

Alex Rate
Elizabeth K Ehret
ACLU OF MONTANA
P.O. Box 9138
Missoula, MT 59807
406-203-3375
406-204-0284
ratea@aclumontana.org
ehrete@aclumontana.org

Shahid Haque
BORDER CROSSING LAW FIRM
618 Highland St.
Helena, MT 59601
406-594-2004
shahid@bordercrossinglaw.com

Omar C. Jadwat*
Daniel Galindo*
American Civil Liberties Union Foundation,
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2600
ojadwat@aclu.org
dgalindo@aclu.org
*Pro Hac Vice Forthcoming

Cody Wofsy*
Spencer Amdur*
American Civil Liberties Union
Foundation, Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
(415) 343-0774
cwofsy@aclu.org
samdur@aclu.org

Attorneys for Plaintiffs

MONTANA NINETEENTH JUDICIAL DISTRICT COURT
COUNTY OF LINCOLN

AGUSTIN RAMON,)	
)	
On behalf of himself and all others similarly)	Cause No. _____
situated,)	
)	
Plaintiffs,)	Hon.
vs.)	
)	CLASS ACTION COMPLAINT FOR
ROBY BOWE, in his individual capacity and)	DECLARATORY AND INJUNCTIVE
his official capacity as Sheriff of Lincoln)	RELIEF AND INDIVIDUAL CLAIM
County and administrator of Lincoln County)	FOR DAMAGES
Detention Center,)	
)	
Defendant.)	

INTRODUCTION

1. This suit challenges the Lincoln County Sheriff's policy and practice of unlawfully exceeding his authority under Montana law by depriving persons of their liberty on the ground that they are suspected of civil violations of federal immigration law.
2. Being present in the United States without authorization is a civil matter, not a crime. *Arizona v. United States*, 567 U.S. 387, 396 (2012). Nevertheless, at the request of federal immigration authorities, Defendant Sheriff Roby Bowe is imprisoning individuals solely because they are suspected of being removable from the United States.
3. Montana sheriffs have limited authority and limited powers. They have only the authority that is provided in the Montana Constitution and Montana law. Montana law provides Montana sheriffs with no authority to rearrest prisoners for alleged civil violations of federal immigration law.
4. Sheriff Bowe holds prisoners in custody for days, weeks, and even months after state law requires their release. He carries out these lawless deprivations of liberty in the absence of any Montana law authorizing him to make civil immigration arrests.
5. On behalf of himself and a class of similarly situated persons (collectively, "Plaintiffs"), Plaintiff Ramon seek temporary and permanent injunctive relief, as well as a declaratory judgment that the policies and practices challenged here exceed Sheriff Bowe's authority under Montana law. Plaintiff Ramon further asks for damages for the months of false imprisonment he has endured as a result of Sheriff Bowe's unlawful practices.

JURISDICTION AND VENUE

6. This Court has jurisdiction to grant declaratory and injunctive relief under the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101, *et seq.*, Mont. Code Ann. §§ 27-19-101, *et seq.*, and Montana Rules of Civil Procedure 57 and 65. The Court has jurisdiction to grant mandamus relief under Mont. Code Ann. §§ 27-26-101, *et seq.* and jurisdiction over

Plaintiff Ramon's tort claim under Rule 4, Mont. R. Civ. P.

7. Venue is proper in Lincoln County, pursuant to Mont. Code Ann. § 25-2-122.

PARTIES

8. Plaintiff Agustin Ramon has lived in Montana since April, 2018. He is pretrial detainee in the Lincoln County Detention Center (hereinafter, the "Lincoln County Detention Center" or "the detention center").
9. Defendant Roby Bowe is the Sheriff of Lincoln County. He is responsible for all policies and practices of the Lincoln County Sheriff's Office (LCSO), including the Lincoln County Detention Center. He has ultimate supervisory responsibility for employees and deputies who work at the Lincoln County Sheriff's Office, including the Lincoln County Detention Center. He is sued in both his individual and his official capacity.

