IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JAMES LACROIX, **CASE NO. F17-376**
F17-1770

Petitioner,

v.

DANIEL JUNIOR
as director of the Miami-Dade County Department of Corrections,

Respondent.
_____/

ORDER ON PETITION FOR WRIT OF *HABEAS CORPUS*

Petitioner is charged with no crime and is serving no sentence. Yet he was, at the time these proceedings were initiated, incarcerated in the Miami-Dade County correctional system with no prospect of imminent release. Seeking to have his liberty restored immediately, he brings this petition for writ of *habeas corpus*. *See gen'ly* Fla. Const. Art. I § 13; Fla. Stat. Ch. 79.

I. Facts

The present petition is a consequence of an important change in the policy of the Miami-Dade County Department of Corrections ("the Department"). That change in policy is in turn a consequence of a recent presidential order.

The Department "operates the eighth largest jail system in the country. There are between 4,300 [and] 4,500 persons incarcerated daily in [its] four detention facilities." *See* http://www.miamidade.gov/corrections/. The cost to Miami-Dade County of incarcerating its inmate population is staggering. Understandably, the county is not eager to house anyone it is not obliged to house, and not eager to house anyone any longer than it is obliged to house him. If

an inmate is convicted and given more than a year's sentence he will be shipped off to state prison, where the state and not the county will bear the burden of maintaining him. If an inmate is acquitted or his case otherwise resolved, he will be released forthwith.

It often happens, however, that Immigrations and Customs Enforcement ("ICE"), the federal agency responsible for the deportation of those whose presence in this country is unlawful, will file a detainer or lodge a request with the Department, seeking to have the Department retain an inmate whom the Department would otherwise release, so that ICE can arrange to take custody of him. *See* Respondent's "Response to Emergency Petition for Writ of *Habeas Corpus* and Motion to Dismiss" (hereinafter "Response") at 2 (referring to DHS Form I-247X, one of the documents commonly employed by ICE to give notice that it wishes someone held by the Department). Such detainers or requests are not evidence that a crime has been committed, or that someone is in this country illegally. They are not evidence of anything. They simply indicate that ICE believes it has a basis to inquire further as to the status of the person sought. *See* Response at 3.

This practice, however, gives rise to two inequities. First, it obliges the Department to house, oversee, and control prisoners in whom neither the state nor the county has any ongoing interest; and it obliges the Department to do so at county expense, because neither ICE nor any other instrumentality of the federal government makes the county whole for the cost of this housing, overseeing, and controlling. Second, it results in the continued incarceration in county jails of persons neither charged with, nor sentenced for violating, any state or county law, and whose ongoing incarceration by the county is therefore difficult to justify.

In 2013, to address these concerns, the Miami-Dade County Commission determined that

the Department simply could not continue to hold, for pick-up by ICE at some future date, any person who had neither charges pending against him nor a sentence imposed upon him. This "2013 commission vote ... effectively banned county jails from honoring the [ICE] requests, since Washington consistently refused to pay the full tab for local jail time." Douglas Hanks, *Under Trump Crackdown, 1,000-Plus 'Sanctuary' Inmates Could be Detained*, Miami Herald (Feb. 6, 2017) p. 3A. "Before the County Commission changed its detention policy ... Miami-Dade said it received 2,500 detainer requests in 2012 and spent about $670,000 complying with them." *Id*. (It is unclear whether that very considerable figure reflects just the cost of compliance, or includes the more general costs of continued housing, supervision, and the like.)

