

ALAMOSA

JUSTICE DERAILED

A case study of abusive and unconstitutional practices in Colorado city courts

ACLU
Colorado

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TABLE OF CONTENTS

I.	Executive Summary.....	1
II.	Key Findings.....	3
III.	Colorado’s Municipal Courts Operate in the Shadow of State Law.....	4
IV.	Recent Efforts to Reform Municipal Courts.....	5
V.	The Alamosa Municipal Court.....	5
A.	Counterproductive & Unfair: Harsh tactics discourage court appearance and make mockery of justice.....	6
B.	Senseless Incarcerations: In Alamosa, impoverished defendants languish in jail.....	7
C.	Setting Defendants up for Failure: Disproportionate sentencing and unreasonable payment obligations.....	8
D.	Debtor’s Prisons Persist Throughout Colorado.....	9
1.	Illegal arrest warrants against impoverished debtors.....	10
2.	Using jail to collect debt for non-jailable offenses.....	11
3.	Using post-conviction bond to collect debt.....	11
4.	Using the threat of jail to collect debt.....	12
E.	Escalating Court Debt: Fees, costs and bond forfeitures.....	13
F.	Justice Denied: Legal shortcuts that trample on constitutional rights.....	13
1.	Illegal arraignments by the Clerk; Unconstitutional guilty pleas.....	14
2.	No lawyers for defendants facing jail.....	15
VI.	Conclusion & Recommendations.....	17
A.	The City of Alamosa.....	17
B.	Statewide Reform.....	18
1.	The Colorado Legislature.....	18
2.	The Colorado Supreme Court.....	19
VII.	Acknowledgements.....	19

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I. EXECUTIVE SUMMARY

Colorado’s municipal courts operate in the shadow of state law, with little meaningful statewide oversight or accountability. Without such oversight, Colorado municipal court judges function largely unchecked as they determine daily how their city will mete out justice. While some Colorado municipal judges are actively working to improve the quality and fairness of their courts, others run their courtroom like a fiefdom, trampling on the rights of criminal defendants—especially those living in poverty—with impunity.

A multi-year investigation by the American Civil Liberties Union of Colorado (ACLU) has revealed that many municipal courts across the state persistently ignore constitutional and statutory standards. This paper documents some of these troubling and unlawful practices through a case study of one particular municipal court. The Alamosa Municipal Court, under the sole leadership of Judge Daniel Powell, stands out for the seriousness and frequency of its violations of criminal defendants’ rights.

Individuals who appear before Judge Powell—most of whom are poor and have been accused of committing minor law violations—often face jail or the threat of jail because of their poverty, are unlawfully denied appointed counsel, are forced to plead guilty without legal advice and without ever appearing in court, and endure disrespectful and patronizing treatment by the judge.

As the practices described herein show clearly, justice in the Alamosa Municipal Court has two tiers—one for those who lack financial resources and one for those with means. Under Judge Powell’s regime, impoverished defendants face the harshest penalties for conduct that is usually minor, non-violent and poses little or no risk to public safety. When sentencing these defendants, Judge Powell commonly imposes unreasonably high fines and fees; requires defendants to adhere to plainly unmeetable payment plans; charges significant additional monies for missed payments; subjects defendants to months or years of mandatory and highly disruptive court appearances under threat of arrest; and has them arrested and held in



Trains at 6th St. and Ross Ave. in Alamosa.

jail for days and sometimes weeks when they are unable to make full payments to the court. Defendants with means, on the other hand, often must appear in court only once to resolve their case and are able to pay their fines promptly and move on with their lives. This two-tiered system of injustice serves to criminalize and perpetuate poverty. The residents of Alamosa deserve better.

The abuses occurring in Judge Powell’s courtroom are shocking and egregious. Yet, it is important to understand that variations of these same abuses are also occurring in other municipal courts across Colorado. The story of the Alamosa Municipal Court is not just a story of one abusive city court—it is also the story of how lack of regulation and oversight of Colorado’s municipal courts has cleared the path for violations of defendants’ fundamental rights, an injustice that falls heavily on people in poverty.



The practices of one particular municipal court in Colorado stand out for the frequency and seriousness of constitutional abuses, the lack of respect for individuals who appear before the court, the striking difference in treatment between impoverished defendants and those with means, and the sense of fundamental injustice that permeates many court proceedings: the Alamosa Municipal Court.

But, the story of the Alamosa Municipal Court is not just a story of one abusive city court—it is also the story of how lack of regulation and oversight of Colorado’s municipal courts has cleared the path for violations of defendants’ fundamental rights, an injustice that falls heavily on people in poverty.



An intersection near San Luis State Park, northeast of Alamosa.

II. KEY FINDINGS

1. Colorado's municipal courts operate with little meaningful statewide oversight or accountability, providing an opportunity for civil liberties violations and other abusive practices to occur unnoticed, unreported, and unaddressed by state agencies that could promote reform.
2. While some Colorado municipal judges are actively working to improve the quality and fairness of their courts, numerous others run their courtroom like a personal fiefdom, trampling on the rights of criminal defendants—especially those living in poverty—with impunity.
3. The Alamosa Municipal Court, under the sole leadership of Judge Daniel Powell, stands out among Colorado municipal courts for the frequency and seriousness of constitutional abuses, the lack of respect for individuals who appear before the court, the striking difference in treatment between defendants with means and those without, and the sense of fundamental injustice that permeates many court proceedings.
4. The vast majority of defendants who appear in the Alamosa Municipal Court have been charged with low level offenses that pose little or no risk to public safety
5. Nonetheless, Judge Powell issues arrest warrants at almost twice the rate of similar municipal courts. This high rate can be explained, in significant part, by the following:
 - In violation of recent sweeping changes to state law aimed at ending municipal court debtor's prison practices, Judge Powell continues to use jail and the threat of jail to collect money from defendants who are too poor to pay their court debt, even for non-jailable offenses.
 - Judge Powell commonly issues arrest warrants for failure to appear at a court hearing when he knows the defendant has a valid excuse for non-appearance, including hospitalization, in-patient treatment, or incarceration in another jurisdiction. Judge Powell is exceptionally insensitive to the challenges faced by defendants suffering from substance abuse.
6. Alamosa municipal inmates charged with low level offenses commonly languish in jail for days and sometimes weeks because they are too poor to pay bonds set by Judge Powell, at a significant cost to the City of Alamosa.
7. It is the city taxpayer who must foot the bill for Judge Powell's misguided incarceration practices. In the one-year span ending in May 2017, 258 Alamosa municipal defendants spent at least a combined 9 total years in jail solely on a municipal hold, an average of 13 days per person. Last year, Alamosa County charged the City over \$200,000 to incarcerate Alamosa municipal defendants—over 65% of the court's entire annual budget.
8. Judge Powell's harsh tactics discourage court appearances and instill fear in the community. Alamosa municipal defendants report their (well-founded) fear of arbitrary and discriminatory incarceration by Judge Powell.
9. Judge Powell regularly sets financially unstable defendants up for failure by imposing fines that are vastly out of proportion to the crime, mandating plainly unmeetable payment plans, and requiring months or years of unnecessary and disruptive post-conviction court appearances to collect debt, even for the lowest level offenses.
10. Judge Powell ignores constitutional mandates and takes legal shortcuts by consistently failing to advise defendants of their most critical constitutional rights and by depriving indigent defendants who face a jail sentence of their constitutional right to the assistance of counsel.
11. Many of the abuses occurring in the Alamosa Municipal Court are also occurring in other Colorado municipal courts.

III. COLORADO'S MUNICIPAL COURTS OPERATE IN THE SHADOW OF STATE LAW

Colorado's system of municipal criminal courts is in dire need of reform. These courts, many established in the nineteenth century when Colorado was still a territory, operate outside of the state's well-regulated state court system.¹

Unlike Colorado's state and county courts—which are closely overseen by the Colorado Supreme Court, are subject to extensive statutory regulation and court rules, and function under the watchful eye of the State Public Defender system—municipal courts operate in the shadow of state law with only the most nominal checks and balances.² Relying on the premise of “home rule,” municipal courts across Colorado operate without uniformity in their structure, procedures, and concepts of justice.³ Municipal courts lack central oversight, are subject to no meaningful data collection or reporting requirements, are minimally regulated by statute and court rules, and have no unified public defender system. While municipal courts are often championed as emblems of local autonomy and community-based justice, the lack of oversight and accountability in Colorado can (and does) pave the way for gross civil liberties violations.