THE CHALLENGED POLICY AND PRACTICE

10. Montana law requires the release of prisoners who have posted bond, completed their sentences, or otherwise resolved their criminal cases. Sheriff Bowe nevertheless refuses to release such prisoners if federal immigration authorities have requested their continued detention.
11. Requests for continued detention come from immigration enforcement officers employed by U.S. Immigration and Customs Enforcement (ICE) and the U.S. Customs and Border Protection (CBP), agencies within the Department of Homeland Security (DHS).
12. The requests are made using DHS Form I-247A, also known as an "immigration detainer" or "ICE hold." An immigration detainer identifies a prisoner being held in a local jail. It asserts that DHS believes that the prisoner may be removable from the United States. It asks the jail to continue to detain that prisoner for an additional 48 hours after he or she would otherwise be released, to allow time for ICE to take the prisoner into federal custody.
13. Detainers are issued by ICE police officers and U.S. Border Patrol Agents. They are never

reviewed, approved, or signed by a judicial officer.

14. Detainers may be accompanied by other forms that convey similar information, such as an administrative warrant, DHS Form I-200, and an inmate tracking form, DHS Form I-203.

15. Forms I-200 and I-203 are issued by ICE officers and/or Border Patrol agents. They are never reviewed, approved, or signed by a judicial officer.

PLAINTIFFS' FACTS

Agustin Ramon

16. Agustin Ramon is 32 years old. He moved to Montana in April, 2018. Mr. Ramon married Lily McNair, a United States Citizen, on May 17, 2018. Mr. Ramon and Ms. McNair were married in Flathead County.

17. Mr. Ramon is a dual citizen of France and Mexico.

18. On August 3, 2018, Mr. Ramon was booked into the Lincoln County Jail. He is charged with burglary.

19. The jail received an ICE detainer, DHS Form I-127A, issued by "US Border Patrol," dated August 3, 2018.

20. The court set Mr. Ramon's bond at \$25,000. Posting bond should have secured Mr. Ramon's release pending trial on his criminal charges.

21. Mr. Ramon's wife, Lily McNair, retained a bail bonds company and paid the company the agreed-upon fee for the company to post Mr. Ramon's bond.

22. The company attempted to post the \$25,000 bond at the jail but officials there told the bondsman that doing so would be futile: the sheriff will continue to hold Mr. Ramon on the basis of the ICE detainer even if the \$25,000 bond is paid.

23. The bond company thus did not post the bond and returned to Ms. McNair her fee.

24. Ms. McNair remains able and willing to have the bond company post the bond, and the

company has told her it is willing to do so in the event paying the bond would result in Mr. Ramon's release.

25. The Lincoln County jail roster confirms the sheriff's detainer policy.

Class Action Allegations

26. Plaintiff brings this action on behalf of himself and all others similarly situated, pursuant to Montana Rules of Civil Procedure 23.

27. Plaintiff seeks to represent a class defined as: all current and future prisoners in the Lincoln County Jail who are, or will be, the subjects of immigration detainers (DHS Form I-247A) and/or administrative warrants (DHS Form I-200) sent to the Jail by ICE or CBP.

28. Pursuant to Sheriff Bowe's policies, these prisoners are being or will be held by Sheriff Bowe in excess of his authority under Montana law.

29. The proposed class is so numerous and so fluid that joinder of all members is impracticable.

30. There are questions of law and fact common to members of the plaintiff class. These questions include, but are not limited to, the following:

- Whether Sheriff Bowe has the authority under Montana law to arrest prisoners suspected of civil immigration violations after Montana law otherwise requires their release because they have posted bond, completed their sentence, or otherwise resolved their state criminal charge.
- Whether Plaintiffs have a clear legal right to release when Sheriff Bowe's state-law authority to confine them has ended, and whether Sheriff Bowe has a clear and mandatory legal duty to release the Plaintiffs when the state-law authority for their confinement has ended.
- Whether holding prisoners at the request of ICE after they have posted bond, completed their sentence, or otherwise resolved their state criminal charge constitutes an unreasonable seizure, in violation of Article II, Sections 10 and 11 of the Montana Constitution.