In January of this year, however, "an executive order [was] signed ... by President Donald Trump that threatened to cut federal grants for any counties or cities that don't cooperate fully with Immigration and Customs Enforcement." Patricia Mazzei, *Miami-Dade Mayor Orders Jails to Comply with Trump Crackdown on 'Sanctuary' Counties*, Miami Herald (Jan. 26, 2017), http://www.miamiherald.com/news/local/community/miami-dade/article128984759.html. In the face of this presidential edict, Miami-Dade Mayor Carlos Gimenez immediately reversed county policy and "ordered county jails to comply with federal immigration detention requests." *Id*.[1] As

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[1] *See also* Patricia Mazzei, *S. Fla. Ranks No. 5 in Undocumented Migrants*, Miami Herald (Feb. 10, 2017) p. 7A:

> President Donald Trump ... sign[ed] an executive order last month to cut federal funding for cities and counties considered "sanctuaries" for the undocumented. To avoid the label, Miami-Dade County Mayor Carlos Gimenez quickly agreed to hold inmates in local jails for federal immigration agents even if the feds refuse to reimburse the county for the expense – a ... policy reversal.

a result Petitioner, and thousands like him, will be held in county facilities until such time – if any – as ICE comes calling for them.[2] Neither the state nor the county makes any claim on Petitioner. But Miami-Dade correctional facilities and Miami-Dade correctional personnel have been conscripted to lock him up for and on behalf of the federal government, and to do so at county expense.

II. Analysis

The presidential order that gave birth to this conflict has sparked the popular use of the term "sanctuary city" to refer to any community that refuses, as Miami-Dade County did till January 26 of this year, to permit its corrections officers and its corrections facilities to be press-ganged into the service of ICE. "Sanctuary city" has a Biblical sound to it,[3] and thus lends

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Mayor Gimenez's decision was approved by the County Commission on February 17 of this year. *See* Patricia Mazzei & Douglas Hanks, *Fearing Trump, Commission Drops Miami-Dade's 'Sanctuary Protections*, Miami Herald (Feb. 17. 2017), http://www.miamiherald.com/news/local/community/miami-dade/article133413384.html.

[2] It is difficult to know exactly how long Petitioner, or indeed any detainee, will be held for pick-up by ICE. Anecdotal evidence suggests that two to five days is not uncommon.

[3] Actually there are no "sanctuary cities" in the Hebrew Bible. There are *arey hamiklat*, cities of refuge, of asylum. These cities exist for the narrow purpose of providing a mechanism for the adjudication of claims of involuntary manslaughter. *See* Joshua 20:1-6:

> And the Lord spoke unto Joshua, saying: Speak to the children of Israel, saying: Assign you the cities of refuge, whereof I spoke unto you by the hand of Moses; that the manslayer that killeth any person through error and unawares may flee thither; and they shall be unto you for a refuge from the avenger of blood. And he shall flee unto one of those cities, and shall stand at the entrance of the gate of the city, and declare his cause in the ears of the elders of that city; and they shall take him into the city unto them, and give him a place, that he may dwell among them. And if the avenger of blood pursue after him, then they shall not deliver up the manslayer into his hand; because he smote his neighbor unawares, and hated

rhetorical force to arguments intended to condemn the county's former policy.[4] But Miami is not and never was a "sanctuary city," and the issue raised by the petition at bar has nothing to do with affording "sanctuary" to those unlawfully in this country. It has everything to do with the separation of powers between the state and federal governments as reflected in the Tenth Amendment to, and in the very structure of, the United States Constitution.

The Constitution protects individual rights and liberties from the encroachment of governmental power by separating that power along both a horizontal axis – the division of executive, legislative, and judicial functions; and a vertical one – the division of federal and state functions. As to the vertical axis, the Tenth Amendment provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." What is sometimes called the "anti-commandeering" principle of the Tenth Amendment is an expression of that reservation of powers.

That principle received its most authoritative exegesis in *Printz v. United States*, 521 U.S. 898 (1997) (Scalia, J.), in which the Court considered "whether certain interim provisions of the

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> him not beforetime. And he shall dwell in that city, until he stand before the congregation for judgment, until the death of the high priest that shall be in those days; then may the manslayer return, and come unto his own city, and unto his own house, unto the city from which he fled.

See also Deut. 4:41-42.