“Justice” in some of Colorado's municipal courts has changed far too little from frontier days. Individuals haled into some municipal courts, mostly for low-level offenses, are too often denied basic constitutional rights, railroaded through to conviction without a lawyer, and subjected to the arbitrary whims of certain vindictive judges. Poor defendants who commit minor infractions are often sentenced to pay high fines and fees wholly out of proportion with the gravity of their offense and without any consideration of their ability to pay. When they are unable to pay their debt to the court, these defendants are often repeatedly jailed and coupled to the train of the municipal criminal justice system for months or years.⁴

As the number of municipal courts and municipal defendants has grown over time, so has the power of these courts to punish

and collect money—despite the fact that many municipal courts do not afford the safeguards present in state courts. In the late nineteenth century, municipal courts were authorized to impose fines of \$300 or less and/or sentence convicted defendants to jail for up to 90 days.⁵ Today, Colorado's approximately 225 municipal courts are authorized to impose fines of up to \$2,827 per offense and/or sentence defendants for up to one year in jail.⁶ This sentencing authority is both disturbing and perplexing given that the vast majority of municipal defendants are charged with low-level offenses that pose minimal, if any, threat to public safety—such as traffic offenses, shoplifting food and household items, panhandling, and sleeping in a park.⁷

Although municipal courts deal largely with minor violations of the law, the wide-reaching and profound effects these courts have on the lives of Coloradans is anything but minor. Jail stays and criminal convictions often have enormous real life consequences for defendants and sometimes occur only due to the capricious and illegal actions of some municipal judges. Even for the most minor municipal offenses, people can be jailed, and they can lose their jobs, their housing, their driver's license, their immigration status, and their gun rights.

These collateral consequences fall most heavily upon people who are poor and people of color, who suffer disproportionately in Colorado's municipal courts. It is almost exclusively poor people who are forced to endure lengthy jail stays on municipal charges. Because monetary bonds in municipal courts tend to be set in relatively low amounts, it is only poor defendants who remain incarcerated waiting for trial. Those with means can pay their bond and go free. Likewise, after conviction, it is poor people who are jailed when they are unable to make payments to the court, contributing to a still-prevalent system of unlawful debtor's prisons in some municipalities.

As this nation and Colorado grapple with over-incarceration, officials from across the state—legislators, sheriffs, and judicial officials—have rejected the notion that jails are an appropriate place to house the scores of impoverished, often homeless, municipal court defendants who pose no threat to public safe-

The Alamosa City Council Chambers, where sessions of the Alamosa Municipal Court are held.



ty.⁸ Yet, we still see jail beds across Colorado occupied by poor municipal defendants accused of having committed minor offenses.⁹ It is time for change.

IV. RECENT EFFORTS TO REFORM MUNICIPAL COURTS

During the last several years, the ACLU has reviewed the practices of a few dozen municipal courts in Colorado through hundreds of records requests, months of live and virtual court watching,¹⁰ dozens of interviews of municipal defendants and defense lawyers, and in-depth conversations with municipal judges. The ACLU found many municipal courts regularly violate constitutional principles and basic concepts of fairness.

For instance, many municipal courts have operated a long-standing and widespread debtor's prison system—in which poor defendants who could not pay their fines were jailed for days and sometimes weeks in violation of clear constitutional law.¹¹ Further, unlike in state and county courts, incarcerated municipal defendants are generally denied counsel at their first court appearance and for bond hearings—sometimes leading to coerced pleas, convictions with no factual basis, and unreasonable bonds for the most impoverished low-level municipal defendants.¹² Because some municipal courts choose to meet infrequently, defendants too poor to bond out of jail languish for days and sometimes weeks waiting to see a judge. This means that some municipal defendants spend far more time behind bars waiting to be brought to court than they would ever serve as a sentence if convicted.¹³

To curb some of these most concerning municipal practices, the ACLU has worked closely with legislators and reform-minded leadership within the Colorado Municipal Judges Association and the Colorado Municipal League to enact legislation.¹⁴ Between 2014 and 2017, the Colorado legislature enacted laws with broad bipartisan support aimed at ending debtor's prisons, providing defense attorneys to incarcerated municipal defendants at first appearance, and ending lengthy pretrial incarceration without an opportunity to see a judge.¹⁵

Some municipal courts have accepted these changes and also worked actively to identify additional areas for potential reform in their courts.¹⁶ These judges appear genuinely motivated to ensure that the entirety of their court practices are in line with state law, constitutional standards, and best practices. Unfortunately, some other municipal courts flatly refuse to comply with the law, much less best practices, and widespread abuses continue. Because Colorado lacks a statewide body to oversee its more than 200 municipal courts, it is extremely difficult to bring recalcitrant municipal courts in line.

A case in point: the ACLU is aware of several municipal courts that continue to flout state and federal law against debtor's prisons. These range from a large metro-area juris-



The Alamosa County Jail

diction that frequently imposes previously suspended jail sentences on impoverished defendants who miss payments, to a city in southeastern Colorado that ignores due process protections explicitly required by state and federal law when defendants are charged with contempt of court for failing to pay their court debt. These debtor's prison practices are only the tip of the iceberg. In some municipal courts, violations of criminal defendants' most critical procedural rights occur regularly, including the right to appointed counsel for indigent defendants facing jail and the requirement that judges ensure that any guilty plea is made knowingly and voluntarily.

Still, the practices of one particular municipal court in Colorado stand out for the frequency and seriousness of constitutional abuses, the lack of respect for individuals who appear before the court, the striking difference in treatment between impoverished defendants and those with means, and the sense of fundamental injustice that permeates many court proceedings: the Alamosa Municipal Court.

V. THE ALAMOSA MUNICIPAL COURT

The City of Alamosa is home to approximately 10,000 residents. It is one of the poorest communities in Colorado—with 35% of the city population living below the poverty line.¹⁷ Nearly half of the population is Latino, which is more than double the statewide average.¹⁸

Presiding over the Alamosa Municipal Court since 2010 is Judge Daniel Powell. The Alamosa Municipal Court meets infrequently—at most 6 days a month, usually for less than a half day.¹⁹ Judge Powell is also the presiding judge in Monte Vista, which meets for a half day twice each month. In his remaining time, Judge Powell continues to work in private practice as a lawyer.

The vast majority of people haled into the Alamosa Municipal Court are accused of having committed low-level, nonviolent offenses that are inextricably tied to poverty. An analysis of the arrest warrants ordered by Judge Powell, many of which are issued to collect court debt, elucidates this point. In 2016, over 90% of the 475 arrest warrants issued by the Alam-



Alamosa City Hall, where Judge Powell holds court.

The ACLU of Colorado traveled to Alamosa to meet personally with Alamosa municipal court defendants. It quickly became clear that many members of the community live in fear of arbitrary and discriminatory incarceration by Judge Powell. It is not uncommon for Judge Powell to issue arrest warrants for failure to appear at a court hearing when he knows that the defendant has a valid excuse, including hospitalization, in-patient treatment, or incarceration in another jurisdiction—like Linda Quintana (*see her story on page 7*).²⁵

Judge Powell is exceptionally insensitive to defendants suffering from substance abuse, which is particularly concerning considering that the San Luis Valley region is experiencing a deadly meth and heroin epidemic.²⁶ Rather than using his position to connect addicts to services, as some municipal courts pride themselves on doing, Judge Powell vilifies and blames people with addictions.

Alamosa Municipal Court were for low level, nonviolent offenses.²⁰ Indeed, the majority of the defendants whom Judge Powell sought to arrest were low-income and/or homeless individuals accused of shoplifting, usually for petty theft under \$100.²¹ Outside of theft, the most common underlying offense for which arrest warrants were issued was trespass, most often for people experiencing homelessness.²²

Judge Powell issues arrest warrants at an eyebrow-raising rate. In 2016, the Alamosa Municipal Court issued arrest warrants at almost two times the average rate of other municipal courts by population.²³ As will be seen below, the high issuance rate is likely driven, in significant part, by Judge Powell's harsh tactics and illegal use of arrest warrants to collect court debt.

A. COUNTERPRODUCTIVE & UNFAIR: HARSH TACTICS DISCOURAGE COURT APPEARANCES AND MAKE A MOCKERY OF JUSTICE

“I want you to understand I’m not waiting for you to go to rehab. OK? You’re going to get your obligation at this court taken care of before you go to rehab or you’re going to end up with a warrant. That’s a consequence I guess of getting in too much trouble . . . fail to be here that day, even if you’ve gone to rehab, I will revoke your bond and issue another warrant.”

—Judge Powell to B.B. on September 12, 2016, after B.B. explained that he could not pay his fines or show up for a scheduled payment review date because he had no job, was struggling with addiction, and expected to be in Salvation Army’s inpatient rehabilitation for addiction treatment.²⁴

- R.A. was charged with petty theft after leaving a store without paying for diapers.²⁷ She failed to appear for trial in July, 2016, but her probation officer had contacted the court to explain that R.A. could not make it to court because she had just entered a Salvation Army rehabilitation program to address her substance abuse problem. With this knowledge, Judge Powell nonetheless immediately issued a warrant for R.A.’s arrest, complaining that she had “*entered that program . . . despite knowing that she needed to be here for trial.*”
- M.L., a minor, was scheduled to appear before Judge Powell in July, 2016.²⁸ At that time, he was in the custody of Youthtracks, a drug rehabilitation program for youth. The Rocky Mountain Youth Center had requested the case be dismissed, and the youth’s mother appeared at the time of her son’s scheduled appearance to explain his absence. Nevertheless, Judge Powell issued a bench warrant.
- A.A. was to be sentenced for petty theft and trespass in April, 2016, but he was hospitalized at the time of his scheduled appearance.²⁹ He called the court ahead of time to explain that he was not able to make it to court, but he was told that a warrant would still be issued. Judge Powell did in fact issue a warrant when A.A. did not appear in court that day, and he spent several days in jail as a result.
- D.F. was charged with petty theft.³⁰ In August, 2016, prior to a scheduled appearance, a family member contacted the court to let the judge know that D.F. was sent out of state for a rehabilitation program. Nonetheless, Judge Powell issued a warrant.
- H.G. entered a one-year court-ordered rehabilitation program in California, causing to her miss court in Alamosa in July, 2016.³¹ Though Judge Powell acknowledged on the record that H.G. was participating in a rehabilitation program, he still chose to issue an arrest warrant.

