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

AGUSTIN RAMON,

*Plaintiff and Appellant,*

V.

DARREN SHORT, IN HIS OFFICIAL CAPACITY AS SHERIFF OF LINCOLN SHERIFF AND ADMINISTRATOR OF LINCOLN SHERIFF DETENTION CENTER,

*Defendant and Appellee.*

# APPELLANT'S REPLY BRIEF

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## INTRODUCTION

The Sheriff does little to contest Mr. Ramon's central arguments on the merits of this important case: that Montana law does not authorize its officers to arrest people for civil immigration violations, and that the district court erred in finding such authorization in a jail administration statute. Instead, the Sheriff's primary argument is that this case is moot. But this is a paradigmatic case for the application of *exceptions* to mootness: The issues are of great public concern, certain to recur, and yet highly likely to evade review.

The United States, too, does little to defend the district court's reasoning. Instead, the United States principally contends continued detention in response to an immigration detainer does not constitute a new arrest, even though courts across the country have unanimously held to the contrary. The Court should apply an exception to mootness to address the important issues in this case, and hold on the merits that Montana local law enforcement have no authority to carry out civil immigration arrests.

## REPLY TO STATEMENT OF THE ISSUES

The Sheriff identifies mootness as the only issue, but the Court directed the parties to "brief the merits." Order (May 28, 2019). Thus Mr. Ramon's prior Statement of the Issues remains correct.

## ARGUMENT

### I. THE COURT CAN AND SHOULD REACH THE MERITS OF MR. RAMON'S CLAIMS.

Mr. Ramon previously demonstrated that two exceptions to mootness apply in this case, and the Court should therefore reach the merits. Opening Br. 8-14. In response, the Sheriff has failed to provide *any* authority—mandatory, persuasive or otherwise—that counsels against this Court deciding the merits in this matter.

Plaintiffs like Mr. Ramon are in a catch-22—facing expedited transfers to federal custody, but only able to show those transfers are unlawful by pursuing the deliberative judicial process. Practically speaking, they are highly unlikely to have their valid legal claims adjudicated by the Court while still in custody. Because the issue in this case involves important issues of public interest, is likely to recur, and evades review, the Court can and should apply an exception to the mootness doctrine and review the merits. *See, e.g., Walker v. State,* 2003 MT 103, 316 Mont. 103, 68 P.3d 872 ("This Court 'reserves to itself the power to examine constitutional issues that involve the broad public concerns to avoid future litigation on a point of law.'").

#### A. The Public Interest Exception Applies.

This case presents recurrent issues of great public concern, a point underscored by the significant amicus participation before this Court. The Montana Association of Criminal Defense Lawyers (MACDL) and thirty-nine

legal scholars filed amicus briefs. And the United States filed a brief on the other side that nonetheless emphasizes the importance of the issues presented. U.S. Br. 1.

The Sheriff contests this case's importance, arguing that the combined 135 detainers sent to detention facilities in Montana in 2017 and 2018 is not "significant" repetition and the stakes of unlawful detention are not "so strong." Appellee Br. 5. Yet this Court has previously applied the mootness exception where, for example, approximately 100 people annually faced unlawful detention. Opening Br. 13 (citing cases). And where the issue is losing one's liberty, the public importance is clear. *See id.*; *cf. State v. Gleason* (1954), 128 Mont. 485, 489, 277 P.2d 530, 532 (emphasizing the "importance of the social interest involved in the maintenance of personal liberty").[1]

The fact that the number of suits brought is much lower than the number of people unlawfully detained, *see* Appellee Br. 5, reflects the difficulty of filing suits like this one and is all the more reason to consider this inherently transitory issue. Individuals jailed in response to immigration detainers often face significant language barriers and may not know their rights under state arrest authority law.

[1] Mr. Ramon also brought claims based on the Montana Constitution. The district court did not reach them, but the constitutional rights at stake—including the right to liberty—underscore the public importance of this case.

Moreover, the time available to file and litigate such cases is necessarily short. *See* Opening Br. 12.[2] That this recurrent problem often evades review militates in favor of applying a mootness exception.