Sanctuary – safety from punishment, prosecution, vengeance – could be had only by clutching the horns of the altar. 1 Kings 1:50-51. *But see* 1 Kings 2:28-34, in which King Solomon commands Benaiah to assassinate Joab while Joab is clutching the horns of the altar.

[4] Those seeking additional rhetorical firepower are directed to William Shakespeare, King Richard III, Act III sc. 1: "God in heaven forbid/We should infringe the holy privilege/Of blessed sanctuary! Not for all this land/Would I be guilty of so deep a sin."

Brady Handgun Violence Prevention Act ... commanding state and local law enforcement officers to conduct background checks on prospective handgun purchasers and to perform certain related tasks violate[d] the Constitution." *Printz*, 521 U.S. at 902. The federal statute in question "direct[ed] state law enforcement officers to participate ... in the administration of a federally enacted regulatory scheme." *Id*. at 904. Printz, a county sheriff in Montana, "object[ed] to being pressed into federal service, and contend[ed] that congressional action compelling state officers to execute federal laws is unconstitutional." *Id*. at 905. The Supreme Court embraced Sheriff Printz's position in uncompromising language:

> We held in *New York [v. United States*, 505 U.S. 144 (1992)] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.

Printz, 521 U.S. at 935.

The case at bar is actually easier than *Printz*. *Printz* involved an area of law as to which the state and federal governments share regulatory responsibility, *viz*., the traffic in firearms. What was constitutionally offensive in *Printz* was not that local sheriffs were called upon to perform background checks on would-be gun owners – something that local police departments are often called upon to do as a matter of local law – but that sheriffs were compelled to do so by, and as agents for, the federal government.

Here, however, we deal with an area of the law – the regulation of immigration and deportation – reserved exclusively to the federal government. *See* U.S. Const. Art. I § 8, clause 4. The Department does not, and as a matter of constitutional law cannot, act in this federal bailiwick. According to its "mission statement," *see* http://www.miamidade.gov/corrections/about-corrections.asp, the Department, "serves our community by providing safe, secure and humane detention of individuals in our custody *while preparing them for a successful return to the community*." (Emphasis added.) This is wholly unrelated, arguably antithetical, to the mission of ICE, *see* https://www.ice.gov/overview, which is "to protect America from the cross-border crime and illegal immigration that threaten national security and public safety." Yet by operation of the recent change in county policy, and the presidential order upon which it is based, county correctional officers and county correctional facilities are made appendages of ICE, obliged to imprison and maintain Petitioner for ICE – Petitioner and others, perhaps many others, similarly circumstanced. If the use made of local governmental resources in *Printz* was constitutionally proscribed, the use made of local governmental resources here is surely constitutionally proscribed.

Printz all but acknowledges as much. In his opinion for the Court, Justice Scalia recounts that:

> On September 23, 1789 – the day before its proposal of the Bill of Rights, *see* 1 Annals of Congress 912-913 – the First Congress enacted a law aimed at obtaining state assistance of the most rudimentary and necessary sort for the enforcement of the new Government's laws: the holding of federal prisoners in state jails at federal expense. Significantly, the law issued not a command to the States' executive, but a recommendation to their legislatures. Congress "recommended to the legislatures of the several States to pass laws, making it expressly the duty of the keepers of their

> gaols, to receive and safe keep therein all prisoners committed under the authority of the United States," and offered to pay 50 cents per month for each prisoner. Act of Sept. 23, 1789, 1 Stat. 96. Moreover, when Georgia refused to comply with the request, *see* L. White, The Federalists 402 (1948), Congress's only reaction was a law authorizing the marshal in any State that failed to comply with the Recommendation of September 23, 1789, to rent a temporary jail until provision for a permanent one could be made, *see* Resolution of March 3, 1791, 1 Stat. 225.

Printz, 521 U.S. at 910.

