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*Attorney for Respondent*

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0257

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RACHELL RENE FLORES,

Petitioner,

v.

CAPT. BRADLEY BRAGG,  
Lewis & Clark Detention Center,

Respondent.

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RESPONSE TO PETITION FOR WRIT OF MANDAMUS

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COMES NOW, the Department of Corrections (“DOC”), by and through counsel of record, Ethan C. Lerman, and submits the following *Response to Petition for Writ of Mandamus*.

**SUMMARY ARGUMENT**

The Respondent maintains that the Petitioner’s, Rachell Flores’, petition seeking additional or specific medical care while at the Lewis and Clark Detention Facility is inappropriate for a writ of mandamus. The degree of

medical care provided is a matter within the discretion of medical providers. A writ of mandamus is only appropriate for ministerial acts and not appropriate for discretionary acts. The Petitioner is not arguing that she didn't receive *any* medical treatment, only that she felt like she should have received more. The DOC medical staff has reviewed her records and did not find evidence of inadequate or inappropriate medical care.<sup>1</sup> Additionally, the Petitioner is no longer incarcerated at the Lewis and Clark Detention Center and, therefore, the petition against the named Respondent is moot in so far as a writ of mandamus is concerned.

### **FACTUAL BACKGROUND**

Rachell Flores ("Flores") is an offender in the custody of the Montana Department of Corrections ("DOC") pursuant to a ten (10) year sentence imposed in Cause No. CDC-2012-242, by the Montana First Judicial District Court.<sup>2</sup> Flores is currently residing at the Passages Assessment and Sanction Center ("Passages") in Billings, Montana.<sup>3</sup>

Flores has been in and out of custody since 2004 with three (3) felony convictions out of Lewis and Clark County, Montana and another felony

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<sup>1</sup> See Appendix "Exhibit A"

<sup>2</sup> See Appendix "Exhibit B(3)" *Revocation and Amended Judgment*

<sup>3</sup> See Appendix "Exhibit C"

conviction out of Jefferson County, Montana. All the felony convictions are for either Forgery or Issuing Bad Checks.

It was during this most recent revocation proceeding that she was incarcerated at the Lewis and Clark County Detention Facility on and off between December 28, 2023, and June 17, 2024.<sup>4</sup> During that stay, she alleges that she was not provided with adequate medical care which is the subject of her *Petition for Writ of Mandamus*.

Trecia Campbell, managed care registered nurse for the Department of Corrections, reviewed Ms. Flores' medical records for the time period she was incarcerated at the Lewis & Clark County detention center.<sup>5</sup> She noted that DOC medical staff had examined and evaluated Ms. Flores, as appropriate on a regular and continuing basis between January and July, 2024.<sup>6</sup> Further, DOC medical staff approved medical appointments with outside providers and approved requests for permitted medications for Ms. Flores on multiple occasions during the same time period.<sup>7, 8</sup>

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<sup>4</sup> See Appendix Exhibit C, "Location Terms".

<sup>5</sup> See Appendix Exhibit A, "Affidavit of Trecia Campbell" ¶2

<sup>6</sup> See Id. ¶4.

<sup>7</sup> See Id. ¶3.

<sup>8</sup> The Respondent does not feel that they can disclose specific medical information without a release from the Petitioner. At the same time, the Respondent feels that specific visits and diagnosis are not necessary to a successful argument.

## **LEGAL ARGUMENT**

### **I. FLORES' MEDICAL REQUESTS TO THE DEPARTMENT OF CORRECTIONS ARE FOR DISCRETIONARY ACTS AND ARE NOT APPROPRIATE FOR A WRIT OF MANDAMUS.**

#### **A. Writs of Mandamus are only appropriate for ministerial acts.**

The Montana Code Annotated provides as follows:

**27-26-102. When and by whom issued.** (1) A writ of mandamus may be issued by . . . any judge of the district court to any . . . person to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to *which the party is entitled and from which the party is unlawfully precluded* by the lower tribunal, corporation, board, or person.

