

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 18-0661

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AGUSTIN RAMON,

*Plaintiff and Appellant,*

v.

ROBY BOWE, IN HIS INDIVIDUAL CAPACITY AND HIS OFFICIAL CAPACITY AS SHERIFF  
OF LINCOLN COUNTY AND ADMINISTRATOR OF LINCOLN COUNTY DETENTION  
CENTER,

*Defendant and Appellee.*

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**APPELLANT'S UNOPPOSED<sup>1</sup> MOTION FOR LEAVE TO FILE  
OVER-LENGTH RESPONSE BRIEF AND BRIEF IN SUPPORT**

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<sup>1</sup> Counsel for Defendant and Appellee indicates that she does not oppose this Motion for Leave to File Over-Length Brief provided Defendant and Appellee is allowed an opportunity to file a reply brief.

COMES NOW, the Appellant, by and through his counsel of record, and hereby files and serves his Motion for Leave to File Over-Length Response Brief.<sup>2</sup>

Appellant respectfully seeks leave to file a brief in opposition to Defendant's Motion to Dismiss in excess of the 1,250 word limit (five page) set forth in Rule 16, M.R.App.P. Appellant seeks leave to file a brief not more than 3,800 words excluding the caption, certificates of service and compliance, table of contents and authorities, and exhibit index.

This Motion is supported by an Affidavit of Alex Rate demonstrating "extraordinary justification." Rate Affidavit, Exh. A (hereinafter, "Rate Affidavit"). Appellant's requested word limit is justified to allow him to adequately present argument in opposition to Defendant's Motion to Dismiss.

This is the second time in less than two years that a similar set of facts are being presented to this Court. Rate Affidavit, ¶ 3. In *Valerio-Gonzales v. Jarrett*, 2017 Mont. LEXIS 764, 390 Mont. 427, 410 P.3d 177, the Court granted a jail administrator's Motion to Dismiss a petition for writ of habeas corpus because, following the inmate's transfer to federal custody, the court could no longer "grant effective relief on his Petition." *Id.* These challenges will recur until the Court decides the legality of local and state officers holding people on the purported

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<sup>2</sup> Out of an abundance of caution, Appellant has simultaneously filed a brief in compliance with Rule 16. In the event that this Motion is denied, Appellant respectfully requests that the Court accept that brief.

authority of an immigration detainer request. Rate Affidavit, ¶ 4. The application of important mootness exceptions to this case deserves fully developed briefing on the complicated legal issues at play. Rate Affidavit, ¶ 5, ¶ 16, ¶ 19. It is virtually impossible to adequately address the capable of repetition and public interest exceptions within a five-page brief. Rate Affidavit, ¶ 17. This court has, at least implicitly, recognized as much when it permitted 13, 26 and 29-page briefs in *Valerio Gonzales* (Brief in Opposition to Motion to Dismiss, *Amicus Curiae* Briefs). Rate Affidavit, ¶ 18.

For these reasons, and given that this case presents issues of significant public interest and concern, Appellant respectfully requests an expanded word limit, up to 3,800 words.

Appellant's counsel has conferred with counsel for the County, who does not oppose this motion provided she is afforded the opportunity to file and serve a Reply Brief.

Appellant's over-length brief is attached to this Motion as Exhibit B.

Dated this 21<sup>st</sup> day of May, 2019.

Respectfully submitted,

/s/ Alex Rate

Alex Rate

Elizabeth K Ehret

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*/s/ Shahid Haque*

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have filed a true and accurate copy of the foregoing MOTION FOR LEAVE TO FILE OVER-LENGTH BRIEF with the Clerk of the Montana Supreme Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

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Dated this 21<sup>st</sup> day of May, 2019.

/s/ Alex Rate

Alex Rate

## **CERTIFICATE OF SERVICE**

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - File Enlarged Brief to the following on 05-21-2019:

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