Finally, as previously explained, courts employ the public interest exception "if there is some legal principle at stake not previously ruled as to which a judicial declaration can and should be made for future guidance." *State ex rel. Dienoff v. Galkowski*, 426 S.W.3d 633, 639 (Mo. Ct.App. 2014); *see also* Opening Br. 10. Local law enforcement across the state would benefit from an authoritative ruling on this unsettled issue.

**B. Mr. Ramon's Challenge is Capable of Repetition Yet Evading Review.**

Alternatively, as Mr. Ramon explained, the capable of repetition exception to mootness applies. Opening Br. 11-12. Indeed, the Sheriff does not contest that the challenged action in this matter is "too short in duration to allow the issues to be fully litigated prior to … release." *In re D.M.S.*, 2009 MT 41, ¶ 10, 349 Mont. 257, ¶ 10, 203 P.3d 776, ¶ 10.

Instead, the Sheriff argues that Mr. Ramon will not be arrested on a detainer again. But the Sheriff concedes, as he must, that, while typically the same plaintiff

[2] The facts and procedural history of this case illustrate how difficult it is to secure judicial review of the legality of detention requested by immigration detainers. *See* Opening Br. 2-6. Even where an Appellant requests expedited consideration it is unlikely that this Court will have time to review the challenge before he leaves state custody.

must again face the same harm, there are "exceptions," particularly in the context of involuntary detention. Appellee Br. 6-7 (citing *In re D.K.D.*, 2011 MT 74, ¶ 14, 360 Mont. 76, ¶ 14, 80, 250 P.3d 856, ¶ 14, 859). Indeed, the Sheriff's cited authority supports the proposition that unlawful detention cases are just the sort warranting an exception to this general rule. Just as it did in *D.K.D.*, and numerous other cases involving unlawful detention, the Court should apply the mootness exception without a showing that the complaining party be subject to the same action in the future. *See* Opening Br. 12-13.

## II. THE SHERIFF'S REFUSAL TO RELEASE MR. RAMON WAS A NEW ARREST IN VIOLATION OF MONTANA LAW.

On the merits, neither the Sheriff nor the United States rebut Mr. Ramon's showing that his arrest violated Montana law. The Sheriff only briefly engages with the core issue in this case—whether Montana's laws authorize civil immigration arrests. The United States, in turn, makes little effort to support the reasoning of the district court below—and the arguments it does make are unpersuasive. Rather, both rely principally on the claim that Mr. Ramon was not subjected to an arrest when the Sheriff held him after he would otherwise have been released. But that "no arrest" position both makes no sense and collides directly with an overwhelming consensus of cases to the contrary. And, once the arrest is acknowledged, it is clear that Montana simply does not provide the Sheriff with the power to execute it.

### A. Extending Detention Because of a Detainer is a New Arrest.

In Montana an arrest is broadly defined to encompass "an actual restraint of the person to be arrested." Mont. Code Ann. § 46-6-104; Opening Br. 15. And that is consistent with the holdings of courts across the country that continued detention in response to a detainer request is a new arrest. Opening Br. 15-16 (collecting cases); *see also Hernandez v. United States*, ___ F.3d ____, 2019 WL 4419379, at *4 (2d Cir. Sept. 17, 2019) ("as the individual is maintained in custody for a new purpose after he was otherwise eligible to be released, he is subjected to a new seizure that must be supported by probable cause"); *Esparza v. Nobles Cty.*, A18-2011, slip op. at 10-11 (Minn. Ct. App. Sept. 23, 2019) (unpublished) (similar).[3] Indeed, neither the United States nor the Sheriff can point to a single case holding to the contrary.

But the Sheriff and the United States insist, for divergent reasons, that there is no arrest at issue here. The Sheriff tries to refashion the facts, incorrectly arguing that there was no new arrest in this case because Mr. Ramon was not "released" before he was held on a detainer; because he did not pay a bond the Sheriff concedes would be futile; and because (according to the Sheriff) he was never held on the detainer at all. Appellee Br. 7, 9. For its part, the United States

[3] *Esparza* is available at: www.mncourts.gov/mncourtsgov/media/Appellate/Court%20of%20Appeals/Standard%20opinions/OPa182011-092319.pdf.

presents a state-law argument about the meaning of "arrest" that even the Sheriff does not embrace—and that is squarely contrary to Montana law.