Apparently it was clear to the members of the first Congress that the federal government is without power to compel state authorities to house and maintain federal prisoners – even if the federal government offers to pay a fair price for that housing and maintenance. Petitioner Lacroix was a county prisoner, but at present the county has neither a reason nor a basis in law to keep him its prisoner. A federal agency wants Lacroix to be a federal prisoner, but demands that the county do the imprisoning on the federal government's behalf. That is a demand that the federal government is constitutionally prohibited from enforcing, and it is a demand with which the local government is constitutionally prohibited from complying. "It might well be deemed an unconstitutional exercise ... to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or instrusted [*sic*] to them by the Constitution." *Prigg v. Pennsylvania*, 41 U.S. 539, 541 (1842) (Story, J.).

This reservation of powers *to* the states is not intended merely as a benefit *for* the states; the intended beneficiaries are, as the language of the Tenth Amendment makes clear, "the people," whose liberties are best protected when "ambition [is] made to counteract ambition." Federalist 51 at 349 (James Madison) (Clinton Rossiter ed., 1961). States cannot cede their reserved powers to the federal government – no, not even if they wish to do so. They must retain

and exercise those fundamental governmental powers that enable them to act as a counterweight to the exercise of federal governmental powers. "Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted. ... The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered." *Ashton v. Cameron County Water Improvement District*, 298 U.S. 513, 531 (1936) (citing *United States v. Butler*, 297 U.S. 1 (1936)).

No doubt the limitations imposed by the Tenth Amendment, like so many limitations imposed by the Constitution, are a source of frustration to those who dream of wielding power in unprecedented ways or to unprecedented degrees. But America was not made for those who dream of power. America was made for those with the power to dream.

The presidential edict at issue here seeks to bring about the conscription of the Department, and employs powerful financial pressure to do so. Mayor "Gimenez defended his order as needed to protect the county's more than $350 million in annual federal aid – plus billions the mayor wants to expand Metrorail. 'I think that money is in jeopardy,' he said." Douglas Hanks, *ACLU: Mayor Was 'Duped' on Law for Detentions*, Miami Herald (Feb. 7, 2017) p. 3A. The federal government's spending power is vested, however, in Congress, *see* U.S. Const. Art. I § 8, clause 1, not in the president or the executive branch. And even Congress cannot use the spending power to bring about otherwise-unconstitutional outcomes. In *New York v. United States*, 505 U.S. 144 (1992), an important "anti-commandeering" decision that was heavily relied upon by the Supreme Court in *Printz*, the Court noted that, "under Congress' spending power, 'Congress may attach conditions on the receipt of federal funds.'" *New York v. United States*, 505 U.S. at 167 (quoting *South Dakota v. Dole*, 483 U.S. 203, 206 (1987)). But

"[s]uch conditions must ... bear some relationship to the purpose of the federal spending ... otherwise, of course, the spending power could render academic the Constitution's other grants and limits of federal authority." *New York v. United States*, 505 U.S. at 167. The Tenth Amendment, with its "anti-commandeering" principle, is among "the Constitution's other ... limits of federal authority" – among those limits that Congress cannot end-run or frustrate by means of the powerful spending power. The law could scarcely be otherwise. The federal government has not sought and will not seek to circumvent the "anti-commandeering principle" by means other than the spending power. It will not use main force to press-gang into federal service the Department's personnel and the facilities they operate. But coercion achieved by financial starvation is no less effective than coercion achieved at sword's point. The former may take a little longer than the latter; but it may be more painful, too.

The present petition for writ of *habeas corpus* is, on its face, a simple matter to adjudicate. There are no criminal charges pending against Petitioner anywhere in Florida. There is no criminal sentence imposed on Petitioner anywhere in Florida. The Department has no desire to hold Petitioner in its custody, and Petitioner has no desire to be held in the custody of the Department. To the extent that the Department continues to hold Petitioner, it is because the Department has been rendered the cat's paw of ICE, and ICE wishes Petitioner held. Thus the issue posed by the present motion is easily framed: If ICE's conscription of the Department's facilities and manpower is unconstitutional, the writ must issue and Petitioner must go free. If ICE's conscription of the Department's facilities and manpower is constitutional, the writ must be denied and Petitioner must remain in the actual custody of the Department – and the constructive custody of ICE – until such time as ICE sees fit to dispose of him.

