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.

BRIEF OF AMICUS CURIAE THE UNITED STATES IN SUPPORT OF APPELLEE DARREN SHORT

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INTRODUCTION

The United States of America submits this amicus brief to explain why the Lincoln County Sheriff's Office's (Sheriff) cooperation with federal immigration detainers issued by U.S. Customs and Border Protection (CBP) is lawful.[1] A CBP detainer asks local law enforcement to aid federal immigration-enforcement efforts in two ways: by notifying CBP prior to the release of an individual for whom there is probable cause to believe that he is a removable alien and by maintaining custody of that alien briefly (up to 48 hours beyond when the alien would otherwise be released) so that CBP can take custody in a safe and orderly way. Without such cooperation, removable aliens, including individuals who have committed crimes, would be released into local communities, where it is harder and more dangerous for CBP or ICE to take custody of them and where they may commit more crimes.

CBP's use of—and the Sheriff's cooperation with—detainers is consistent with Montana law. Federal statutes authorize CBP to issue detainers and allow States and localities such as the Sheriff's Office to cooperate with them. Montana law permits such cooperation. Thus, the United States respectfully submits that this Court, if it reaches the merits, should affirm the district court.

[1] Another component of the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), also issues detainers. The detainer in this case was issued by CBP, and accordingly this brief analyzes CBP detainer practices only.

BACKGROUND

Legal Background. The federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). This includes authority to interview, arrest, and detain removable aliens. *See, e.g.*, 8 U.S.C. § 1226(a) (Secretary of Homeland Security may issue administrative arrest warrants and may arrest and detain aliens pending a decision on removal); *id.* § 1226(c)(1) (Secretary "shall take into custody" aliens who have committed certain crimes when "released"); *id.* § 1231(a)(1)(A), (2) (Secretary may detain and remove aliens ordered removed); *id.* § 1357(a)(1), (2) (authorizing certain warrantless interrogations and arrests).[2] These cooperative efforts are critical to enabling the federal government to identify and remove the hundreds of thousands of aliens who violate immigration laws each year.

Federal law authorizes these efforts. Congress has authorized DHS to enter into cooperative agreements (287(g) agreements), *see* 8 U.S.C. § 1357(g), under which local officers may, "subject to the direction and supervision of the [Secretary]," *id.* § 1357(g)(3), perform immigration enforcement functions relating to investigating, apprehending, and detaining aliens. *Id.* § 1357(g)(1). DHS may also enter into intergovernmental services agreements (IGSAs) to house detainees after DHS has

[2] Following the Homeland Security Act of 2002, many references in the Immigration and Nationality Act to the "Attorney General" are now read to mean the Secretary of Homeland Security. *Clark v. Suarez Martinez*, 543 U.S. 371, 374 n.1 (2005).

arrested them. *Id.* § 1103(a)(11)(A). Even without a formal 287(g) agreement or IGSA, States and localities may "communicate with the [Secretary] regarding the immigration status of any individual" or "cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," 8 U.S.C. § 1357(g)(10), when that cooperation is pursuant to a "request, approval, or other instruction from the Federal Government," *Arizona*, 567 U.S. at 410. Such cooperation may include "arrest[ing] an alien for being removable" when the federal government requests such cooperation and "responding to requests for information about when an alien will be released from their custody." *Id.*

States and localities frequently cooperate with federal immigration enforcement by responding to federal requests for assistance, often contained in immigration detainers issued by CBP or ICE, components of DHS responsible for immigration enforcement at the border and in the interior of the country, respectively. CBP enforcement authority extends to 100 miles of the border, which includes Lincoln County. *See* 8 U.S.C. § 1357(a)(3); 8 C.F.R. § 287.1(a)(2). An immigration detainer notifies a locality that CBP or ICE intends to take custody of a removable alien who is detained in its custody, and asks the locality to cooperate in that effort. A detainer asks a locality to cooperate in two main respects: (1) by providing advance notification of the alien's release; and (2) by maintaining custody of the alien for up to 48 hours, based on CBP's or ICE's determination that it has probable cause to believe that the alien is removable, until they can take custody. *See* 8 C.F.R. § 287.7(a) (describing notification

of release), (d) (describing request for continued detention). Statutes authorizing such action include 8 U.S.C. §§ 1103(a)(3), 1226(a) and (c), 1231(a), and 1357(d); *see, e.g.*, *McLean v. Crabtree*, 173 F.3d 1176, 1186 (9th Cir. 1998).