1. The Sheriff's new-arrest arguments are each flawed. First, the Sheriff is simply wrong that other cases finding that detainer holds are new arrests involved any "actual[] release" prior to the hold. Appellee Br. 7-8. That the petitioner in *Lunn v. Commonwealth* was "placed in a holding cell" following the termination of his state criminal case, Appellee Br. 8, is irrelevant, as he remained in court-officer custody the entire time—and the court recognized that the issue was whether the officers who had custody could "*continue to hold* an individual after he or she is entitled to be released," 477 Mass. 517, 524 n.16 (2017) (emphasis added). And *People ex rel. Wells v. DeMarco* rejected the idea that the petitioner had left the jail's custody, holding that the jail itself had re-arrested him in violation of state law. 88 N.Y.S.3d 518, 524, 527 (N.Y. App. Div. 2018). The Sheriff does not even attempt to address the other cases holding that refusal to release because of an immigration detainer constitutes a new arrest. Opening Br. 16.

Second, courts have roundly rejected the idea that technical ability to post a bond absolves a jail of responsibility for unlawful detainer holds. *See Hernandez*, 2019 WL 4419379, at *10 (holding that complaint alleged Fourth Amendment violation where plaintiff alleged he "would not have been released, even if he had posted bail," because of detainer); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-

CV-02317-ST, 2014 WL 1414305, at *11 (D. Or. App. 11, 2014) (similar); *see also, e.g., Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1250 (E.D. Wash. 2017) (similar). The instant motion for a temporary restraining order was brought while Mr. Ramon was in custody facing the futility of posting bond, which would have resulted in him being held on the detainer. *See* Doc. 27 at 2-3 (district court noting the same and rejecting ripeness argument on that basis). Thus, at the time the district court denied the TRO, that denial was erroneous because the jail had no authority to re-arrest Mr. Ramon and effectively keep him from posting bail because of the imminent threat of an illegal arrest.

Third, the Sheriff appears to now assert that Mr. Ramon was not actually held on the detainer *at all* after his state court sentencing. *See* Appellee Br. 7. That post-decision factual assertion is not properly before the Court. And in any case the affidavits he has submitted do not say that, and an unsubstantiated factual assertion in a brief is not evidence.

In the alternative, the Sheriff suggests that any detention was limited, relying on a statement from his predecessor in office. Bowe Aff. ¶ 6. But that affidavit freely admits that the Sheriff's Office is committed to holding individuals on detainer requests, *id.* ¶ 10, and it is undisputed that the detainer asks for up to two additional days of detention. Further, claiming an illegal arrest was for only a short period of time is no answer: *Any* seizure for a new purpose must be

authorized, whether it is minutes, an hour, or longer. *Cf. Rodriguez v. United States*, 135 S. Ct. 1609, 1613, 1616 (2015) (requiring new justification for even "seven or eight minutes" of detention for new purpose).

Finally, the Sheriff asserts that it is entitled to hold prisoners up to 48 hours to "complete the release process," and thus the detainer hold is not a new arrest. Appellee Br. 9. That is entirely incorrect. *County of Riverside v. McLaughlin*, on which he relies, is about what delay is permissible in presenting an arrested individual to a magistrate—not a license for jails to keep custody without any authority. 500 U.S. 44 (1991). Likewise inapposite is the United States' argument that jails may take time to "assess" whether there are outstanding warrants before releasing an inmate. U.S. Br. 8. The cases it cites are about reasonable administrative delays, for example in processing paperwork. *See, e.g.*, *Berry v. Baca*, 379 F.3d 764, 771 (9th Cir. 2004) (addressing jail's "ability to process releases"). This case is not about such complications and ordinary delays. The Sheriff does not purport to be checking or processing anything at all, but executing a *known* request to detain. Indeed, the Sheriff himself admits that "the detention of an inmate on an immigration detainer is not a routine part of the release process." Appellee Br. 9. And while a jail generally has authority to re-arrest on an outstanding criminal warrant it may find upon a routine check, here the entire issue is whether the Sheriff has such authority for a federal immigration detainer.