B. SENSELESS INCARCERATIONS: IN ALAMOSA, IMPOVERISHED DEFENDANTS LANGUISH IN JAIL

Impoverished Alamosa municipal inmates commonly endure lengthy jail stays simply waiting to see Judge Powell. State and county inmates—most of whom are held on more serious offenses than municipal inmates—typically appear before a judge within 24 to 48 hours of arrest.³² Not so for Alamosa municipal inmates, virtually all of whom are incarcerated pursuant to warrant issued by the Alamosa Municipal Court with a pre-set monetary bond.³³ The Alamosa Municipal Court is scheduled to meet, at most, six days a month, often even less due to federal holidays. Thus, impoverished defendants charged with minor municipal offenses sometimes must wait up to two weeks for an opportunity to see Judge Powell and ask for modification of their bond.³⁴ By the time municipal inmates appear before Judge Powell, they have often spent much more time in jail than they would ever receive as a sentence if they were convicted.

Once in-custody defendants finally appear before Judge Powell, many are released because either they resolve their case or they secure a personal recognizance bond or affordable monetary bond. However, for a smaller number of defendants, Judge Powell's practices result in continued detention due to poverty even after the defendant appears in court. This is because Judge Powell sometimes refuses to modify a defendant's money bond to an amount the defendant can afford to pay, regardless of how minor the offense, the circumstances leading to the arrest warrant, or the amount of time that the individual has already spent in custody. This can have drastic consequences for defendants—like Ashley Medina (*see her story on page 8*) and M.R.M. (*see her story on page 14*)—who, simply because they are too poor to post bond, are forced to wait in jail for weeks.

Even short stays in jail can have grave consequences, particularly for impoverished defendants unable to pay their way out. Incarceration perpetuates poverty—crippling people's ability to continue employment, maintain housing, pursue education, and care for their families.³⁵ For people who remain incarcerated pretrial, there is also a significant increase in that individual's probability of a conviction, severity of sentence, and future involvement with the criminal justice system.³⁶ These impacts fall most heavily on communities of color.³⁷

It is the city taxpayer who must foot the bill for Judge Powell's misguided incarceration practices. In the one-year span ending in May 2017, 258 Alamosa municipal defendants spent at least a combined 9 total years in jail solely on a municipal hold, an average of 13 days per person.³⁸ Last year, Alamosa County charged the City over \$200,000 to incarcerate Alamosa municipal defendants—over 65% of the court's entire annual budget.³⁹

Given these practices, it should come as no surprise that the Alamosa Municipal Court has recently made headlines

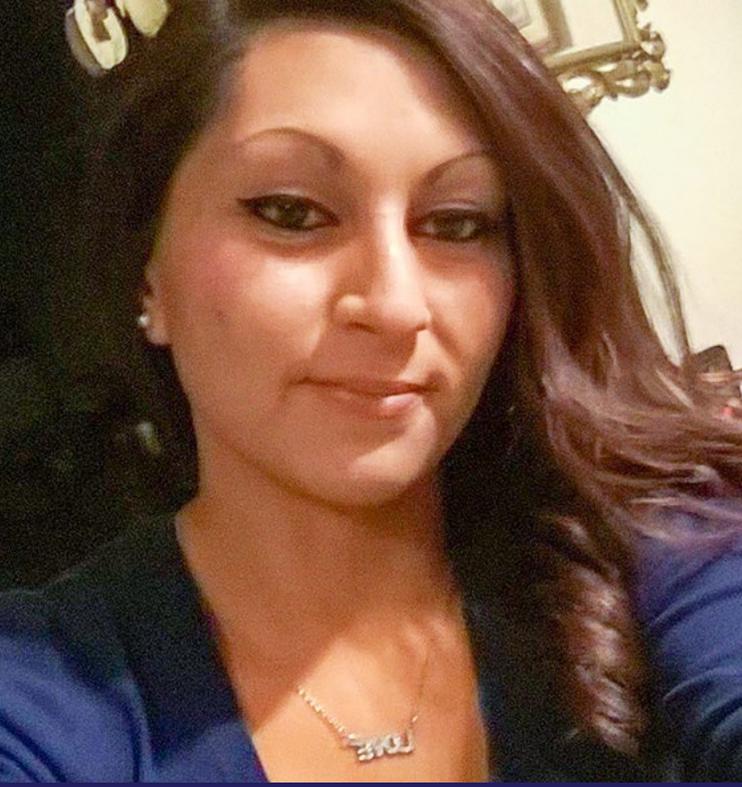


“IF JAIL IS NOT AN EXCUSE, THEN WHAT IS?”

Linda Quintana wrote to the court in December, 2015, to explain she would not be able to make an upcoming payment review date in her trespass case because she was incarcerated in La Plata County on another matter.⁴⁰ She explained that, due to her incarceration, she was unable to pay her fines or complete community service. Ms. Quintana had already appeared in court several times as required and had made multiple payments toward her debt. In response to Ms. Quintana's letter, Judge Powell set the case for the next review date in January, 2016, when Ms. Quintana was still incarcerated and unable to appear.

On that date, the court confirmed that Ms. Quintana was still incarcerated in the La Plata County Jail. Judge Powell issued a warrant for her arrest anyway. In February and March of 2016, Ms. Quintana wrote two additional letters informing the court that she remained in custody. Upon receiving these letters, Judge Powell simply noted: “warrant to remain active.” In May, 2016, shortly after Ms. Quintana was released from La Plata County Jail, she was re-arrested on the Alamosa municipal warrant. Linda recalls the frustration of being taken back into custody just as she was trying to get back on her feet after her release: “It's not like I didn't show up to court, because I always show up for court . . . I wrote [Judge Powell] a letter three times from Durango that I'm incarcerated . . . You know what he told me? 'Jail is no excuse,' and he still put a warrant out for me when I had already paid \$165 . . . If jail is not an excuse, then what is?”

as a driver of endemic overcrowding at the Alamosa County Jail.⁴¹ Though the facility was built for only 48 people, the jail population has lately ballooned to 115.⁴² County officials have expressed concern about the role of Alamosa Municipal Court in overcrowding, because Alamosa municipal inmates are held for the lowest level offenses and are often held in jail for unreasonably long periods of time.⁴³ Given these realities, the Alamosa County Commissioners unanimously granted Alamosa Sheriff Robert Jackson the authority to reject



REPEATEDLY JAILED FOR DEBT

Ashley Medina was arrested at least two times and spent a total of 36 days in jail because she was unable to pay in full her nearly \$800 debt to the Alamosa Municipal Court for three petty theft convictions.⁴⁴ The court received several letters from Ms. Medina's family, which explained that she struggled with addiction, that she was trying to get help, but that Medicaid did not cover the services. Ms. Medina paid at least \$259 of her debt throughout the course of her cases. Still, Judge Powell ordered three separate times that she be arrested when she was unable to pay her court debt and missed a payment review hearing. This resulted in lengthy detentions after each arrest.

- In November, 2015, Ms. Medina was arrested on a bench warrant associated with failure to pay her court debt. She waited in jail 6 days to see Judge Powell, who refused to modify her \$1000 bond. It took her family an additional 7 days to gather the money to post bond, resulting in a total 13-day jail stay.
- In June, 2016, Ms. Medina was again arrested on a bench warrant associated with failure to pay her court debt. This time, she waited in jail for 14 days to see Judge Powell, who again refused to modify her monetary bond. It took Ms. Medina's family 9 additional days to gather the money to post bond, resulting in a total 23-day jail stay.

All in all, Ms. Medina spent a total of 36 days behind bars because she was unable to pay her fines for three petty theft offenses committed while she was unemployed and struggling with substance abuse. Her incarceration cost the city \$2,287.08—nearly triple her original debt to the court.

inmates wanted by the Alamosa Municipal Court.⁴⁵ Judge Powell responded by threatening the Sheriff with contempt of court if he exercised that authority.⁴⁶

C. SETTING DEFENDANTS UP FOR FAILURE: DISPROPORTIONATE SENTENCING AND UNREASONABLE PAYMENT OBLIGATIONS

“You can make payments in equal payments over a period of 3 months, that’s as far as I’ll go. Technically I can make you pay in full before you leave the building or if you don’t or can’t, I can put you in jail instead. But I’m not that much of a hard nose. I allow people to make equal payments over a period of three months, but that’s as far as I go.”