DHS's detainer form, Form I-247A, sets forth the basis for DHS's determination that it has probable cause to believe that the subject is a removable alien. It states that probable cause is based on: (1) a final order of removal against the alien; (2) the pendency of removal proceedings against the alien; (3) biometric confirmation of the alien's identity and a records match in federal databases that indicate, by themselves or with other reliable information, that the alien either lacks lawful immigration status or, despite such status, is removable; or (4) the alien's voluntary statements to an immigration officer, or other reliable evidence that the alien either lacks lawful immigration status or, despite such status, is removable. Form I-247A at 1, https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf. The current detainer form requests that the locality "[m]aintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody." *Id.* It clarifies that "[t]his detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters." *Id.* It also states that the "alien must be served with a copy of this form for the detainer to take effect." *Id.* It encourages local law enforcement and the alien to contact DHS with "any questions or concerns" about a

detainer. *Id.*

CBP and ICE issue detainers in different circumstances. CBP, which patrols the border, routinely permits state and local law enforcement to take custody of aliens initially apprehended by Border Patrol, so that the alien may be prosecuted for pending state or local charges. This is normally done by the discretionary act of releasing the alien from immigration custody directly to the appropriate law enforcement agency along with a detainer. Border Patrol also, although less commonly, will issue detainers to aliens in state or local custody at or near the international border who are removable from the United States in order to assist state and local law enforcement in holding aliens accountable under Montana law and to ensure their removal from the United States.[3]

Factual Background. The Sheriff has a practice of cooperating with immigration detainers by temporarily maintaining custody of an alien upon release from state criminal charges to facilitate the orderly transfer of the alien to DHS custody. The Sheriff notifies CBP or ICE when it learns the subject of the detainer is about to be released from custody. Ordinarily, DHS picks up the subjects as soon as they are released. In the unusual circumstance that processing the alien for transfer to federal

[3] ICE has a different policy that requires a signed administrative warrant in addition to a detainer. *See* ICE Policy No. 10074.2 ¶¶ 2.4, 2.5, https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf. That policy is not implicated in this case. While CBP and ICE both issue detainers, each component follows its own policy for doing so. While the Sheriff cooperates with both DHS components, only the CBP processes are at issue in this case.

custody takes longer, the subject may remain in County custody for a brief period.

This case arises out of Augustin Ramon's arrest on burglary charges on August 3, 2017. That same day, CBP lodged a detainer with the Sheriff. The detainer states that a border patrol agent has probable cause to believe that Ramon is unlawfully present in the United States based on statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicates the alien lacks immigration status or notwithstanding such status is removable under U.S. immigration law. Ramon remained in state custody until his criminal charges resolved and he was released to DHS custody on February 11, 2019.

Ramon filed suit on behalf of himself and all others similarly situated claiming that the Sheriff lacks authority to cooperate with CBP detainers by detaining aliens subject to them beyond the point at which they are entitled to release under state law. The district court denied a temporary restraining order, concluding that Montana law authorized cooperation with federal immigration enforcement. Plaintiff appealed that order to this Court.

ARGUMENT

If the Court reaches the merits, it should hold that a locality's cooperation with CBP detainers is fully consistent with Montana law.