2. For its part, the United States argues that a "new arrest does not occur until CBP physically comes to the jail and arrests the detainee under its own authority." U.S. Br. 9. But it provides *no* support at all beyond its own say-so, which is squarely contrary to Montana law and the unanimous case-law addressing claims of this type.

A new arrest does not require restraint by a different agency. *State v. Norvell*, 2019 MT 105, 395 Mont. 404, 440 P.3d 634, makes this point clear. There, a man was held in jail for violating probation and, when that first basis for detention was to end, his probation officer provided a new document asserting that the jail should hold the man for "[n]ew felony charges to be filed" by another law enforcement agency. *Norvell*, ¶ 7. The same jail kept the man in detention after he would have been released on this new basis. *Id.*, ¶ 19. This Court held that this continued detention in response to the request, "valid or not," constituted a new arrest. *Id.*[4]

The Sheriff does not respond to *Norvell*. The United States cites it but fails to acknowledge its holding. Under the United States' theory of what constitutes an "arrest" under Montana law, the *Norvell* situation would be mere "continued

[4] *State v. Dieziger* (1982), cited in U.S. Br. 8, does not question that someone can be arrested while already in custody. 200 Mont. 267, 270, 650 P.2d 800 (finding no prejudice in the delayed arrest and arraignment of a man imprisoned on another matter).

detention"—the same jail continuing to hold the man, at his probation officer's request, so that another agency could "come[] to the jail and arrest[] the detainee under its own authority." U.S. Br. 7, 9. This Court's new-arrest holding in *Norvell* refutes the United States' theory.

Montana's extradition statutes highlight the same point. Opening Br. 17. The United States concedes that an individual who was previously arrested for extradition without a warrant may be held under that statutory scheme for *subsequent* "arrest" once the governor's warrant issues. U.S. Br. 9 (internal quotation marks and alterations omitted).[5] If the United States' theory were correct, there would be no new arrest for such an in-custody extension of detention based on the Governor's warrant; yet the legislature *specifically* referred to that extension as an "arrest." Mont. Code Ann. § 46-30-302. Thus, as courts across the

[5] The extradition statutes and cases make clear that once the governor's warrant is issued and served, the arrest has happened, even if no transfer of custody has occurred. *See State v. Holliman* (1991), 247 Mont. 365, 366-68, 805 P.2d 52 (person "held on the governor's warrant," and no transfer of custody); *see* Mont. Code Ann. § 46-30-217.

country have concluded under state and federal law,[6] continued detention in response to a detainer request constitutes an arrest.[7]

**B. The Sheriff Lacked Authority to Hold Mr. Ramon on the Detainer.**

Once properly seen as an arrest, the Sherriff's detainer hold is plainly unlawful, as it exceeds the arrest authority that Montana law provides him. Opening Br. 17-18. Neither the Sheriff nor the United States disputes that arrest authority here is a matter of state law. *See id.*; *see also* Law Professors' Br. 20. But there is no such authority under Montana law, and the Sheriff and United States offer almost nothing new—and nothing persuasive—in response to Mr. Ramon's arguments.

1. Jail Administration and Payment Statutes Do Not Provide Arrest Authority.

The jail administration statute—Mont. Code Ann. § 7-32-2203—on which the district court relied grants no arrest authority. That statute merely sets out

[6] While a Fourth Amendment seizure may not always be the same as a statutory arrest, *see* US. Br. 8 & n.4, the questions are plainly closely connected, will often have the same answer, and in any event most of the new-arrest cases Mr. Ramon has cited *are* statutory cases.

[7] In any event, even if holding on a detainer were deemed distinct from a new arrest, the Sheriff would still need some lawful authority to hold someone for up to two days when that person is otherwise entitled to release, and for effectively thwarting posting bail because doing so will not result in actual release.

categories of people whom a jail may house, once they have *already* been "committed" or "sentenced" by a court or arresting officer. Opening Br. 24-25.