There can be no suggestion that Petitioner lacks standing to seek *habeas corpus* on these facts, or to seek it based upon an allegation of violation of the Tenth Amendment. A prisoner who asserts his unlawful confinement by state or local authority has asserted everything necessary to entitle him to be heard by a Florida court on his petition for writ of *habeas corpus*. Apart from that, all courts are in agreement that Tenth Amendment claims can be brought by individual claimants. *Bond v. United States*, 564 U.S. 211, 220 (2011) ("The individual, in a proper case, can assert injury from governmental action taken in excess of the authority that federalism defines [pursuant to the Tenth Amendment]. Her rights in this regard do not belong to a state."). *See also Dillard v. Baldwin County Commissioners*, 225 F.3d 1271 (11th Cir. 2000). In *Dillard*, the court rejected any suggestion that private parties lack standing to assert Tenth Amendment challenges. *Dillard*, 225 F.3d at 1276. Nor is it the case that "standing to assert Tenth Amendment claims ... [is] contingent on ... [the] assert[ion of] some other constitutional or statutory claim. ... [T]o establish standing to bring a Tenth Amendment claim, just as for any other claim, [a litigant] must show that [he] suffered an injury in fact caused by the challenged action." *Id*. at 1276-77. The injury of which Petitioner complains is his continued incarceration by the Department in the complete absence of any Florida charge pending against him, or of any Florida sentence imposed upon him. That injury, he alleges, is the product of the federal government's having coerced the Department to do its bidding, in violation of the Tenth Amendment.[5]

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[5] Thus even if Petitioner *were* obliged to show an additional constitutional or statutory deprivation as a condition of his asserting his Tenth Amendment claim, *but cf. Dillard, supra*, he could easily do so. His *habeas* claim subsumes allegations of violation of his rights under both Florida and federal law to be free from unreasonable search and seizure, to be subjected to no cruel and unusual punishments, to be free from deprivation of liberty without due process of law,

Respondent, in the very scholarly pleading filed on his behalf, places principal reliance upon *Ricketts v. Palm Beach County Sheriff*, 985 So. 2d 591 (Fla. 4th DCA 2008). *See also Joseph v. Bradshaw*, 4 So. 3d 777 (Fla. 1st DCA 2009); *but cf. Florida Immigrant Coalition v. Mendez*, 2010 WL 4384220, esp. at * n.11 (S.D.Fla. 2010). The facts in *Ricketts* are superficially similar to those in the case at bar. Ricketts was arrested by local authorities and a reasonable bond was set. *Ricketts*, 985 So.2d at 591. When he attempted to post that bond, however, he was told that it would not be accepted because of the pendency of an immigration hold. *Id.* He sought relief by petition for writ of *habeas corpus* in state circuit court. *Id.* at 592.

Ricketts made no Tenth Amendment claim. He simply asserted that he was "being illegally detained without any showing of probable cause or judicial oversight," *id.*, a claim probably intended to invoke the Fourth Amendment and Article I § 12 of the Florida constitution. In effect, he sought an adjudication in state court of the merits of a federal detainer. The Fourth District quite properly held that Ricketts could not "secure *habeas corpus* relief from the state court on the legality of his federal detainer. The constitutionality of his detention pursuant to [the federal detainer] ... is a question ... for the federal courts." *Id.* at 592-93.

That "a state court cannot adjudicate the validity of [a] federal detainer, as the area of immigration and naturalization is within the exclusive jurisdiction of the federal government" – the holding for which Respondent cites *Ricketts*, *see* Response at 1 (quoting *Ricketts*, 985 So.2d at 591) – is indisputably true. Indeed Petitioner Lacroix appears not to dispute it. Whether any detainer filed by ICE as to Mr. Lacroix is legally sufficient and legally efficacious is a question that could be raised only in federal court. Lacroix does not raise it here.