Ramon argues that the Sheriff's authority to cooperate with federal immigration detainers is prohibited by Montana law. He is wrong: Montana law authorizes such cooperation.[4]

To start, the short period of time that a person may be held under a detainer to assist CBP in making an arrest is not a new arrest but a continued detention. The difference between a new arrest and continuation of custody is clear under Montana law. An arrest is a *process* by which a person is taken into custody. *See, e.g.*, M.C.A. § 46-1-202 ("Arrest means *taking* a person *into custody*...") (emphasis added); *id.* § 46-6-104 ("An arrest is made by an actual restraint of the person to be arrested..."); *id.* § 46-6-105 (describing the "[t]ime of making arrest"). "Custody," meanwhile, is a period of restraint that *results from* a prior arrest. *See, e.g.*, *id.* § 46-6-505 (describing a peace officer "tak[ing] custody of a person arrested by a private citizen"). The continuing of a prior detention

[4] Ramon admits that the validity of ICE detainers under federal statutory law is not before this Court but still calls it into question. Br. 19, 31 n.13. That issue is indeed not before this Court, so this brief does not address it other than to note that the great weight of authority shows that 8 U.S.C. § 1357(g)(10) authorizes local cooperation with ICE and comports with the Fourth Amendment, Ramon's one citation of an outlier case, *C.F.C. v. Miami-Dade County*, 349 F. Supp. 3d 1236 (S.D. Fla. 2018) (which is still pending), notwithstanding. *See, e.g.*, *Arizona*, 567 U.S. at 410; *United States v. Ovando-Garzo*, 752 F.3d 1161, 1164 (8th Cir. 2014); *El Cenizo*, 890 F.3d at 189; *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 467 (4th Cir. 2013) (detention by state officer lawful when "at ICE's express direction"); *Rios v. Jenkins*, --- F. Supp. 3d ---, 2019 WL 3070632, *8 (W.D. Va. 2019); *Canseco Salinas v. Mikesell*, No. 18-cv-30057, 2018 WL 4213534 (Colo. Teller Cty. Dist. Ct. Aug. 19, 2018); *Lopez-Lopez v. Cty. of Allegan*, 321 F. Supp. 3d 794, 799 (W.D. Mich. 2018); *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053, 1065 (D. Ariz. 2018); *Perez-Ramirez v. Norwood*, 322 F. Supp. 3d 1169, 1171 (D. Kan. 2018); *Comm. for Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma*, 644 F. Supp. 2d 1177 (N.D. Cal. 2009).

is not an arrest, as no new process of restraint has occurred.[5] *Cf. State v. Dieziger*, 200 Mont. 267, 269-70, 650 P.2d 800, 801-02 (1982). Instead, the cooperation here is merely a temporary extension of current custody in order to assist CBP in effecting its own valid arrest procedures pursuant to its sovereign, constitutionally recognized authority. After the brief extension of custody, CBP makes the new arrest.

It is settled that a jailor may assess whether any outstanding "wants and holds" concerning a detainee exist before releasing that detainee—that is, whether the prisoner is "wanted by any other law enforcement agency," *Streit v. Cty. of Los Angeles*, 236 F.3d 552, 556 (9th Cir. 2001)—or facilitate transfer of the detainee to another jurisdiction that wants the detainee. *See Berry v. Baca*, 379 F.3d 764, 770 (9th Cir. 2004); *Brass v. Cty. of Los Angeles*, 328 F.3d 1192, 1201-02 (9th Cir. 2003) (discussing the permissibility of processing for "wants and holds"); *Lewis v. O'Grady*, 853 F.2d 1366, 1370 (7th Cir. 1988) (similar); *Golberg v. Hennepin Cty.*, 417 F.3d 808, 811 (8th Cir. 2005) (similar); *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1969) (similar).

Ramon's authorities, and Montana law, are not to the contrary. Br. 15-17. In *State v. Norvell*, 2019 MT 105, 395 Mont. 404, 440 P.3d 634 (2019), a person was arrested for

[5] A Fourth Amendment "seizure" is not synonymous with a statutory "arrest," and the test for determining whether a new Fourth Amendment "seizure" has occurred does not depend on whether the state statutory definition of "arrest" has been met. Thus, Ramon's citation of *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), involving "arrests" under the Fourth Amendment, is irrelevant. So too is his citation of *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016), because the prior detainer form did not make a statement about probable cause. *Id.* at 1005.