Without responding to that point, both the Sheriff and the United States argue that the immigration detainer is "civil process"; they do not contend that any other provisions in Section 2203 apply. Appellee Br. 8-9; *see also* U.S. Br. 17. But Montana law is clear that "process" must be issued by a court. Opening Br. 26-27; MACDL Br. 12-14.[8] Indeed, the Legislature specifically defined that term: "'Process' means a writ or summons issued in the course of *judicial* proceedings." Mont. Code Ann. § 1-1-202(5) (emphasis added); *see id*. at § 1-1-202 (explaining that this definition applies generally to the use of this term in the Code). It is undisputed that none of DHS's documents used in detainer requests are issued by a judge. The Sheriff does not even acknowledge § 1-1-202 (or any of the other authorities Mr. Ramon cited on this issue). The United States' response—that the definition "includes 'a writ,'" U.S. Br. 17—misses the point: the writs encompassed in "process" must be "issued in the course of judicial proceedings."

[8] Neither the United States nor the Sheriff contend—or, at least, develop any argument—that the detainer is "other authority of law." *See* Sheriff Br. 7-8; U.S. Br. 17. In any case, as previously explained, such "other authority" would also have to be from a judge. Opening Br. 2726; *see* MTACDL Br. 13-15 (explaining the consistent requirement for a judicial order to commit someone on civil process to a Montana jail).

Mont. Code Ann. § 1-1-202(5). Detainers are not, which is the end of the statutory inquiry.[9]

Moreover, whatever the federal government wishes to call its detainer requests for federal purposes, the issue in this case is whether Montana's laws allow its officers to effectuate these arrests. Writs are defined by the Legislature: "'Writ' means an order in writing issued in the name of the state or of a court or judicial officer." Mont. Code Ann. § 1-1-202(8); *see also id*. § 1-1-202(2) (defining judicial officer). A detainer is issued neither in the name of the State, nor that of a court or judge. They are never reviewed, approved, or signed by a judicial officer. And detainers are *requests* issued by ICE officers and Border Patrol agents—not orders. *See Galarza v. Szalczyk*, 745 F.3d 634, 645 (3rd Cir. 2014). Unsurprisingly, therefore, the United States cites no Montana cases or statutes to support its recasting of a warrant as a writ.

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[9] For the same reason, the United States' invocation of the Sheriff's duty to "serve all process or notices in the manner prescribed by law," U.S. Br. 12-13, is unavailing, *see* Mont. Code Ann. § 7-32-2121(9); *see also State v. Dist. Court of Fifteenth Judicial Dist. in & for Musselshell Cty.* (1925), 75 Mont. 116, 241 P. 1075, 1076 (holding that arrest authority was granted in other statutes, and not in § 2121's list of duties).

And, as previously explained, Mont. Code Ann. § 7-32-2242, which allows the federal government to make contracts to use a jail and sets out which entity must pay costs, addresses "the confinement of *arrested* persons" (emphasis added) or people serving a sentence—but does not itself provide any arrest authority, Opening Br. 24.

Unable to find any Montana statute that would encompass detainer requests, the United States argues that detainers are "warrants." It contends that Montana's laws "do not define 'warrant' generally but rather describe certain warrants." U.S. Br. 16; *see also id.* 12.[10] Even if that were correct, the detainer request is not a warrant. For one thing, the federal government has a form it calls an administrative immigration "warrant," Opening Br. 20 n.8, and no such claimed "warrant" was issued here, U.S. Br. 5 n.3. Further, such "warrants" are by their very terms directed to "immigration officers, not state and local officers." *Esparza*, slip op. at 14 n.4.

More fundamentally, the idea that Montana's dozens of warrant laws do nothing to illuminate the state-law meaning of "warrant" is highly implausible. To the contrary, Montana statutes reflect that under state law a warrant is a command from a court, subject only to narrowly defined statutory exceptions. Mont. Code Ann. § 46-1-202(4) ("Arrest warrant' means a written order *from a court.*" (emphasis added); *accord id.* § 27-16-201 (civil actions); *see also id.* § 5-5-104 (exception for legislature's warrant); Opening Br. 17 (governor's warrant). Again, detainers are simply requests from law enforcement officers—not commands at all,

[10] Neither the Sheriff nor the United States argues that there is warrantless arrest authority for a detainer arrest, and no such authority exists here. Opening Br. 21-23.

much less commands from a court. The United States' unsupported and illogical theory would render the statutory term "warrant" meaningless.