Mont. Code Ann §27-26-102 *Emphasis added.*

The Court, in *State ex rel. School Dist. v. Cooney*, set forth the distinction between the two types of acts.

As to whether an act is ministerial or judicial, it is said: "The distinction between mere ministerial and judicial and other official acts is generally said to be that, where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial, but where the act to be done involves [\*\*\*13] the exercise of discretion or judgment, it is not to be deemed merely ministerial." (38 C. J. 598, sec. 72.).

*State ex rel. School Dist. v. Cooney*, 102 Mont. 521, 529 102 Mont. 521, 529, 59 P.2d 48, 53.

In *Smith v. County of Missoula*, a case involving the sheriff's rejection of an individual's concealed carry permit application due to criminal convictions,

and the District Court's subsequent denial of the petitioner's writ of mandate, the Court elaborated on the standard, again citing to the Montana Code referenced above:

A two-part standard must be satisfied for the issuance of a writ of mandate. *Becky*, 274 Mont. at 135, 906 P.2d at 195. The writ is available where the party who applies for it is entitled to the performance of a clear legal duty by the party against whom the writ is sought. If there is a clear legal duty, the district court must grant a writ of mandate if there is no speedy and adequate remedy available in the ordinary course of law. Section 27-26-102, MCA.

*Smith v. Cty. of Missoula*, 1999 MT 330, ¶?, 297 Mont. 368, 992 P.2d 834.

The Court continued, “[a] Writ of Mandate is only appropriate when the movant seeks to enjoin a ministerial act, not a discretionary act.” *Smith v. Cty. of Missoula*, 1999 MT 330, 297 Mont. 368, 992 P.2d 834, citing *Withers v. County of Beaverhead* (1985), 218 Mont. 447, 450, 710 P.2d 1339, 1341.

In *Smith*, the Court held that the District Court did not violate the law by denying the petitioner's writ of mandate. *Id* at 31. The Court stated the Sheriff's legal duty was discretionary, not ministerial, and therefore the Court did not have to hear the issue on a writ of mandamus. *Id*.

B. Conditions of confinement, including provision of health care for inmates, are by their nature discretionary

This Court has held that writs of mandamus are not appropriate when alleging improper conditions of confinement or issues of improper medical

care. In *Disability Rights Mont. v. Mont. Judicial Dists. 1-22*, 2020 Mont.

LEXIS 2061, \*4, this Court held:

A writ of mandamus is available if the party who applies for it is entitled to the performance of a clear legal duty by the party against whom the writ is sought. If a clear legal duty exists, a court must grant the writ if there is no speedy and adequate remedy available in the ordinary course of law. The clear legal duty must involve a ministerial, not a discretionary, act. *Smith v. Cty. of Missoula*, 1999 MT 330, ¶ 28, 297 Mont. 368, 992 P.2d 834

*Disability Rights Mont. v. Mont. Judicial Dists. 1-22*, 2020 Mont. LEXIS 2061, \*4.

*Disability Rights Montana* sued the District Courts to reduce the jail populations during the COVID-19 pandemic and urged the Court to issue a writ of mandamus to effectuate the remedies it sought. *Id at* \*5. It bears similarities to the case at hand because both matters involved the care of incarcerated individuals. The Court held the matter “ While DRM may have a "policy disagreement" with Respondents, as DOC describes it, DRM has not proven the existence of a clear legal duty to reduce the prison population. Without the existence of a clear legal duty, no writ of mandamus may issue. *Id*

In her Petition, Flores does not allege she *never* saw a doctor or that she was uniformly denied *all* medical care.<sup>9</sup> Flores is alleging she is unhappy with the degree of medical care. Any allegation of inadequate medical care is a factual determination subject to the exercise of discretion and requiring

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<sup>9</sup> See generally, *Petitioner's Writ of Mandamus*, p. 3-33.

extensive fact finding. In *Lowry v. First Jud. Dist. Ct.*, 2022 Mont. LEXIS 828, this Court held,

....to the extent the petition alleges inadequate medical care, a writ of mandate is not the appropriate civil remedy. *See Gates v. Missoula Cty. Comm'rs*, 235 Mont. 261, 262-63, 766 P.2d 884, 885 (1988) (holding that habeas corpus is not the correct remedy for constitutional claims, including lack of "adequate food, shelter, clothing, medical [\*3] care, exercise, individual security, and a law library" and that "disputed factual issues should be directed to an appropriate district court, since it is not the role of this Court to function as primary fact-finder.").