allegedly violating probation and was subject to a 72-hour hold. *Id.* at ¶18, 410, 638. On the same day that that hold terminated, the Detention Center received an arrest warrant regarding other charges, and the person became held under that warrant. *Id.* That is analogous to what happens when CBP takes custody based on the immigration detainer. Indeed, in many instances, DHS will arrest a person who is the subject of the detainer and then place him in *DHS custody* at the same jail under an IGSA. That process shows that the DHS arrest, even when conducted in an ongoing custodial environment at a county jail, is what changes detention authority, like the service of the new warrant, albeit from the same authority, caused the new arrest in *Norvell*. The same is true of Ramon's example regarding extradition warrants under M.C.A. § 46-30-302. Br. 17. As *State v. Holliman* acknowledges, the extradition statute provides for "a 90 day time period that a fugitive awaiting a governor's warrant may be held in custody or on bond" *prior to* "arrest[] under the warrant of the governor." 247 Mont. 365, 267 (1991). That situation is analogous to the detainer context, as it provides for a period of time for the governor's warrant to be served and for the individual to be taken into custody under the new warrant. The new arrest does not occur until CBP physically comes to the jail and arrests the detainee under its own authority.

In continuing to detain a person under a CBP detainer, the Sheriff acts at the request of the federal government. Cooperation with an immigration detainer "provide[s] operational support" to the federal government. *Lopez-Lopez*, 321 F. Supp. 3d at 799 (citing 8 U.S.C. § 1357(g)(10)). That action is taken at the "request, approval,

or other instruction from the Federal Government." *Arizona*, 567 U.S. at 410, and for purposes of liability or immunity from suit, "[a]n *officer* or *employee* of 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*." 8 U.S.C. § 1357(g)(8) (emphases added); *see also Santos v. Frederick Cty. Bd. of Comm'rs*, 2010 WL 3385463, *3-4 (D. Md. Aug. 25, 2012), *rev'd on other grounds*, 725 F.3d 451 (4th Cir. 2013) (arrest at ICE's request); *Arias v. ICE*, No. 07-1959, 2008 WL 1827604, *13-15 (D. Minn. Apr. 23, 2008) (joint immigration task force resulting in arrests).

Even were that not so, Montana sheriffs may lawfully assist other sovereigns in the execution of their lawful detainers or warrants under their *own* authority. Absent evidence that it "was the clear and manifest purpose of Congress to abridge [a State's police] powers," *Arizona*, 567 U.S. at 400, States and their subdivisions retain whatever common-law police powers they had when joining the Union. *Id.* Far from abridging state power, Congress has authorized cooperation with detainers and federal immigration warrants through the INA. *See* 8 U.S.C. § 1357(g)(10)(B).

As to Montana's or its localities' exercise of its police powers, there is no requirement that, "before a state law enforcement officer may arrest a suspect for violating federal immigration law, state law must *affirmatively* authorize the officer to do so." *United States v. Santana-Garcia*, 264 F.3d 1188, 1193-94 (10th Cir. 2001) (collecting cases). Rather, "state and local law enforcement officers are empowered to arrest for violations of federal law, as long as such arrest is authorized by state law." *United States*

v. Vasquez-Alvarez, 176 F.3d 1294, 1296 (10th Cir. 1999); *see id.* (noting general state authority to arrest for immigration laws). The overwhelming consensus is that, at common law, a State's inherent police powers are not diminished absent explicit legislative action. *See id.*; *Tenorio-Serrano*, 324 F. Supp. 3d at 1060-64 (recognizing that "sheriffs retain common law powers"); *United States v. Bowdach*, 561 F.2d 1160, 1167-68 (5th Cir. 1977) (state officers may make arrests on federal statutes or arrest warrants despite absence of state statute explicitly permitting); *United States v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983) (recognizing state officers' implicit authority to arrest for federal offenses, even though "no Illinois statute explicitly authorized" it); *cf. Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928) (L. Hand, J.) (it is inappropriate to infer an intent to restrict pre-existing authority to arrest for other offenses); *see also Commonwealth v. Leet*, 537 Pa. 89, 95, 641 A.2d 299, 303 (Pa. 1994) (common-law authority not abrogated absent explicit statutory provision); *Christopher v. Sussex Cty.*, 77 A.3d 951, 959 (Del. 2013) (similar); *Dep't of Pub. Safety & Corr. Servs. v. Berg*, 342 Md. 126, 137-39, 674 A.2d 513, 518-20 (1996) (similar); *Southern R. Co. v. Mecklenburg Cty.*, 231 N.C. 148, 150-51, 56 S.E.2d 438, 439-40 (1949) (similar). That is the law in Montana. *See* M.C.A. § 1-1-108 ("In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision."); *Sunburst Sch. Dist. No. 2 v. Texaco, Inc.*, 338 Mont. 259, 276 (2007) ("The common law applies in Montana whenever it does not conflict with a statute."); *State v. Dist. Court of*