2. The Common Law Does Not Provide Arrest Power.

Mr. Ramon previously charted out Montana's comprehensive system of arrest statutes, showing that "there is no common law" arrest authority because "the law is declared by statute," and that in any case there was no rule from common law that would support a civil immigration arrest. Opening Br. 20-24, 27-29 (quoting Mont. Code Ann. § 1-1-108).[11] The United States resists that conclusion but fails to identify *any* Montana common-law arrest authority. *See* U.S. Br. 11-12. Instead, it cites irrelevant Montana common-law cases, none of which touch on arrest power. *See Sunburst School Dist. No. 2 v. Texaco, Inc.*, 2007 MT 183, 338 Mont. 259, 165 P.3d 1079 (common-law claim for restoration damages not displaced by a single statute allowing actions for contribution and declaratory relief); *State v. Dist. Court of Second Judicial Dist. in & for Silver Bow Cty.* (1923), 69 Mont. 29, 220 P. 88 (common-law authority to grant spouse separate maintenance). The cases are therefore unresponsive to the argument that the Legislature has displaced any residual common law arrest power.

[11] The United States' assertion that Mr. Ramon's argument is "without citations," U.S. Br. 12 (citing Opening Br. 20), is incorrect, and cites to Mr. Ramon's introduction, not the argument itself.

Its reliance on out-of-state cases is likewise unavailing. Indeed, the United States has advanced the same argument—that common law arrest authority exists everywhere absent explicit legislation—in various other courts, which have repeatedly rejected it. *See Lunn*, 477 Mass. at 532-33, 535; *Wells*, 88 N.Y.S.3d at 530-31; *Esparza*, slip. op. at 16-17 n.5; *Cisneros v. Elder*, No. 2018CV30549 2018 WL 7142016, at *9-10(Dist. Ct. Colo. Dec. 6, 2018).

And the cases that the United States cites offer no support. First, it cites two Tenth Circuit cases, neither of which deals with Montana law, and both of which were squarely abrogated by the Supreme Court. *See United States v. Santana-Garcia*, 264 F.3d 1188, 1193 (10th Cir. 2001) (citing *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1296, 1299 n.4, 1300 (10th Cir. 1999), *abrogated by Arizona v. United States*, 567 U.S. 387, 410 (2012) (holding state officers do not have authority "to engage in [immigration] enforcement activities as a general matter"); *see also Wells*, 88 N.Y.S.3d at 531-32 (rejecting reliance on *Santana-Garcia*).[12]

The United States also cites federal cases addressing state officers' authority to arrest for federal criminal violations. But those cases simply interpret other states' criminal arrest *statutes*; none of them endorse a non-statutory power to

[12] Of course, such federal court decisions have no special force as interpretations of state law—state courts are the ultimate arbiters of their law. *See Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011).

conduct civil arrests. *See United States v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983) (relying on Illinois statute); *United States v. Bowdach*, 561 F.2d 1160, 1168 (5th Cir. 1977) (relying on Florida statute); *Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928) (interpreting "the meaning of the [New York] statute"); *see also Wells*, 88 N.Y.S.3d at 531 (recognizing *Marsh* was statutory); *United States v. Cardona*, 903 F.2d 60, 63 (1st Cir. 1990) (statute authorized arrest on out-of-state violation warrant). The United States also argues that governments "routinely" hold detainees for each other. U.S. Br. 13. But where the authority to do so exists in Montana, it is granted by statute—and only for a felony, *see*, Mont. Code Ann. § 46-6-210.[13]

Finally, the United States relies on a single out-of-state case indicating that sheriffs in *that* state had the common-law power to effect a *criminal* arrest. *See, e.g.*, *Com. v. Leet*, 641 A.2d 299, 301 (Pa. 1994); *but see Kopko v. Miller*, 892 A.2d 766, 774 (Pa. 2006) (emphasizing *Leet*'s limits and rejecting argument that sheriffs "possess general police powers, which are essentially plenary in nature"). There is, in other words, no support at all, much less an "overwhelming