—Judge Powell to A.J. on January 6, 2015, regarding payment of \$785 in fines and costs after A.J. explained that he was “broke” and “getting letters from collections.”⁴⁷

Impoverished defendants are set up for failure in the Alamosa Municipal Court. Upon conviction for minor offenses, Judge Powell imposes monetary obligations that can be grossly disproportionate to the conduct for which the defendant was convicted, and he does so without any consideration of defendants' ability to pay. In contrast, understanding the senselessness of imposing an unrealistic debt, especially on low-level offenders, lawmakers and judges across the nation are moving to require in-depth determinations of ability to pay at the time of sentencing.⁴⁸

In Judge Powell's court, however, there is no meaningful consideration of ability to pay at sentencing. Defendants are never asked about their income, their housing status, whether they have dependents, what other financial obligations they have, or how much they actually can afford to pay per month. Nor does Judge Powell consider mitigating circumstances in an individual's particular case that might justify a lesser fine.⁴⁹ Instead, it appears from observation of hundreds of cases that Judge Powell follows an unwritten fine schedule, requiring defendants to pay a predetermined monetary amount based on the type of offense, rather than the facts of the case and the defendant's financial circumstances. Additionally, Judge Powell automatically tacks on myriad court fees without any consideration of ability to pay.⁵⁰ Until recently, for even the lowest level petty theft or trespass by a person experiencing homelessness, Judge Powell rigidly imposed \$185 in fines and fees for a first offense.⁵¹ In 2017, the payments owed on first-time petty theft cases were increased to \$210.⁵²

- D.B. was convicted of petty theft after taking a \$1.89 beverage from Walgreens.⁵³ He was 18 years old, homeless, unemployed, and had no criminal history. He later explained to the judge that “I was just really thirsty, didn’t have the money to pay.”

He appeared as summoned in August, 2016, and Judge Powell sentenced him to pay **\$185**.

- I.B. was convicted of petty theft after she left Walmart without paying for a **\$2.88** child’s shirt.⁵⁴ She explained to the judge that she didn’t mean to leave without paying—in fact she had paid for all other items in her cart. I.B. was 23 years old, unemployed, and had no criminal history. She appeared as summoned in July 2016, and she was sentenced to pay **\$185** without any discussion of her ability to pay.

Once saddled with an unrealistic and burdensome monetary sentence, poor defendants must pay an extra \$15 fee simply to enter into any installment plan exceeding two weeks in length.⁵⁵ Even when establishing the terms of these payment plans, the court does not consider the defendant’s ability to pay. Instead, in the Alamosa Municipal Court, *all* defendants on a payment plan are assigned an inflexible timeline, usually only a three-month window to pay “in full.” To determine the monthly payment, the clerk simply divides the total amount due by the number of months in the plan. Burdened with excessive fines and fees and put on plainly unmeetable payment plans, impoverished defendants are set up for failure in the Alamosa Municipal Court.

Judge Powell: *“Make sure you make your payments on time so you don’t have to come back to court.”*

Defendant J.G.: *“What happens if I can’t afford that? I’m a single parent right now and we’re in between housing right now, I’ve got a lot of expenses.”*

Judge Powell: *“Well that’s too bad, isn’t it? That’s part of the consequences of getting in trouble. Somehow you have to shuffle all those other life responsibilities with the responsibility of paying your debt to society. Right? Do you understand what I’m saying?”*

Defendant J.G.: *“That’s, that’s your perspective of it.”*

Judge Powell: *“No, that the law’s perspective of it. If you don’t make your payment you’ll get a notice to come back to court and you can be resentenced and maybe sent to jail instead. Do you understand what I’m saying?”*

—Conversation on August 22, 2016, between Judge Powell and J.G., an indigent defendant, regarding the court’s inflexible three-month payment schedule.⁵⁶

D. DEBTOR’S PRISONS PERSIST THROUGHOUT COLORADO

“None of that gets you off the hook with me . . . I’m thinking I should make you take this matter seriously by sticking you in jail . . . Make sure you have those payments made, or make sure you bring your toothbrush, because you’ll have to go over to the jail.”

—Judge Powell to S.R.S. on July 11, 2016, after he had just explained his difficulty making his last two payments of \$59 each, because he has been unemployed while caring for his children, his wife after her recent surgery, and his mother while she battled breast cancer.⁵⁷

The many impoverished individuals who are unable to meet their payment obligations to the Alamosa Municipal Court face the very real specter of debtor’s prison. Judge Powell commonly jails or threatens to jail defendants who are unable to pay their debt to the court. This practice—coined “debtor’s prison”—violates long-standing constitutional principles established by the United States Supreme Court⁵⁸ and fortified in recent state legislation.⁵⁹

In 2014, after extensive investigation, the ACLU of Colorado learned that debtor’s prison practices were still common in many Colorado courts. Impoverished municipal defendants were regularly arrested on warrants for failure to pay a debt and sometimes held in jail to “pay” down the debt at a daily rate, usually of about \$50 per day.⁶⁰ When the ACLU uncovered this cruel and unconstitutional practice, the Colorado legislature took a hard stance. It enacted HB 14-1601, nearly unanimously, to crack down on municipal court practices that effectively put people behind bars solely for being poor.⁶¹

The legislation prohibited courts from imprisoning poor people for debt, including by issuing warrants for failure to pay.⁶² District and county courts began following the law even



A trainyard at LaDue Ave. and 6th St. in Alamosa.



RMOMS (Rocky Mountain Offender Management Systems) charges an \$80 fee to supervise court-ordered community service in Alamosa.

COMMUNITY SERVICE IN ALAMOSA: EXCESSIVE AND EXPENSIVE

While virtually all sentences handed down by the Alamosa Municipal Court require payment of fines and fees, Judge Powell often piles on an additional penalty—an obligation to complete community service. Sentences of community service make the most sense when they are imposed *in lieu of*, rather than *in addition* to fines, as an alternative in the event that the defendant is too poor to pay. Yet, in almost all cases, Judge Powell rigidly imposes a uniform three full workdays (24 hours) of community service on top of fines and fees, even for the lowest level offenses with mitigating circumstances. He does not make efforts to ensure that punishment is proportionate to the behavior, nor does he consider any individual’s valid obstacles to completing community service, such as disability, work, or child care.⁶³

Defendants must pay a steep \$80 fee to get credit for completing court-ordered community service. This fee alone is an insurmountable obstacle for many defendants, and Judge Powell takes no steps to determine the defendant’s ability to afford participation, nor does he grant fee waivers. Instead, he commonly threatens to jail, and sometimes actually jails, defendants when they fail to complete community service because of their inability to pay the fee.

A.S. was sentenced as a juvenile to complete Judge Powell’s standard 24 hours of community service in addition to payment of fines and costs.⁶⁴ In October, 2014, A.S. appeared before Judge Powell with her parents. The family explained that A.S. had started paying down the court debt for fines and costs, but A.S. had to postpone starting community service because of the parents’ inability to pay the \$80 fee. A.S.’s mother said: *“I only get \$700 per month, it’s hard you know; I don’t have the means. She could have got her hours done earlier if we could have her do them and then pay for it. But you have to pay before it’s done and I just don’t have the money to do it.”* Judge Powell threatened the parents with two days in jail unless they could prove they did not have the money to pay the fee. When the father asked what kind of evidence he needed to show inability to pay, Judge Powell stated: *“I’m not going to tell you that, that’s your burden, not mine. You have to prove to my satisfaction and to prove to my satisfaction you better make it good.”*

Afterwards, Judge Powell suggested to court staff his plan to find that A.S.’s parents had the ability to pay the fee: *“She had some really nice gold earrings, if she shows up in court with those again, she doesn’t know this, but that is evidence to me of ability to pay. They look real nice, but my question is going to be: ‘Did you try to pawn those earrings?’ When the answer is no, that’s ability to pay.”*

before it came into effect, but municipal courts devised a loophole to skirt the law and continue jailing impoverished debtors. Municipal courts across the state began substituting “failure to appear” warrants to serve the same function as the “failure to pay” warrants prohibited by HB 14-1601—with the same unconstitutional effect of jailing impoverished individuals who lack the means to pay court fines or fees. Courts accomplished this by making every payment date under a payment plan a mandatory court appearance. These court appearances were shams, designed only to allow municipal courts to issue a warrant for the defendant’s arrest if the defendant did not make the payments due.

In 2016, the ACLU brought to the Colorado legislature overwhelming evidence that municipal courts were thwarting legislative intent and continuing to operate debtor’s prisons.⁶⁵ In response, the legislature enacted HB 16-1311, with broad bipartisan support, to close this loophole.⁶⁶ Now, it is illegal for courts to issue a warrant when someone simply fails to appear on a payment review date.⁶⁷ The law also clarifies what had been the legislature’s plain intent since 2014: when a defendant’s sole obligation to the court is a monetary debt, a warrant may issue *only if* there are findings on the record, after notice and a hearing, that the defendant willfully failed to pay—meaning that the defendant had the ability to pay without undue hardship, but failed to act in good faith.⁶⁸

Many municipal courts have complied with the requirements of HB 16-1311. Some municipal judges, however, like Judge Powell, persistently refuse to give up jail as a tool to collect debt from the people in poverty. These judges’ practices violate state law and constitutional principles against debtor’s prisons and serve to punish impoverished defendants with jail and the threat of jail for failing to pay court debt. Four such practices of Judge Powell’s are discussed below.