- Whether holding prisoners at the request of ICE after they have posted bond, completed their sentence, or otherwise resolved their state criminal charge deprives them of procedural due process, in violation of Article II, Section 17 of the Montana Constitution.
- Whether holding prisoners at the request of ICE after they have posted bond deprives them of their right to pretrial release on bail, in violation of Article II, Section 21 of the Montana Constitution.

31. The claims of the representative party, the named plaintiff, are typical of the claims of the members of the class.

32. The representative party will fairly and adequately protect the interests of the class.

33. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

CLAIMS FOR RELIEF

First Claim For Relief

Ultra Vires Actions - Declaratory and Injunctive Relief

(Asserted on Behalf of Plaintiff and the Class against Defendant Roby Bowe in his Official Capacity)

34. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

35. Montana law does not authorize Sheriff Bowe to deprive persons of liberty on the ground that they are suspected of civil violations of federal immigration law.

36. Sheriff Bowe has seized, threatened to seize, and continues to seize and threaten Plaintiffs with arrest and detention that is not authorized by any valid legal authority.

37. Sheriff Bowe has acted and is threatening to continue acting under color of law, but in excess of his legal authority, to deprive Plaintiffs of their liberty.

38. The Sheriff's illegal detainer policy is causing and threatening irreparable harm. Because of the Sheriff's policy, Plaintiff Ramon cannot post bond, even though a court ordered him released upon the posting of bond. And at the end of his state-law custody, the Sheriff will illegally arrest him for a civil immigration violation.
39. Wherefore, Plaintiffs request a declaratory judgment, temporary and permanent injunctive relief, and any additional relief the Court deems just.

Second Claim for Relief

Relief in the nature of mandamus, Mont. Code Ann. § 27-26-101 et seq.

(Asserted on Behalf of Plaintiff and the Class against Defendant Roby Bowe in his Official Capacity)

40. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.
41. When Sheriff Bowe's state-law authority to confine Plaintiffs has ended, Plaintiffs have a clear legal right to release from the Lincoln County Jail.
42. Sheriff Bowe has a clear and mandatory legal duty to release the Plaintiffs when the state-law authority for their confinement has ended.
43. Plaintiffs have no adequate legal remedy to secure this release.
44. Wherefore, Plaintiffs interim injunctive relief and relief in the nature of mandamus, and any additional relief the Court deems just.

Third Claim for Relief

Unreasonable seizure, Montana Constitution, Article II, Sections 10 and 11;

Declaratory and Injunctive relief

(Asserted on Behalf of Plaintiff and the Class against Defendant Roby Bowe in his Official Capacity)

45. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

46. An arrest without legal authority is an unreasonable seizure, in violation of Article II, Sections 10 and 11 of the Montana Constitution.

47. Sheriff Bowe has acted and is threatening to continue acting under color of law but without legal authority, to carry out unreasonable seizures of the Plaintiffs.

48. Wherefore, Plaintiffs request a declaratory judgment, temporary and permanent injunctive relief, and any additional relief the Court deems just.

Fourth Claim for Relief

Procedural and substantive due process, Montana Constitution, Article II, Section 17;

Declaratory and Injunctive Relief

(Asserted on Behalf of Plaintiff and the Class against Defendant Roby Bowe in his Official Capacity)

49. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

50. Sheriff Bowe's policies do not provide Plaintiffs with meaningful notice and opportunity to be heard to contest the unreasonable detentions challenged in this lawsuit.

51. Deprivations of liberty carried out without notice and opportunity to be heard deprive Plaintiffs of procedural due process, in violation of Article II, Section 17 of the Montana Constitution.

