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IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 18-0661

AGUSTIN RAMON,

Plaintiff-Appellant,

v.

DARREN SHORT, in his Official Capacity
as Sheriff of Lincoln County and Administrator
of Lincoln County Detention Center,

Defendant-Appellee.

**THE UNITED STATES' MOTION FOR LEAVE
TO FILE AN AMICUS CURIAE BRIEF**

The United States of America hereby files this motion for leave to file an amicus curiae brief in this case. Counsel for the United States conferred with counsel for Appellant, Agustin Ramon, and Appellee, Darren Short, on August 12, 2019, via email. Both Appellant and Appellee consent to this motion.

The United States makes this request pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure and 28 U.S.C. § 517. Rule 12(7) permits amicus participation by leave of Court. And 28 U.S.C. § 517 provides that “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” *See also* 28 U.S.C. § 2403 (“In any action, suit or proceeding in a court . . . to which the United States . . . is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn into question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene”); Fed. R. Civ. P. 5.1 (similar); Mont. R. Civ. P. 5.1(a) (similar, as to Montana Attorney General).

The appeal pending before this Court alleges that Lincoln County, Montana’s cooperation with federal immigration detainers, *see* 8 C.F.R. § 287.7, violates state law. *See* Br. 14-31. These claims directly implicate questions of law regarding federal immigration detainers, which involve the Executive’s “undoubted power over the subject of immigration and the status of aliens,” *Arizona v. United States*, 567 U.S.

387, 394 (2012), as well as Acts of Congress and the federal government’s implementation of those acts through federal regulations and policies. *See* 8 U.S.C. § 1226(a) (“On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed by the United States”); *id.* § 1357(g)(10) (“[A]ny officer or employee of a State or political subdivision of a State” may “cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States”); *id.* § 1357(g)(8) (indicating that “a State or political subdivision of a State acting under color of authority under this subsection . . . shall be considered to be acting under color of Federal authority for purposes of determining [] liability, and immunity from suit”); 8 C.F.R. § 287.7(d) (authorizing federal immigration officials to issue detainers directed at aliens the federal government has probable cause to believe are removable from the United States that request that local law enforcement “maintain custody of the alien for a period not to exceed 48 hours”).

Given that the pending appeal implicates the legality of Appellee’s cooperation with the federal government in matters of immigration enforcement and requires interpretation of federal statutes and regulations, the United States’ interests are implicated by this appeal. Accordingly, the United States respectfully requests that the Court grant the United States leave to file an amicus brief in this case within 7 days (excluding federal holidays) of the filing of Appellee’s brief.

Dated: August 13, 2019

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief contains 553 words, excluding caption and certificate of compliance.

Dated: August 13, 2019

/s/ Chad C. Spraker
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CERTIFICATE OF SERVICE

I certify that on August 13, 2019, I e-filed the foregoing motion with the Clerk of Court. I also served true and accurate copies of the foregoing motion on the following via U.S. mail on August 13, 2019:

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