1. Illegal arrest warrants against impoverished debtors

Judge Powell continues to devote a substantial portion of his court time to collecting money from defendants who are too poor to pay their debts to the court in full. In fact, there are many court days when virtually the entire docket focuses on collecting money from impoverished defendants.⁶⁹ This is because, long after HB 16-1311 became the law, Judge Powell still (illegally) requires impoverished defendants on a payment plan to appear before him on a near-monthly basis for a “payment review,” under threat of jail.

Some defendants, unable to pay according to the court’s rigid timelines, experience years of monthly payment reviews just to avoid jail for a debt associated with the most minor of offenses.⁷⁰ Requiring such frequent appearances from already-disadvantaged defendants is

extremely burdensome. Simply because they cannot afford to pay in full, defendants are required to periodically skip work, lose pay, arrange for child care, and organize transportation into the city center—all to appear in court under threat of jail to explain why they are still too poor to meet the court’s inflexible and unreasonable payment expectations. This scheme is profoundly discriminatory. In Alamosa, a person of means might only appear *once* for sentencing, then pay their fine and move on with their lives. But, for poorer defendants forced to sign up for an installment plan, these monthly court appearances often feel like probation due to poverty.

If a person fails to appear for one or two payment review dates, Judge Powell invariably issues a warrant for that person’s arrest without any consideration of ability to pay. Such warrants directly violate HB 16-1311.

2. Using Jail to Collect Debt for Non-Jailable Offenses

As an added layer of injustice, Judge Powell uses jail and the threat of jail to collect debt for non-jailable offenses for which the only possible penalty is a fine, such as traffic infractions⁷¹ and animal offenses.⁷² Though the Alamosa City Council has taken jail off the table as a sentence in these cases, Judge Powell still illegally incarcerates defendants who miss a payment for one of these fine-only violations. In 2016, alone, Judge Powell issued at least 13 arrest warrants associated with a missed payment review date for non-jailable offenses.⁷³ Of particular concern, seven of these warrants were issued for non-payment of fines for a mere traffic infraction, such as “unsafe backing” and “failing to stop at a stop sign.”⁷⁴ Under state law, a court is forbidden from ever issuing a warrant or order a defendant into custody for these infractions.⁷⁵

- *S.K.S.* was charged with two counts of “Dog at Large” after both of her chihuahuas slipped into the street through a hole in her fence in April, 2015.⁷⁶ In May, 2016—when she had only \$40 left to pay of her original \$165 balance due—*S.K.S.* missed a payment review date. A warrant issued, and she was arrested despite the fact that “Dog at Large” is not an offense for which jail is a possible penalty. *S.K.S.* was required to appear in court for at least three additional review hearings, under threat of jail, before she was able to pay the balance in full.

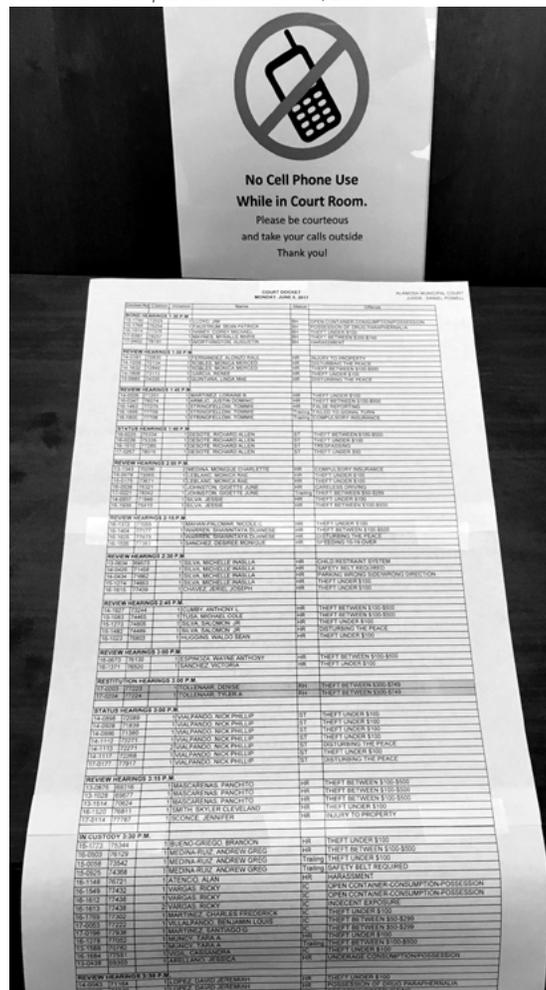
- In May, 2015, *M.L.M.* failed to stop at a stop sign and was sentenced to pay a total of \$140 for this non-jailable traffic infraction.⁷⁷ He could not afford the \$47 periodic payments required by the court’s inflexible three-month timeline. *M.L.M.* explained that he was “*literally living on like \$20 a week*”—his car was repossessed, his wages were garnished, and he was the sole provider for his three kids. Nevertheless, Judge Powell issued a warrant when *M.L.M.* missed a payment in February, 2016, even though the underlying offense was non-jailable and the law did not permit issuance of an arrest warrant. *M.L.M.* was arrested. After he was released, he was required to appear in court for at least seven additional review hearings, under threat of jail, to discuss his outstanding debt. In early 2017, he was finally able to pay his balance in full.

3. Using post-conviction bond to collect debt

One particularly suspect method utilized by Judge Powell to commit debtors to jail stems from his misuse of bond. Judge Powell does not limit the use of bond to assuring pre-trial appearances. Rather, he very often “continues bond” after conviction, throughout the course of an indigent defendant’s payment plan. By doing this, the threat of incarceration remains over defendants’ heads indefinitely until the case is paid in full—sometimes for months or even years—as a means of coercing payment. If a defendant ordered to “appear on bond” misses a payment review date, Judge Powell has a practice of “revoking” the bond and remanding that person to custody without any consideration of ability to pay.

As a starting point, there is no legal authority permitting Judge Powell’s use of post-conviction bond to collect debt.⁷⁸ Additionally, jailing someone on a bond revocation upon a missed payment review, without notice, a hearing, or findings of willful failure to pay, violates Colorado’s debtor’s prison law.⁷⁹ The practice of “continuing bond” is particularly unjust for defendants charged with a non-jailable traffic infraction for which the court is prohibited from issuing a bench warrant. Michelle Silva is one individual subjected to this practice—she was required to appear regularly “on bond” for over two and a half years under threat of jail after an illegal arrest for a missed payment in a traffic infraction case (*see Ms. Silva’s story on page 13*).

A lengthy docket, mostly of payment review hearings, at the Alamosa Municipal Court on June 5, 2017.





The Alamosa City Council Chambers, where Judge Powell holds court.

POVERTY IS “NO EXCUSE FOR NONPAYMENT”

S.R.S. was convicted of two traffic offenses, as well as petty theft for taking bottled water from Walmart.⁸⁰ Judge Powell sentenced S.R.S., who was impoverished, to pay over \$900 for these offenses. S.R.S. made some payments towards his balance, but the court assessed numerous late fees because he was not able to pay in full and on time pursuant to the inflexible repayment schedule set by the court. Judge Powell required S.R.S. to appear in court, under threat of arrest for failure to appear, on a near-monthly basis for “Review Hearings” that focused solely on debt collection.

S.R.S. dutifully appeared for 9 such reviews over the course of 7 months between November, 2015 and July, 2016. Each time, he explained to Judge Powell why he could not pay. S.R.S. is a father and, at times, he was going through addiction treatment, was unemployed, was taking care of his mother during her cancer treatment while his father was incarcerated, and was caring for his sick wife. In the notes for one of these review hearings in which S.R.S. explained in detail his financial hardships, Judge Powell wrote simply: “No excuse for nonpayment.” Judge Powell responded to the description of S.R.S.’s financial hardships as follows: *“None of that gets you off the hook with me . . . I’m sorry your father has been recently incarcerated, but my question for you is, ‘do you want to join him?’ . . . I’m thinking I should make you take this matter seriously by sticking you in jail . . . Make sure you have those payments made, or make sure you bring your toothbrush, because you’ll have to go over to the jail.”* After receiving this illegal threat of incarceration, S.R.S. did not appear for his next payment review hearing. A warrant was issued for his arrest, without any consideration of his ability to pay. S.R.S. was arrested on the warrant and spent several days in jail before he was brought before Judge Powell.

4. Using the threat of jail to collect debt

“I want you to know—if you ever miss a payment, I’m going to revoke this prior sentence then re-sentence you, and that could involve up to a year on each and every one of these charges.”

—Judge Powell on August 1, 2016, to Michelle Silva (*see her story on page 13*), who was indigent but making payments toward court debt for three non-jailable traffic infractions.

As a matter of consistent practice, Judge Powell uses the threat of jail to coerce payments from impoverished defendants. Such threats ignore the letter and spirit of Colorado’s recent debtor’s prison legislation, which requires that judges expressly advise defendants sentenced to pay a monetary amount that they cannot be jailed for failure to pay if they lack the present ability to pay.⁸¹ Judge Powell does not make this required advisal. To the contrary, his in-court statements are designed to leave criminal defendants with the impression (which is often a reality) that they will be jailed if they fail to pay, even if they are too poor to pay.

Threatened by Judge Powell with incarceration in the event of non-payment, impoverished criminal defendants have reported to the ACLU that they have avoided appearing in court on a payment date because they (understandably) believed that their inability to pay would result in their automatic on-the-spot arrest.

