

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

---

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.*

---

**AFFIDAVIT OF ALEX RATE IN SUPPORT OF APPELLANT'S  
MOTION FOR LEAVE TO FILE OVER-LENGTH BRIEF**

---

Alex Rate  
Elizabeth K Ehret  
ACLU OF MONTANA  
P.O. Box 9138  
Missoula, MT 59807  
406-203-3375  
406-204-0284  
ratea@aclumontana.org  
ehrete@aclumontana.org

Shahid Haque  
BORDER CROSSING LAW FIRM  
618 Highland St.  
Helena, MT 59601  
406-594-2004  
shahid@bordercrossinglaw.com

Cody Wofsy\*  
Spencer Amdur\*  
American Civil Liberties Union  
Foundation, Immigrants' Rights Project  
39 Drumm Street  
San Francisco, CA 94111  
(415) 343-0774  
cwofsy@aclu.org  
samdur@aclu.org

Omar C. Jadwat\*  
Daniel Galindo\*  
American Civil Liberties Union Foundation,  
Immigrants' Rights Project  
125 Broad Street, 18th Floor  
New York, NY 10004  
(212) 549-2600  
ojadwat@aclu.org  
dgalindo@aclu.org  
\*Pro Hac Vice Admitted  
*Attorneys for Plaintiff and Appellant*

COMES NOW ALEX RATE and deposes and says:

- 1) I am one of the attorneys for Appellant Agustin Ramon.
- 2) I am filing this affidavit in support of Appellant's Motion for Over-Length Brief.
- 3) This is the second time in less than two years that a similar set of facts are being presented to this Court. In *Valerio-Gonzales v. Jarrett*, 2017 MT 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."
- 4) These challenges will recur until the Court decides the legality of local and state officers holding people on the purported authority of an immigration detainer request.
- 5) The availability of potential exceptions to the mootness doctrine, including the "capable of repetition yet evading review" exception and the "public interest exception" bear close examination by this court. These are complicated legal concepts which, while adopted by the Montana Supreme Court, derive from case law in other jurisdictions.
- 6) On October 30, 2018, Ramon filed a Complaint challenging the County's

“policy and practice of unlawfully exceeding [its] authority under Montana law by depriving persons of their liberty on the ground that they are suspected of civil immigration violations of federal immigration law.”

- 7) An immigration detainer identifies a prisoner being held in a local jail or other state facility. It asserts that federal immigration authorities (typically Immigration and Customs Enforcement or Customs and Border Protection) believe the prisoner may be removable from the United States. It asks the jail to detain that prisoner for an additional 48 hours after he or she would otherwise be released, to provide time for ICE to take the prisoner into federal custody. Detainers are typically issued by ICE officers and Border Patrol Agents. They are never reviewed, approved, or signed by a judicial officer.
- 8) Ramon’s complaint sought, among other things, declaratory and injunctive relief, and specifically a declaration that “Defendant Bowe has no authority under Montana law to arrest individuals for civil immigration violations” as well as an injunction “from undertaking such arrests.”
- 9) Ramon filed an Application for Temporary Restraining Order, Preliminary Injunction and Order to Show Cause concurrently with his Complaint.
- 10) On November 16, 2018, the District Court denied Plaintiff’s Application, holding that while Ramon presented a justiciable controversy,

nevertheless statutory authority exists for Lincoln County to re-arrest individuals pursuant to federal immigration detainers.

11) While Ramon was still in the custody of Lincoln County he appealed the District Court's Order to the Montana Supreme Court. Ramon's appeal requested expedited consideration "[b]ecause there is the possibility that transfer of Plaintiff Ramon to federal custody will impact the justiciability of this appeal (*citing Valerio Gonzales v. Jarrett*, 2017 Mont. LEXIS 764, 390 Mont. 427, 410 P.3d 177), and furthermore because, but for the immigration detainer, Plaintiff Ramon would otherwise be released on bond pending trial...". Ramon also filed a "Motion for Expedited Consideration" with this Court.

12) The Court denied Ramon's Motion, holding: "Although Ramon asserts in his recently filed motion that following any final disposition in the form of a plea agreement or trial, he will be transferred to federal custody within one or two days, it is, at best, conjecture as to when that may occur in the usual course of a felony proceeding."

13) The Court further distinguished Ramon's appeal from *Valerio-Gonzales* because, where Valerio-Gonzales was released sua sponte by the Justice Court, "Ramon's appeal in the instant case will not interfere with the criminal proceedings below."



- 14) The County now asserts that on February 11, 2019, Ramon was ordered released from custody pursuant to the District Court's Judgment and Sentence.
- 15) My understanding is that Mr. Ramon is now in federal custody and undergoing removal proceedings.
- 16) The application of important mootness exceptions to this case deserves fully developed briefing on the complicated legal issues at play.
- 17) It is virtually impossible to adequately address the capable of repetition and public interest exceptions within a five-page brief.
- 18) I was the attorney for the ACLU of Montana who filed an amicus brief in the *Valerio Gonzales* case. In that case the court, without leave, permitted 13, 26 and 29-page briefs (Brief in Opposition to Motion to Dismiss, *Amicus Curiae* Briefs).
- 19) Rule 12(10) M.R.App.P. provides that "Motions to file over-length briefs... must be supported by an affidavit demonstrating extraordinary justification." I believe that the complicated legal concepts at play in this case, the public attention that this case has attracted, and the probability that this court will be presented with nearly identical issues in the future warrant more in-depth briefing on the exceptions to the mootness doctrine.

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

Alex Rate

State of Montana  
County of Park

This instrument was signed or acknowledged before  
me on 05/21/19 by Alex Rate  
(Name of signer)

Leeann Dodgin  
(Notary Signature)  
[Affix seal/stamp to the left or below]

