

ETHAN C. LERMAN
Deputy Legal Counsel
Montana Department of Corrections
5 South Last Chance Gulch
P.O. Box 201301
Helena, MT 59620-1301
Phone - (406) 542-7125
ethan.lerman@mt.gov

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0489

HEATHAN BLODHARN,

Petitioner,

v.

MONTANA DEPARTMENT OF CORRECTIONS,

Respondent.

RESPONDENT’S REPLY TO EMERGENCY PETITION FOR INJUNCTION

In compliance with the Court’s Order, OP 25-0489, issued on July 16, 2025, Respondent Montana Department of Corrections (“DOC”) replies to the Court’s Order.

FACTUAL BACKGROUND

The Petitioner, Heathen Blodharn (“Blodharn”), has filed an “Emergency” Petition for an Injunction to prevent the authorities at the Ohio Department of Rehabilitation and Correction from utilizing a feeding tube to

feed him *should he* go on another hunger strike in another attempt to force his return to Montana.

Blodharn is currently serving a fifty-year sentence to the Montana State Prison. He was sentenced as a persistent felony offender for the offense of Robbery in DC-16-542B.¹ According to the *Judgment* in this matter, Blodharn (a/k/a “Danny Warner”), had committed twelve (12) felony offenses prior to the Flathead County robbery conviction.²³ Blodharn has a current discharge date of 2066. Since his 2017 conviction, Blodharn has filed numerous lawsuits, many of those in the form of “Emergency Injunctions.”

The undersigned has checked with the Ohio Department of Rehabilitation and Corrections (“ORDC”), and Blodharn is not currently on a hunger strike as of the filing date of this Response.

LEGAL ARGUMENT

- I. The Montana Department of Corrections agrees that inmates transferred to out-of-state facilities are subject to Montana law.

The threshold question is which state’s law applies. The Petitioner has filed in the State of Montana. Pursuant to §46-19-401 MCA (2025), Article IV (c),

Inmates confined in an institution pursuant to the terms of this compact

¹ *Judgment and Sentence, Cause No. DC-16-542B, Flathead County District Court, Flathead County, Montana.*

² *Id.* at 1.

³ Warner was subsequently convicted for another felony in Toole County, Montana, for an assault which occurred while he was incarcerated on the robbery conviction in DC-16-542B.

shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; ...

46-19-401 MCA (2025), Article IV (c).

We concur with the Petitioner; the matter is appropriately decided under Montana law.

II. The controversey is no longer ripe and therefore Bloharn lacks standing.

Bloharn is suing the Department of Corrections about a theoroitical *future* injury based upon a hypothetical situation should he go on another hunger strike. *See Petitioner's Brief* p. 1-2. This does not satisfy the standing requirements as *set* forth in 350 Mont. v. State, 2023 MT 87. In Mont. the Court leaned on Reichert positing,

" Ripeness is another [\[****13\]](#) justiciability doctrine with constitutional and prudential considerations. [Reichert, ¶ 56](#). Ripeness can be viewed as a time dimension of standing, asking "whether an injury that has not yet happened is sufficiently likely to happen or, instead, is too contingent or remote to support present adjudication." [Reichert, ¶ 55](#)...." 350 Mont. v. State, 2023 MT 87, P22, 412 Mont. 273, 281, 529 P.3d 847, 853, 2023 Mont. LEXIS 506, *12-13, 2023 LX 82545, 2023 WL 3476915. *Citing Reichert v. State, 2012 MT 111, 365 Mont. 92, 278 P.3d 455.*

The Respondent maintains that this is a theoretical argument based upon a hypothetical set of facts. The Respondent concedes, Blodharn has gone on

more than one hunger strike, but importantly for the Court's consideration, never contending to the point of requiring medical intervention. The matter is not ripe for adjudication.

III. The Petitioner fails to cite any *relevant* law that would allow the State of Montana to permit Blodharn to starve himself to death.

Blodharn argues he should be allowed to starve himself to death, by refusing a feeding tube, *should he* go on another hunger strike. The Montana Department of Corrections disagrees. The current statutory scheme indicates the DOC is able, in fact required, to administer medically necessary treatment, providing in relevant part:

53-30-716 Conditions of confinement.

(1)

(a) An inmate in restrictive housing must be provided with:

(i) prescribed medication;

(ii) other medically necessary treatment as prescribed by a qualified health care provider;

(2) A facility may provide alternative meal service to an inmate who uses food or food service equipment in a manner that is hazardous to self, staff, or other inmates. Service may be provided on an individual basis based only on health or safety considerations and must meet basic nutritional requirements and occur only with the written approval of the administrator or chief health care authority. The food substitution period may not exceed 7 days.

Mont. Code Ann. § 53-30-716 (2025)

Blodharn is asking this Court to prevent a (potentially) medically necessary intervention, intra-venous feeding, *should he* choose to go on another

hunger strike.⁴ The runs counter to Montana law and the Eighth Amendment of the United States Constitution.