Perhaps one of the most abusive threats Judge Powell makes is to impose a formerly-suspended jail sentence on an indigent debtor who is unable to keep up payments on his court debt. In addition to sentencing virtually all defendants to fines and fees, Judge Powell regularly tacks on a jail sentence, which he then “suspends” on the condition that the defendant timely pay his or her court debt. For defendants too poor to pay the full amount due, Judge Powell often threatens to impose the suspended jail sentence—pressuring the debtor to stay on schedule in his or her payments to the court. Even for cases in which Judge Powell sentenced the individual solely to pay a fine, Judge Powell has threatened to “re-sentence” defendants who are not able to pay in full and on time. In a case described below, he followed through on that threat, in direct violation of longstanding Supreme Court precedent.⁸²

- M.C. was sentenced to pay \$690 in fines and fees for two thefts committed when he was 18 years old, in addition to being sentenced to 15 days in jail for each charge.⁸³ The 15-day jail sentences were suspended on the condition of timely payment. In November, 2016, M.C. appeared for a review hearing. Judge Powell asked: *“Where are you at with your payments?”* M.C. explained that he could not afford them—he was unemployed and had not been able to find a job. Judge Powell cautioned: *“You have jail time hanging over your head in these matters. If I find that you have failed to*

comply, the court may re-impose that jail time, or the court will revoke the prior sentence and re-sentence you, which might involve more jail time.” In February, 2017, M.C. was still unable to pay and Judge Powell followed through on this threat. He re-imposed the two 15-day jail sentences, to be served consecutively, so that M.C. had to spend a total of 30 days in jail.

E. ESCALATING COURT DEBT: FINES, FEES AND BOND FORFEITURES

In Alamosa, court debt can escalate quickly as a result of extra fees and costs tacked on to a defendant’s outstanding balance for payment plans and late payments and upon a missed payment review hearing.⁸⁴ However, the greatest drivers of Alamosa Municipal Court debt are bond forfeitures, which can cause balances to skyrocket sharply. When defendants post bond to secure their release from custody, and they then fail to appear “on bond” later in the case, Judge Powell often adds the entire value of the bond to the total debt the defendant owes. Such “forfeitures” happen even if the bond had been posted after an illegal arrest for a missed payment review hearing—meaning that the defendant should never have had to post the bond in the first place. A missed payment review hearing can result in a bond forfeiture of \$500 or even \$2000—depending on the value of the bond—an incredibly steep charge to an indigent court debtor for a single missed court appearance regarding payments. These illegal bond forfeitures further embed indigent defendants in a cycle of debt that keeps them tied to the criminal justice system often for years.

F. JUSTICE DENIED: LEGAL SHORTCUTS THAT TRAMPLE ON CONSTITUTIONAL RIGHTS

Defendant: *“Can I have an attorney?”*

Judge Powell: *“Let’s talk about your plea first.”*

—Judge Powell speaking on July 25, 2016, with T.M., who was in custody and facing a charge of theft. Without counsel, T.M. pleaded no contest to the charge.⁸⁵

In the Alamosa Municipal Court, criminal defendants are commonly denied their most essential constitutional rights. They are seldom advised by Judge Powell regarding any of their constitutional rights, and generally their first appearance before the judge is for sentencing. Defendants are expected to plead guilty to a court clerk by checking a box on a pre-printed form, without the assistance or advice of counsel and without judicial oversight.⁸⁶ Judge Powell regularly accepts and enters convictions on these guilty pleas, which fail to meet the constitutional standard that requires that such pleas be “knowing” and “voluntary.” He does not advise most criminal defendants of their right to counsel and, as a matter of course,



THE PRICE OF POVERTY IN ALAMOSA: YEARS OF COURT APPEARANCES AND ARRESTS

Between 2013 and 2015, Michele Silva was convicted of three traffic infractions and one petty theft charge. Judge Powell sentenced her to pay fines and fees of at least \$660.⁸⁷ Ms. Silva, who works seasonally with the harvest or in factory assembly, made enormous efforts and experienced substantial hardship in her effort to keep up with the court’s inflexible payment schedule. **She appeared for payment review hearings at least 12 times and has paid over \$600 to the court.** Still, because of her poverty, she was often unable to pay her debt according to the court’s inflexible timeline.

In October, 2015, Judge Powell issued a warrant for her arrest, even though the underlying offense was a non-jailable traffic infraction for which state law prohibits arrest. She tried to make a payment in January, 2016, and was arrested on the spot at the clerk’s window. Without any legal authority to do so, Judge Powell required Ms. Silva to post a bond to secure her appearance at future periodic review hearings that focused solely on debt collection. At each appearance, Judge Powell “continued” Ms. Silva’s bond to secure her appearance in court at her next payment review—threatening to revoke the bond and jail her if she failed to appear to answer for the remaining balance due.

After Ms. Silva had appeared twice in court “on bond,” she missed a payment review date. Judge Powell revoked her bond and again illegally ordered a warrant issued for her arrest. She was arrested on that warrant in May, 2016. **Because Ms. Silva was too poor to pay the \$1000 bond that Judge Powell set and refused to modify, Ms. Silva remained in custody for 14 days until Judge Powell finally granted her a personal recognizance bond.** Even after this two-week period of incarceration, Ms. Silva was still required to appear in court under threat of arrest when her payments were due. The purpose, in Judge Powell’s words, was “to monitor your progress.” As of August, 2017, Ms. Silva was still regularly appearing for payment review hearings and struggling to pay her debt in full.



Judge Daniel Powell on the bench in Alamosa.

M.R.M.: “CAN I SAY SOMETHING?” JUDGE POWELL: “NOPE.”

Due to Judge Powell’s debtors prison practices, M.R.M. spent 43 days in jail because she was too poor to pay her debt to the court. In 2015, M.R.M. was convicted of “theft under \$100” after taking **\$7.45 of merchandise from Walmart**.⁸⁸ For this offense, Judge Powell sentenced M.R.M. to **30 days in jail**. After she served ten days, he suspended twenty days conditioned on timely payment of **\$570 in fines and fees**. As is his practice, Judge Powell did not consider or discuss ability to pay at sentencing. M.R.M. paid down a portion of her debt and wrote to the court asking for additional time to make payments.

On April 11, 2016, M.R.M. started the drive to Alamosa for one of her many scheduled payment review hearings, but she had to turn around because the La Veta Pass was closed due to heavy snow.⁸⁹ Court records note that M.R.M. called and explained why she was unable to make the hearing. Still, and even though her only obligation to the court was an outstanding balance of \$407, Judge Powell issued a warrant for her failure to appear.⁹⁰

M.R.M. was arrested on that warrant on June 19, 2016, but she was too poor to pay the bond set by the court. She remained incarcerated for 8 days before she was taken before Judge Powell. She requested a personal recognizance bond, which Judge Powell denied. M.R.M. asked: “*Can I say something?*” and Judge Powell replied: “*Nope.*” Judge Powell set M.R.M.’s bond at \$100 even though he had no legal authority to hold her (or any other defendant) on a post-conviction bond for failure to pay.⁹¹ Without any discussion of M.R.M.’s ability to pay her bond, Judge Powell then scheduled her next payment review date for more than a month in the future. M.R.M. was so poor that she was unable to afford even a \$100 bond. As a result, she remained incarcerated until her next court date on August 1, when her case was finally resolved. In the end, **M.R.M. spent 42 days in jail—essentially as a penalty for being unable to pay \$407—at a cost to the city of \$2,668.26.**⁹²

does not appoint counsel for indigent defendants facing jail. Indeed, almost all of the individuals whom Judge Powell convicts and sentences go through the entire criminal proceeding without access to appointed counsel. Thus, the Alamosa Municipal Court functions as a well-oiled machine to railroad defendants through to conviction, sentencing, and ultimately payments to the court—all while denying critical constitutional rights.

1. Illegal Arraignments by the Clerk, Unconstitutional Guilty Pleas

While Judge Powell takes pains to personally handle payment review hearings where he attempts to extract money from poor defendants, most defendants in his court first appear before and plead guilty to a court clerk, outside of the courtroom and off the court record, without the benefit of counsel or judicial oversight.⁹³ These guilty pleas occur at the defendant’s first appearance in the case, also called an “arraignment.”⁹⁴ An arraignment is the time at which a defendant is first advised of his or her constitutional rights and informed of how to exercise them during the course of the criminal case. As one federal court has explained, “Almost every element of a ‘first appearance’ . . . serves to enforce or give meaning to important individual rights that are either expressly granted in the Constitution or are set forth in Supreme Court precedent.”⁹⁵

While Colorado Municipal Court Rules permit a municipal court clerk to handle the arraignment of a defendant when the defendant desires to plead *not guilty*, the rules expressly require that “before a plea of guilty is received, the defendant shall be arraigned *in court*.”⁹⁶ This requirement serves to enforce a court’s core constitutional obligation to ensure that any guilty plea is made knowingly and voluntarily.⁹⁷ This duty is only fulfilled when the court makes specific findings on the record, as codified in Colorado Rule of Criminal Procedure 11 and Colorado Municipal Court Rule 211(b), that include the following: (1) the defendant understands the constitutional rights he or she is giving up with entry of a guilty plea; (2) the defendant understands the nature of the charge, the effect of the plea, and the possible penalties, and (3) an indigent defendant either has appointed counsel to advise on the plea or has knowingly and voluntarily waived the right to counsel.⁹⁸ Indeed, the Colorado Supreme Court holds that when such findings are not made, “a plea of guilty cannot be accepted, and any judgment and sentence which is entered following the plea is void.”⁹⁹ Yet, in Alamosa Municipal Court, the clerk regularly accepts guilty pleas from uncounseled defendants who are never otherwise arraigned or advised by the court.