52. Deprivations of liberty carried out without lawful authority constitute deprivations of substantive due process, in violation of Article II, Section 17 of the Montana Constitution.

53. Sheriff Bowe has acted and is threatening to continue acting under color of law but without legal authority, to carry out unreasonable seizures of the Plaintiffs.

54. Wherefore, Plaintiffs request a declaratory judgment, temporary and permanent injunctive relief, and any additional relief the Court deems just.

Fifth Claim for Relief

Right to Bail, Montana Constitution, Article II, Section 21; Prospective Relief

(Asserted on Behalf of Plaintiff and the Class against Defendant Roby Bowe in his Official Capacity)

55. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

56. The challenged policies violate Plaintiffs' right to pretrial release on bail, in violation of Article II, section 21 of the Montana Constitution.

57. Sheriff Bowe has acted and is threatening to continue acting under color of law but without legal authority, to deprive the Plaintiffs of their right to release on bond.

58. Wherefore, Plaintiffs request a declaratory judgment; temporary and permanent injunctive relief, and any additional relief the Court deems just.

Sixth Claim for Relief

False Imprisonment

(Asserted by Plaintiff Ramon against Defendant Roby Bowe in his individual capacity)

59. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

60. Sheriff Bowe knowingly and intentionally restricted Mr. Ramon's freedom of movement. Mr. Ramon was aware that his freedom of movement was restricted.

61. Sheriff Bowe restricted Mr. Ramon's freedom of movement without legal justification.

62. Sheriff Bowe is liable to Mr. Ramon for false imprisonment.

63. Wherefore, Plaintiff Ramon is entitled to damages for false imprisonment, and any additional relief the Court deems just.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that the Court:

A. Certify, pursuant to Montana Rules of Civil Procedure 23, a class defined as "all current and future prisoners in the Lincoln County Jail who are, or will be, the subjects of immigration detainees (ICE

Form I-247A) and/or administrative warrants (ICE Form I-200) sent to the Jail by ICE or CBP.”

B. Issue a judgment declaring that Defendant Bowe has no authority under Montana law to arrest individuals for civil immigration violations and enjoining him from undertaking such arrests.

C. Order Defendant Bowe to release all class members who post bond, complete their sentences, or otherwise resolve their state criminal cases, notwithstanding any detainer request from ICE or CBP;

D. Issue a judgment declaring that Sheriff Bowe violates the Montana constitutional right to be free of unreasonable seizures when he makes civil immigration arrests without state-law authority;

E. Issue a judgment declaring that Sheriff Bowe violates the Montana constitutional right to due process of law when he makes civil immigration arrests without state-law authority;

F. Issue a judgment declaring that Sheriff Bowe violates the Montana constitutional right to bail when he relies on ICE detainers or ICE administrative warrants as grounds for refusing to release pretrial detainees who post bond;

G. Award interim and permanent injunctive relief, and relief in the nature of mandamus;

H. Award compensation for the losses and harms Plaintiff Agustin Ramon has incurred as a result of Defendant’s wrongful conduct to date;

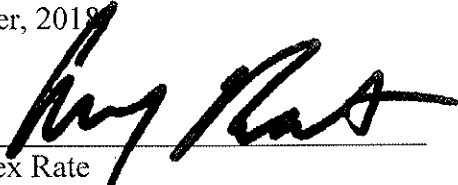
I. Award compensation for general damages, in an amount to be determined by the jury at trial;

J. Schedule a jury trial on Plaintiff Ramon’s claim of false imprisonment;

K. Award costs and prejudgment interest on Plaintiff Ramon’s claim of false imprisonment; and

L. Provide any additional relief the Court deems just.

DATED THIS 30th day of October, 2018



Alex Rate
ACLU OF MONTANA
P.O. Box 9138
Missoula, MT 59807
406-203-3375
Attorney for Plaintiffs