*Lowry v. First Jud. Dist. Ct.*, 2022 Mont. LEXIS 828, \*2-3.

As in *Lowry*, this petition involves grievances concerning medical care. The degree of medical care is an act of discretion. Any determination as to appropriate degree necessarily requires extensive fact finding. In Montana, this type of fact finding is generally the duty of the trial courts and not the Supreme Court. See *Id.*

## II. FLORES' PETITION FOR A WRIT OF MANDATE IS MOOT

The local law enforcement placed Flores at the Lewis and Clark County Detention Center on or about December 28, 2023, to appear on a warrant in her District Court revocation.<sup>10</sup> She bonded out on January 22, 2024.<sup>11</sup> She returned to custody on February 7, 2024, where she remained until June 17,

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<sup>10</sup> See Appendix Exhibit C, "Location Terms".

<sup>11</sup> See *Id.*

2024, when she was transported to Passages Assessment and Sanction Center in Billings for treatment.<sup>12</sup>

Where an issue presented at the outset of the action "has ceased to exist or is no longer 'live,' or if the court is unable, due to an intervening event or change in circumstances to grant effective relief or to restore the parties to their original position, then the issue before the court is moot." *Gateway Opencut Mining Action Grp. v. Bd. of Cnty. Comm'rs*, 2011 MT 198, ¶ 16, 361 Mont. 398, 260 P.3d 133 (citation omitted). *Ramon v. Short*, 2020 MT 69, P20.

In the Flores matter, her movement to Billings has rendered the writ of mandamus moot. The alleged facts of her complaint involve the degree of medical care she received while at the Lewis and Clark County Detention Facility. Capt. Bradley Bragg is the named respondent. DOC records reflect she is at the Passages in Billings, MT, rendering her complaint against Capt. Bragg moot, so far as it applies to a writ of mandamus.<sup>13</sup>

## **CONCLUSION**

The Court should deny the Petitioner's writ of mandamus. The lack of medical care she complains of is a discretionary act which requires extensive fact finding and thus, not appropriate for a writ of mandamus. Additionally, she no longer resides at the Lewis and Clark Detention Center and the named

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<sup>12</sup> See *Id.*

<sup>13</sup> See *Id.*



respondent no longer oversees her custody, or any of the policies and procedures she is subject to, rendering the gravamen of her petition moot.

As such the Court should deny her *Petition for Writ of Mandamus* and dismiss the matter.

DATED this 7<sup>th</sup> day of August 2024.

*Ethan Lerman*

Ethan Lerman

Attorney for Department of Corrections

**CERTIFICATE OF SERVICE**

I certify that on or about the 7<sup>th</sup> day of August 2024, I mailed a true and correct copy of the foregoing by U. S. Mail, postage prepaid to the following:

Rachell Rene Flores (#2063974)  
Passages Women's Center  
1001 S 27th St.  
Billings, MT 59101

/s/ *Ethan Lerman*

## **CERTIFICATE OF SERVICE**

I, Ethan C. Lerman, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 08-07-2024:

Austin Miles Knudsen (Govt Attorney)  
215 N. Sanders  
Helena MT 59620  
Representing: Bradley Bragg  
Service Method: eService

Rachell Rene Flores (prohibited filer) (Petitioner)  
AO#2063974  
Passages Alternative  
1001 South 27th St.  
Billings MT 59101  
Service Method: Conventional

Electronically Signed By: Ethan C. Lerman  
Dated: 08-07-2024