At the “arraignment,” the Alamosa clerk is not permitted to have meaningful dialogue with the defendant about his or her plea or constitutional rights. Instead, the entirety of the court’s communication about the defendant’s rights and the plea is contained in a single “Advisement of Rights” form provided to the defendant by the clerk, which is excerpted on page 15.

As the form makes clear, while defendants are “expected to enter a plea” when they meet with the clerk, they are not permitted to ask the clerk questions about their case or their rights. Rather, they are expected to make the critical choice of

This is an arraignment and you are expected to enter a plea to the charge(s) which have been brought against you, either guilty, not guilty or nolo contendere (no contest).

...

COURT STAFF CANNOT GIVE ANY LEGAL ADVICE, INCLUDING HOW YOU SHOULD PLEA.

If you are under 21 years old and are convicted of Possession or Consumption of Alcohol, the conviction will be reported to the Department of Motor Vehicles which may cause your drivers license to be revoked.

By signing this form, I have read and understand the above rights.

- enter a plea of Not Guilty and set this matter for trial;
- enter a plea of Guilty; enter a plea of No Contest to the charges

"Advisement of Rights" form provided to defendants by the Alamosa Clerk.

whether or not to plead guilty by simply checking a box and signing their name. When the "guilty" box is checked, the defendant is scheduled for sentencing, which is typically the first time that defendants appear before Judge Powell.¹⁰⁰ At sentencing, it is Judge Powell's practice not to discuss the previous arraignment, written advisement of rights, or entry of plea. Instead, Judge Powell simply states the charges, notes that the defendant previously pleaded guilty, and proceeds with sentencing.

2. No Lawyers for Defendants Facing Jail

In Alamosa Municipal Court, nearly all defendants plead guilty and then proceed through to conviction and sentencing without an attorney. This is at least partially due to several unconstitutional practices of Judge Powell, including: (1) failing to adequately advise defendants of their right to counsel; (2) failing to appoint counsel even when indigent defendants have not waived their right to counsel; and (3) failing to appoint counsel even when indigent defendants explicitly request appointment of counsel.

In all criminal cases, the Sixth Amendment right to counsel attaches at first appearance, and defendants are entitled to the presence of counsel at all future "critical stages" of the proceedings, including plea hearings, trial and sentencing.¹⁰¹ The court must appoint counsel to represent indigent defendants at these critical stages whenever the defendant faces the possibility of incarceration, unless the defendant knowingly and voluntarily waives counsel on the record.¹⁰²

The vast majority of defendants in Alamosa Municipal Court face a possible jail sentence and are thus entitled to counsel absent a valid waiver. Almost all municipal offenses in Alamosa are punishable by jail,¹⁰³ and—as previously discussed—Judge Powell regularly sentences defendants to a fine and suspended *jail sentence*.¹⁰⁴ Under binding legal precedent, suspended jail sentences are illegal and unenforceable if the defendant was sentenced without the benefit of counsel, unless the defendant knowingly and voluntarily waived the right to counsel.¹⁰⁵ Yet, in the dozens of court appearances reviewed by the ACLU in which Judge Powell sentenced a defendant to a suspended jail sentence, not a single defendant had appointed counsel at initial sentencing and none of the defendants had validly waived their right to counsel.

In fact, as a matter of consistent practice at these sentences, Judge Powell does not even *mention* the right to counsel

MONTE VISTA MUNICIPAL COURT: SAME JUDGE, SAME BAD PRACTICES

Judge Powell is also the presiding judge in neighboring Monte Vista Municipal Court, which meets only two days per month. While the ACLU has not yet been able to closely study the workings of this court, there is evidence of the same disturbing practices we see in Alamosa: lengthy waits in jail due to the court's infrequent schedule, refusal to release incarcerated defendants when they are finally able to appear, and an unwillingness to acknowledge that some failures to appear are beyond a defendant's control and not deserving of punishment.

Because of her poverty and Judge Powell's practices, R.A. was jailed for 58 days away from her newborn child.¹⁰⁶ She had failed to appear for trial in November, 2016, because she was in labor. Judge Powell issued a bench warrant for that failure to appear. **R.A. was arrested on that warrant when her infant son was only 6 days old, and—because she was too poor to pay the \$1000 money bond—remained in jail waiting to see a judge until the next session of court 22 days later.** When R.A. finally had an opportunity to appear before Judge Powell, she explained that she had missed her court date only because she was giving birth to her son. Even with this knowledge, Judge Powell refused to release R.A. on a personal recognizance bond. Instead, he reduced her bond to \$500 and re-scheduled trial for 35 days in the future, without ever discussing R.A.'s ability to pay the bond. Because R.A. was too poor to pay her bond, she remained in custody for the full 35 additional days, solely on the municipal hold, until her next scheduled court appearance in January, 2017. At that appearance, R.A.'s case was finally resolved and she was released. In the end, **because of her poverty and Judge Powell's apparent disregard for R.A.'s irrefutably valid excuse for failure to appear, she spent 58 days in jail and missed out on the first two months of her baby's life. This senseless detention cost the city taxpayers \$2,610.**¹⁰⁷



A marquee at "The Green Spot" in Alamosa highlighting the region's struggle with substance abuse.

IMPOVERISHED, ADDICTED, AND DENIED COUNSEL

Daimon Naranjo was convicted in July and August of 2016 on two charges of shoplifting committed when he was 18 years old.¹⁰⁸ He was and still is deeply impoverished and addicted to heroin. His family is being ravaged by the opioid epidemic. As he explained to Judge Powell in one of many highly personal letters to the court, Daimon lost his sister—who was his best friend—to an overdose in late 2016.¹⁰⁹ Daimon is trying desperately to get clean and to avoid the fate of his sister.

Daimon was convicted of these two thefts without access to an attorney. Indeed, Daimon thought he had no choice but to represent himself. Pursuant to Judge Powell's standard practice, during the course of these proceedings (including a trial), Judge Powell never even mentioned Daimon's constitutional right to counsel, much less his right to free appointed counsel. After convicting Daimon, Judge Powell sentenced him to pay over \$700 and imposed jail sentences totaling thirty days, which he suspended on the condition that Daimon pay his fines and commit no new offenses.

Daimon had difficulty paying his outstanding balance to the court. He wrote to the court: "I can't make my payment to my fine by the due date. I am currently homeless, jobless, and I am struggling to get by." Nevertheless, Daimon managed to pay \$50 toward his debt, even though, as he wrote, he was "hungry . . . living out of [his] backpack" and was "staying in a broken down car. . . . I am struggling so hard. I have no clean clothes, or laundry detergent to wash them . . . or money to wash them at a laundry mat . . . no place to shower. . . ." "Now 'where am I going to stay' is the only thing running through my mind every single night"

Still struggling with his addiction, Daimon was again cited for theft in October, 2016.¹¹⁰ Though conviction in this new case would trigger imposition of his prior 30-day suspended jail sentence, the court never advised Daimon of this consequence or discussed his right to counsel before Daimon entered a guilty plea with the clerk. It was not until Judge Powell sought to impose the formerly

suspended jail sentences that he finally appointed counsel for Daimon. Counsel was too late, though. Because the guilty pleas had already been made and the convictions and sentences had already been entered, counsel at this stage had no meaningful effect on the outcome in Daimon's case.

In an August 2017 hearing—relying on Daimon's uncounseled pleas and the illegal sentences that stemmed from those pleas— Judge Powell perfunctorily (and illegally) imposed the formerly suspended jail sentences of 30 days, as well as a direct sentence of 30 days in the third theft case. These sentences were unconstitutional because of the prior violations of Daimon's right to counsel.



to the defendant. Typically, the only information these defendants receive concerning the right to counsel during the course of their entire criminal proceedings is in the "Advisement of Rights" form that most defendants sign when they plead guilty to the court clerk.¹¹¹ As discussed previously, this arraignment occurs outside the courtroom, without meaningful discussion with the clerk who "CANNOT GIVE LEGAL ADVICE." The vast majority of defendants then proceed uncounseled all the way through initial sentencing without any advisal from or discussion with the court regarding the right to counsel.

It is beyond dispute that a defendant's mere signature on a single form *acknowledging* the right to counsel during a *pro se* arraignment before a court clerk, without judicial oversight or engagement, does not constitute a knowing and voluntary waiver of the right to counsel. As the Supreme Court has held: Waiver of the right to counsel "will not be lightly presumed, and a trial judge must indulge every reasonable presumption against waiver."¹¹² Accordingly, the record must illustrate an "affirmative showing that the waiver was intelligent and voluntary."¹¹³ Yet, in almost all of the hundreds of cases reviewed by the ACLU, the record reflects no discussion, or "colloquy" between Judge Powell and the defendant regarding the right to counsel. The Supreme Court has held that a silent record can never reflect a knowing and voluntary waiver of constitutional rights.¹¹⁴ Thus, many of the sentences imposed by Judge Powell are invalid and unconstitutional due to violation of the defendant's right to counsel.