Second Judicial Dist. in & for Silver Bow Cty., 69 Mont. 29, 220 P. 88, 90 (1923) ("The principle is recognized that an intent to alter the common law beyond the evident purpose of the act is not to be presumed.") (internal quotation marks and citation omitted).

Montana sheriffs in particular retain broad residual authority to cooperate with other federal and state authorities in the enforcement of their laws. This authority includes the ability to effect writs of arrest (both criminal and civil) and detain prisoners under outstanding warrants. Montana common law permits holding prisoners beyond the length of their sentence "to answer to other writs upon which [they have] not been arrested." 1 WALTER H. ANDERSON, TREATISE ON THE LAW OF SHERIFFS, CORONERS, AND CONSTABLES § 146 (1941). That is because "[i]t would be a useless and idle ceremony to discharge [a prisoner] and immediately arrest him upon the other process held by the officer." *Id.* These common-law duties have existed throughout Montana's history, even as some provisions of Montana law have been codified. *See Annala v. McLeod*, 122 Mont. 498, 500, 206 P.2d 811, 813 (1949) ("In the United States it would appear that the duties of sheriff are substantially the same as they were at common law."); *see also Tenorio-Serrano*, 324 F. Supp. 3d at 1060-64. Ramon ignores these authorities while claiming, without citations, that "modern arrest authority is codified in statute only." Br. 20.

Under the common law, a CBP detainer and a federal civil warrant are both valid civil "writs" with which a sheriff may comply in comity. *See* M.C.A. § 7-32-2121 ("The

sheriff shall ... serve all process or notices in the manner prescribed by law ….”); *Annala*, 206 P.2d at 813 (noting a sheriff’s civil and statutory duty to keep the peace). A CBP detainer signed by an executive immigration officer is a valid means of effecting federal custody. *See, e.g.*, *Abel v. United States*, 362 U.S. 217, 233, 234 (1960); *Lopez v. INS*, 758 F.2d 1390, 1393 (10th Cir. 1985) (aliens “may be arrested [by] administrative warrant issued without an order of a magistrate”); *El Cenizo*, 890 F.3d at 187; *Lopez-Lopez*, 315 F. Supp. 3d at 799 *Roy v. Cty. of Los Angeles*, No. CV1209012BROFFMX, 2017 WL 2559616, *8 (C.D. Cal. June 12, 2017) (“[C]ourts have recognized that the executive and the Legislature have the authority to permit executive—rather than judicial—officers to make probable cause determinations regarding an individual’s deportability.”); *accord Sherman v. U.S. Parole Comm’n*, 502 F.3d 869, 876-80 (9th Cir. 2007) (in immigration context, warrants may be issued “outside the scope of the Fourth Amendment’s Warrant Clause”). The Sheriff has authority to “serve all process[,]” civil or criminal, “in the manner prescribed by law.” M.C.A. § 7-32-2121. Regardless, under common law, the Sheriff’s cooperation with a detainer or immigration warrant is permissible because it constitutes a warrant under state law.