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishments.⁵

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

USCS Const. Amend. 8

The Respondent is unable to envision a scenario where the Eighth Amendment would permit the Respondent to allow the Petitioner to starve to death. The Respondent maintains, starving oneself fits the common understanding of both “cruel” and “unusual” Blodharn has not alleged he is suffering from any debilitating and or terminal disease. Simply put, dying from starvation seems like a painful endeavor that the Eighth Amendment would be understood to prevent.

Blodharn cites *Baxter v. State*, a case easily distinguished from the instant matter. Baxter involved a mentally competent patient who was terminally ill with lymphocytic leukemia and wanted the assistance of his physician to aid in dying, among other issues. *Baxter v. State*, 2009 MT 449, ¶

⁴ Blodharn is not currently on a “hunger strike”. He was on a hunger strike for approximately twenty days in June 2025, but voluntarily gave it up prior to the filing of this *Emergency Petition*. See attached Exhibit B, email from Ohio Dept. of Rehabilitation and Correction.

⁵ Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
USCS Const. Amend. 8

1, 354 Mont. 234, ¶ 1, 224 P.3d 1211, ¶ 1.

This instant case involves none of those facts, and as such, an analysis under *Baxter* is a fruitless endeavor.

Finally, the Petitioner grasps for a First Amendment argument to argue that his religion allows him to die by starvation, stating “Petitioner’s religion relishes all that is natural and abhors all that is unnatural, precluding life-sustaining or life-saving measures that would unnaturally extend the Petitioner’s life.”⁶ If we accept the basic premise that eating is very much a natural act for a human being then starving oneself would be “unnatural” or, at a minimum, undesirable. Regardless, the Petitioner fails to cite what particular religious affiliation and where in the tenets of this religion, self-starvation is encouraged and/or medically necessary, life-saving measures are “abhorred.” Furthermore, Blodharn’s admission that he is doing this to be sent back to a Montana facility undermines any remaining legitimacy to the claim he is exercising some “fundamental right.”

The DOC is responsible for the overall well-being and basic human needs of inmates, including health care, and must not engage in what could be construed as deliberate indifference to an inmate's health and safety. *Smith v. Dep't of Corr.*, 399 Mont. 554, *Disability Rights Mont. v. Mont. Judicial Dists.*

⁶ Petitioner’s Brief, p. 4.

1-22, 400 Mont. 556.

In the instant case, force-feeding *could be* medically necessary to prevent a substantial risk of serious harm to the inmate's health or safety. Not doing so, deliberate indifference to a potential suicide.

The Respondent is unaware of any State or Federal case law, from *any* jurisdiction in the United States of America, much less a Montana statutory provision that would direct the Montana Department of Corrections to allow an otherwise physically healthy inmate to commit suicide based upon his religious beliefs.⁷

CONCLUSION

The Petitioner is asking the Court to direct the Department of Corrections to allow the Petitioner starve himself to death should he feel like it. The Montana Department of Corrections finds no legal justification in the Petitioner's argument and respectfully requests this Court dismiss the Petition.

⁷ Other states have addressed factually analogous scenarios to the instant case, none of which is binding on this court, and none of which are in support of allowing an inmate to starve themselves to death. E.g. Matter of Bezio v. Dorsey (App. Div.), 2012 NY Slip Op 145, 91 A.D.3d 1051, 937 N.Y.S.2d 393.

Respectfully submitted this 31st day of July, 2025.

/s/ Ethan Lerman
Ethan Lerman
Attorney for Respondent

CERTIFICATE OF SERVICE

I, Ethan Lerman, hereby certify that I have served true and accurate copies of the foregoing Response to the following on August 1, 2025:

Heathan Blodharn
Trumbull Correctional Facility
PO Box 901
5701 Burnett Road
Leavittsburg, OH 44430
Service: E-File

/s/ Ethan Lerman
Ethan Lerman
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14(7) of the Montana Rules of Appellate Procedure, I certify this Response is double spaced (except for point headings, footnotes and quotes), printed with proportionately spaced Times New Roman Typeface, 14 point, and contains not more than 1210 words as calculated by MSWord excluding any table of contents, table of citations, certificate of service, certificate of compliance, and appendix or exhibits.

Dated July 31, 2025.

/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 - Court Order to the following on 07-31-2025:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Montana Department of Corrections
Service Method: eService

Kyle Patrick Chenoweth (Attorney)
5 S. Last Chance Gulch
Helena MT 59620
Representing: Montana Department of Corrections
Service Method: eService

Heathen Blodharn (Petitioner)
#799415 TCI
5701 Burnett Road
Leavittsburg OH 44430
Service Method: Conventional

Charity N Yonker (Attorney)
1113 18th Ave. SW
Great Falls MT 59404
Representing: Montana Department of Corrections
Service Method: Conventional

Ethan C. Lerman (Govt Attorney)
PO Box 9231
Missoula MT 59807
Service Method: eService
E-mail Address: ethan.lerman@mt.gov

Electronically signed by Pam Lammey on behalf of Ethan C. Lerman
Dated: 07-31-2025