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and the like.

Rather, Petitioner argues that the Department, in holding him, acts as no more than handmaiden to the federal government; that the reduction by the federal government of the Department to its mere handmaiden is in utter violation of the "anti-commandeering" principle of the Tenth Amendment; and that Petitioner and all others similarly situated are, by operation of the Tenth Amendment, entitled to relief. *Dicta* in *Ricketts* supports these propositions. The sheriff of Palm Beach County, respondent in *Ricketts*, "will not be holding [Ricketts] pursuant to state authority but pursuant to federal authority." *Id*. at 593. Ricketts "would no longer be a state prisoner but a federal detainee," although in the physical custody of the county. *Id*. at 592. The petition at bar calls, not for the adjudication of the merits of a given ICE hold served on Respondent – something a state judge would be wholly unable to provide – but for the vindication of rights promised by the Tenth Amendment "to [all] the people" – something any American judge, state or federal, is oath-bound to provide.

Undoubtedly the regulation of immigration and deportation is a prodigious task. Understandably eager to marshal all possible resources for that task, ICE in particular and the executive branch of the federal government in general grasp for assistance wherever and however it is to be found. The infrastructure and human resources of the Miami-Dade Department of Corrections – and, for that matter, those of every local corrections department from coast to coast; which, if nationalized, would constitute a mighty host at ICE's command – would be of invaluable aid in the performance of ICE's regulatory mission.

But the price to be paid for that aid was determined, long ago, to be much too high. The price would be the subjugation of state and local governments, the reduction of those governments to mere satrapies of a central government of unlimited and illimitable power. The

price would be the abandonment of the fundamental constitutional principle that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or *to the people*." (Emphasis added.)

The "people" to whom the Tenth Amendment refers include the native-born as well as the naturalized citizen; the native English speaker as well as the speaker for whom English is a second, or third, language; the scion of old Yankee stock as well as the newcomer who took the oath of citizenship yesterday. Miami is not, and has never been, a sanctuary city. But America is, and has always been, a sanctuary country. As I have written elsewhere, "America, perhaps more than any other nation, was made great not by its leaders but by its people: by the refugees who were called to begin life anew; by the pioneers who were called to build a nation; by 'the homeless, tempest-tossed' who were called by the light that shone from the 'lamp beside the golden door'." *State v. Robaina*, 20 Fla. L. Weekly Supp. 406a (Fla. 11th Cir. Ct. 2013) (quoting Emma Lazarus, "The New Colossus").[6]

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[6] The Statue of Liberty Enlightening the World was dedicated on October 28, 1886. In the torch 300 feet aloft the statue's sculptor, Frederic Bartholdi, pulled the rope that removed the French tricolor from Liberty's face and President Grover Cleveland accepted the statue on behalf of the United States. The torch was lighted that night.

Three years earlier, to assist a campaign to raise funds to complete the construction of the statue's pedestal, Emma Lazarus wrote the sonnet, "The New Colossus." It is inscribed on a bronze tablet in the pedestal:

Not like the brazen giant of Greek fame,
With conquering limbs astride from land to land;
Here at our sea-washed, sunset gates shall stand
A mighty woman with a torch, whose flame
Is the imprisoned lightening, and her name
Mother of Exiles. From her beacon hand
Glows world-wide welcome; her mild eyes command
The air-bridged harbor that twin cities frame.

Of course we must protect our country from the problems associated with unregulated immigration. We must protect our country from a great many things; but from nothing so much as from the loss of our historic rights and liberties.

The petition for writ of *habeas corpus* is GRANTED. Respondent's motion to dismiss is respectfully DENIED.

SO ORDERED, in chambers in Miami, Miami-Dade County, Florida, this ____ day of March, 2017.

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Hon. Milton Hirsch
Judge, 11th Judicial Circuit

cc: all counsel of record

"Keep, ancient lands, your storied pomp!" cries she
With silent lips, "Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tossed to me,
I lift my lamp beside the golden door!"