As Ramon openly acknowledges, Br. 21-22 & 22 n.10, other types of warrants, including administrative warrants, are also provided for under Montana law although they are not issued through the same process as criminal warrants. Indeed, temporary *civil* detentions effectuated by one sovereign on behalf of another routinely occur in our system of dual sovereignty. *See, e.g.*, *United States v. Cardona*, 903 F.2d 60 (1st Cir. 1990)

(parole-violator warrant issued by New York, arrest effectuated by local police officers in Rhode Island); *Chavez v. City of Petaluma*, No. 14-CV-5038, 2015 WL 6152479, *6, *11 (N.D. Cal. Oct. 20, 2015) (dismissing a claim for allegedly improper warrantless arrest and detention where parole officers placed parole hold on Plaintiff, city policy effectuated warrantless arrest, and County detained following arrest). Ramon contends that CBP detainers, attesting to probable cause of removability, are not "warrants" under state law so that the "warrantless arrest" statute applies. Br. 20. But that Montana law provides *its own entities* civil arrest authority shows that Montana law recognizes civil warrants as valid. Br. 22 n.10. It is no wonder that Montana statutory law, concerned with delineating state entities' own powers, does not provide a laundry list of out-of-jurisdiction warrants that it deems valid. And it would be inappropriate for the State to pass judgment on the validity of Congress' preferred immigration scheme. The cases that Ramon cites interpret preexisting statutes and do not address this authority. Br. 28-29. In *Draggin' Y Cattle Company, Inc. v. Junkermier, Clark, Campanella, Stevens, P.C.*, 395 Mont. 316, 336, 439 P.3d 935, 946 (2019), the appellees sought a "new obligation," not the recognition of existing authority. *State v. Bradshaw* addressed the specific statute regarding warrantless arrest, contrasting it with "a warrant fair on its face." 53 Mont. 96, 96, 161 P. 710, 711 (1916). *State v. Lemmon*, 214 Mont. 121, 692 P.2d 455 (1984), involves statutory interpretation with no discussion of the common law, while *State v. Ellis* describes when a "defendant in a civil action" in Montana "may be arrested," 2007 MT 210, ¶ 23, 339 Mont. 14, 21, 167 P.3d 896, 901 (2007). None of these cases involves

the authority of a sheriff to cooperate with another lawful sovereign.

That other states have elected to *require* that their localities cooperate with immigration enforcement—sometimes in rebuke of judicial opinions that have interpreted state law to the contrary, *see, e.g.*, *Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276 (S.D. Fla. 2018)—or that other state judiciaries have interpreted differently how their statutes modify the common law is irrelevant to *Montana* law. *See* Br. 18-19. To the extent that Ramon may rely on a set of minority cases interpreting other states' laws to the contrary, those cases are not persuasive in light of Montana law. *See, e.g.*, M.C.A. § 1-1-108. Moreover, they are distinguishable on their own terms. *Lunn v. Commonwealth*, 477 Mass. 517, 528-33, 78 N.E.3d 1143, 1153-57 (2017), represents the minority view, rests on Massachusetts law, involves a prior ICE policy, and conflicts with the authorities cited herein. *Cisneros v. Elder,* No. 18CV30549, 2018 WL 7199173, *8 (Colo. Dist. Ct., Dec. 6, 2018), incorrectly relied on *Lunn* in contravention of the state common law authority and has been called into question by another Colorado case, *Canseco Salinas v. Mikesell*, No. 18-cv-30057, 2018 WL 4213534 (Colo. Teller Cty. Dist. Ct. Aug. 19, 2018), on the identical issue. And *Esparza v. Nobles County,* 53-cv-18-751, slip op. (Minn. 5th Jud. Dist. Ct. Oct. 19, 2018), also accepted *Lunn* without considering relevant Minnesota precedent; that decision is currently on appeal. Finally, *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 88 N.Y.S.3d 518 (N.Y. App. Div. 2018), is only controlling in one of New York's appellate divisions and relies on interpretation of New York law, which is not analogous to Montana's statutory scheme that explicitly recognizes the

continued vitality of the common law.

Moreover, Ramon's citation of Montana statutes describing warrants and warrantless arrests is irrelevant here. *See* Br. 20-23. Those statutes do not define "warrant" generally but rather describe certain warrants under Montana law. Further, they do not constrain the common law authority to cooperate with the federal government's own valid detainers. *See, e.g.*, *Roy*, 2017 WL 2559616, *10 (noting that "a different analysis [would apply] if Plaintiffs were alleging that Defendants have failed to provide any probable cause determination within forty-eight hours and Plaintiffs ... were being detained without any authorization at all"). Indeed, most courts that have considered cooperation with federal immigration detainers where those detainers are supported by probable cause of removability have found such cooperation permitted or not prohibited by state law. *See* cases cited *supra* at 5 n.4. Even on its own terms, Ramon's argument that CBP holds are "warrantless arrests" is incorrect, as the "warrantless arrest" statute does not confine itself to crimes—it permits arrests for "offense[s]," the definition of which includes "violation[s]" of "any ordinance" of a "political subdivision[]." M.C.A. §§ 46-6-311, 46-1-202(15); *see* Br. 20.

