Andro solely on the basis of the detainer, without probable cause to believe he was subject to detention and removal
- e. Award compensatory and punitive damages against all individual Defendants in their individual capacities for the above violations of federal and state law;
- f. Award compensatory damages against the United States under the F.T.C.A.;
- g. Award prejudgment interest on any award of damages to the extent permitted by law;
- h. Award reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988 and any other applicable law;
- i. Grant such other relief as the Court may deem appropriate.

DATED: JULY 27th 2015



EMMANUEL ANDRO,
PLAINTIFF