[13] The choice to limit that arrest authority to felonies was a deliberate one. *See id.* (Commission Comments) ("The commission felt that this provision should be limited to felony warrants only."); *see generally State v. Flummerfelt*, 684 P.2d 363, 366-68 (Kan. 1984) (explaining the different choices by states, including Montana, to grant arrest power for out-of-state warrants).

consensus," for the United States' argument that the authority to conduct civil immigration arrests exists everywhere unless it is affirmatively disclaimed. *See* U.S. Br. 11.[14]

3. Federal Law Does Not Supply the Missing Authority.

Federal law does not and cannot supply the missing state authority here. Opening Br. 17-18 (state officer arrest a question of state law); *id.* 30-31 & 31 n.13. The Sheriff does not argue otherwise. Nor does the United States appear to argue that federal law, including 8 U.S.C. § 1357, authorizes a detainer arrest where state law withholds that authority. Indeed, in other litigation it has conceded § 1357(g)(10) provides no such authority. *Lunn*, 477 Mass. at 535.[15]

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[14] The United States' effort to distinguish Mr. Ramon's cases is unconvincing. Montana's jurisprudence looks only to statutory arrest power both in the criminal and civil contexts. Opening Br. 28. There is "no discussion of the common law" in these cases, U.S. Br. 14, precisely because there is no relevant common-law.

[15] Whether detainer arrests are mere "cooperat[ion]," 8 U.S.C. § 1357(g)(10)(B), rather than a core "immigration officer function[]" which requires a formal agreement, supervision, and training, *id.* § 1357(g)(1)-(9), is a contested federal statutory issue not before the Court, *see* Opening Br. 31 n.13; *see also Davila v. N. Reg'l Joint Police Bd.*, 370 F. Supp. 3d 498, 551 (W.D. Pa. 2019). The United States agrees this issue is not properly presented here. U.S. Br. 7 n.4.

Nevertheless, the United States does now invoke another subsection, § 1357(g)(8), suggesting that it bears on this case. U.S. Br. 9-10. Not so. Subsection (g)(8) addresses certain officers' "liability" and "immunity from suit"—neither of which is at issue here, as there is no damages claim before the Court, nor any assertion of (for example) qualified immunity. Moreover, that subsection is only relevant to state officers who acting as immigration officers under a formal agreement

Finally, the United States invokes the collective knowledge doctrine (also known as the "fellow officer rule"), which allows officers to pool their knowledge for purposes of the Fourth Amendment's probable cause requirement. U.S. Br. 18. But that is irrelevant, because the state-law issue in this case is entirely independent of whether officers—collectively or individually—have probable cause. Even if DHS agents validly convey probable cause of removability to local officers, the local officers cannot make the arrest without state-law arrest authority. The collective knowledge doctrine therefore has no bearing on this case. *See Wells*, 88 N.Y.S. at 532 (explaining that the fellow officer rule is irrelevant to state-law arrest authority).

## REQUEST FOR RELIEF

The judgment of the district court should be reversed.

Dated this 23rd day of September, 2019.

Respectfully submitted,

*/s/ Alex Rate*
Alex Rate
Counsel for Appellant

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pursuant to § 1357(g)(1). *See Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 463 (4th Cir. 2013); *Davila*, 370 F. Supp. 3d at 552.

## CERTIFICATE OF COMPLIANCE

The undersigned, Alex Rate, certifies that the foregoing complies with the requirements of Montana Rules of Appellate Procedure 11 and 12. The lines in this document are double spaced, except for footnotes and quoted and indented material, and the document is proportionately spaced with typeface consisting of fourteen characters per inch. The total word count is 5,000 words or fewer, excluding caption, table of contents, table of authorities, signature block and certificate of compliance. The undersigned relies on the word count of the word processing system used to prepare this document.

*/s/ Alex Rate*
Alex Rate
*Counsel for Appellant*

## CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing APPELLANT'S REPLY 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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