Additionally, Montana statutory law does not withdraw the Sheriff's authority to cooperate with federal immigration enforcement. In fact, Ramon's argument fails on its own terms, even if this Court were to accept the mischaracterization of the continued detention as an arrest.

First, Montana law requires the sheriff to "preserve the peace," M.C.A. § 7-32-

2121, which includes "serv[ing] all process[,]" civil or criminal, "in the manner prescribed by law." M.C.A. § 7-32-2121. And under M.C.A. § 7-32-2203, Montana law affirmatively authorizes local jails to temporarily hold individuals subject to "civil," rather than criminal, process, or any "other authority of law." M.C.A. § 7-32-2203(c). Immigration enforcement is such a civil process, and nothing in M.C.A. § 7-32-2203 suggests that it is limited to *state* civil process. *See* M.C.A. § 7-32-2242 ("Local government, state, and *federal* law enforcement and correctional agencies may use any detention center") (emphasis added). As the trial court in this case and another Montana trial court has held, this provision "authorize[s] a detention center to detain individuals in civil circumstances." Order; *Valerio-Gonzalez v. Jarrett*, No. DV 17-688B (18th Jud. Dist. Ct., Gallatin Cty.). That is because a detainer "falls within the authority of § 7-32-2203(3), M.C.A. as a civil process," and thus the Sheriff, as a jailor, has "authority under Montana law to detain [a removable alien] on a civil immigration hold." *Id.* The Sheriff had authority under Montana law to cooperate with the CBP detainer here. Ramon cites M.C.A. § 1-1-202, concerning "[t]erms relating to procedure and the judiciary," to argue that process must mean judicial process. Br. 21. But that definition includes "a writ," which is what a CBP detainer, from a coequal sovereign, is. M.C.A. § 1-1-202.

By the plain terms of these statutes, Montana sheriffs have the authority to assist federal law enforcement agencies even if this Court were to consider the continuation of custody to be a new arrest. A detainer demonstrates that there is probable cause to believe that an alien is subject to removal, a federal civil offense. 8 C.F.R. § 287.7. An

alien is removable if he or she has violated federal immigration law in any number of specified ways. *See generally* 8 U.S.C. §§ 1182, 1227. Therefore, a federal immigration officer issuing a detainer has probable cause to believe that the alien has committed a federal offense, and the sheriff has the authority under Montana law to keep the peace by cooperating with the federal government.

"It is well established that an arresting officer may rely on information conveyed by another officer to determine whether there is probable cause to arrest." *State v. Williams*, 273 Mont. 459, 464, 904 P.2d 1019, 1022 (1995). The Supreme Court of Montana's "policy [is] that courts should evaluate probable cause on the basis of the collective information of the police rather than that of only the officer who performs the act of arresting." *Id.* (internal quotation marks and citation omitted). Hence a Montana peace officer may rely on the federal government's detainer. *See El Cenizo*, 890 F.3d at 188 ("Compliance with an [immigration] detainer ... constitutes a paradigmatic instance of the collective-knowledge doctrine, where the detainer request itself provides the required communication between the arresting officer and an officer who has knowledge of all the necessary facts."). Because Montana sheriffs have the authority to cooperate with federal immigration enforcement, this Court should affirm the district court.

CONCLUSION

When the Sheriff cooperates with federal immigration enforcement by cooperating with a CBP detainer, it is permitted by Montana law. This Court should uphold that cooperation.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2019, a true copy of this Amicus Curiae brief was e-filed with the Court and emailed to all parties of record.

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Dated: September 3, 2019

CERTIFICATE OF COMPLIANCE

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Dated: September 3, 2019

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