In the rare cases in which Judge Powell appoints counsel for a defendant, appointment does not occur until long after the defendant has entered a plea of guilty. Judge Powell waits until the sentencing phase when he is planning to impose a direct sentence of jail or even later at the revocation phase when he plans to impose a formerly suspended jail sentence—like Daimon Naranjo (*see his story on this page*). In both circumstances, as the law cited above makes clear, the later appointment of counsel cannot cure the constitutional infirmity of the initial sentences imposed without counsel.

VI. CONCLUSION & RECOMMENDATIONS

This paper highlights many of the abusive practices occurring in the Alamosa Municipal Court. Perhaps more concerning, however, is the State of Colorado's lack of oversight that has allowed these abuses to occur. Based on the ACLU's review of only a few dozen of the more than 220 municipal courts in Colorado, it is clear that many of the practices described in this paper are occurring in other Colorado municipal courts. It is past time for Colorado's unaccountable municipal court system, including the Alamosa Municipal Court, to come in line with 21st century principles of fair and equitable justice. Doing so requires action by municipalities, the Colorado Legislature, and the Colorado Supreme Court, as recommended here:

A. THE CITY OF ALAMOSA

Cities should take immediate action to end the illegal and inequitable practices described in this paper.

1. Reserve jail beds only for individuals who pose a serious safety threat. To do so, the City of Alamosa should:

- a. Repeal or alter the City's "general," or standard penalty, which gives the court broad authority to impose the maximum sentence for even the most minor city ordinance violations. Instead of utilizing a one-size-fits-all general penalty:
 - Carefully review all criminal offenses in the Alamosa Municipal code and specifically determine the appropriate penalty range for each offense given the seriousness of the prohibited conduct;
 - Decriminalize those offenses that pose minimal threat to public safety by converting them to civil infractions for which a person can never be arrested or jailed.¹¹⁵
- b. Cease the illegal practice of issuing arrest warrants for non-jailable traffic infractions;
- c. Create a diversion program to serve low-level offenders who are experiencing homelessness and/or struggling with drug addiction; and
- d. Avoid jailing defendants for failure to appear by:
 - Reminding defendants by phone of upcoming court dates, which empirical research shows dramatically decreases failures to appear;¹¹⁶
 - Allowing a grace period of thirty days after a missed court appearance for a defendant to come to court and schedule a new court date without issuance of a bench warrant; and

- Directing the municipal judge to refrain from issuing a bench warrant when there is credible evidence that the defendant is unable to appear, such as when the defendant is hospitalized, incarcerated, or in an inpatient rehabilitation program.

2. Address economic inequality in jail stays by:

- a. Requiring that all municipal inmates be brought promptly before the municipal judge to facilitate release by resetting bond;¹¹⁷ and
- b. Requiring the municipal judge to consider ability to pay if setting a monetary bond and to ensure that bond is low enough that no defendant is held in jail solely because he or she cannot afford to pay a monetary bond.¹¹⁸

3. Address economic inequality in sentencing and payment plans by requiring judges to:

- a. Individualize sentences by considering the particular facts of each case and each defendant's financial circumstances, and only imposing sentences that are proportional to the gravity of the particular offense and the defendant's ability to pay. Doing so would require the court to:
 - Carefully consider the defendant's ability to pay at sentencing through consideration of written criteria;¹¹⁹
 - End the practice of sentencing defendants to 24 hours of community service regardless of offense;
 - Reduce or waive fines, fees or costs that the defendant is unlikely to be able to pay without undue hardship to the defendant or the defendant's dependents; and
 - End the practice of charging defendants a fee simply because they require a payment plan or additional time to make payments.
- b. Require the court to establish reasonable payment plans for individuals unable to pay their entire court debt at once. Reasonable guidelines for payment plans include:
 - that the defendant will likely be able to pay all fines, fees and costs within a six month period without undue hardship to the defendant and/or the defendant's dependents, unless exceptional circumstances related to the particular facts of the case warrant a longer payment period and these circumstances are explained on the court record; and
 - a monthly payment of no more than 10% the defendant's monthly income.
- c. Waive all court fees associated with poverty, including payment plan fees and late payment fees.

d. For indigent defendants, waive fees associated with compliance with a court sentence, such as mandatory community service and classes.¹²⁰

4. End all debtor's prison practices by coming into compliance with state law and constitutional standards. Doing so requires the court to:

- a. Cease issuing arrest warrants when a defendant's only obligation to the court is to pay money;
- b. Cease issuing arrest warrants for failure to appear on a payment review date;
- c. Cease placing defendants on post-conviction bond to monitor and ensure payments to the court;
- d. Cease bond forfeitures associated with failure to pay, including for failure to pay or appear on a payment review date;
- e. Inform defendants that they will not be arrested for failing to pay a court debt they do not have the money to pay; and
- f. Cease using the threat of jail to coerce payment from debtors.

5. Ensure all guilty pleas are knowing and voluntary by:

- a. Ending the practice of having the court clerk take guilty pleas, and instead requiring the municipal judge to arraign and advise each defendant of their constitutional rights; and
- b. Requiring the municipal judge to follow the guidelines set out in the Colorado Trial Judge's Benchbook regarding the requisite colloquy with defendants prior to accepting a plea.¹²¹

6. Ensure all defendants have constitutionally adequate access to counsel.

- a. Require the municipal judge to inform all defendants of their right to counsel at all critical stages of the proceedings, including the right to appointed counsel if indigent; and
- b. For indigent defendants who face a possible jail sentence, including a suspended jail sentence, require the municipal judge to either appoint counsel for the defendant at every critical stage of the proceeding or make findings on the record of a knowing and voluntary waiver.

7. Evaluate cases more than one year old to consider closure, taking into consideration at least the following:

- a. Whether the case has remained open solely to collect court debt or to ensure completion of community service;
- b. Whether the defendant has been a victim of the unfair or illegal court practices identified in this paper, such

as incarceration on a non-jailable offense, incarceration without effective waiver of the right to counsel; or incarceration for inability to pay or failure to appear in court to answer for payments owed;

- c. The defendant's financial circumstances, progress towards payment of fines and fees, and hardship suffered by the defendant due to an excessive monetary obligation and/or the court's rigid payment scheme;
- d. Whether sentences of community service requiring payment of a participation fee are appropriate in light of the defendant's demonstrated inability to make payments;
- e. Whether the original sentence was proportionate to the behavior for which the defendant was convicted; and
- f. The overall number of court appearances at which the defendant has appeared as summoned.

Importantly, the Alamosa Municipal Court does not stand alone among municipal courts in its use of many of the discriminatory, unfair and unconstitutional practices described herein. Other Colorado cities should carefully examine their court's practices and, where applicable, take heed of the recommendations above.

B. STATEWIDE REFORM

The injustices in the Alamosa Municipal Court described in this paper have gone on unknown and unchecked for years, due in part to the lack of accountability and oversight of Colorado's municipal courts. There are two bodies with the power to exert statewide control over the Colorado's municipal courts—the Colorado legislature and the Colorado Supreme Court. Each body must take action to bring fairness and equal treatment of rich and poor to Colorado's municipal courts.

1. The Colorado Legislature

The legislature has both an obligation and the power to protect Colorado residents from constitutional abuses. To fulfill this obligation, the legislature should build upon the common-sense reforms of the last few legislative sessions with the aim of reforming the municipal court system to make it more transparent, accountable, and just. The ACLU makes the following recommendations.

- a. **Establish annual data collection and reporting requirements for municipal courts.** It is only through painstaking investigation by the ACLU that information about abuses in the municipal courts has come to light. The ACLU cannot possibly monitor the more than 220 municipal courts in the state. To fully address the injustices occurring in municipal courts, the legislature must first know the nature and extent of the problems. Municipal courts should be required to report annually at least on the quantity of cases heard by the

court, quantity of warrants issued by the court, bail practices, sentences imposed, and municipal inmate jail stays, all broken down by type of offense, and by race and ethnicity.¹²²

b. Incentivize municipalities to establish a robust and independent public defender system. In Colorado, the state court system benefits from a robust, independent, unified system of public defense that can improve outcomes for defendants and act as a watchdog for constitutional abuses in the courts. In contrast, only two municipal courts, Denver and Aurora, have established an independent public defender's office. In most municipal courts, appointed counsel are private lawyers hired by the court, paid by the City, and appointed at the sole discretion of the municipal judge. With this arrangement, lawyers often lack both the experience and the independence necessary to ensure vigorous defense of indigent defendants. Their livelihood is often subject to political whims of the City, which pays them, and the judge who appoints them on cases. Every nationwide standard concerning indigent defense requires that public defenders be entirely free of these kinds of influences.¹²³ Cities that utilize the power of their courts to mete out stiff fines and deprive people of their liberty through incarceration should be required to provide the same high quality, independent public defense that is available in state and county courts. One potential way to properly incentivize city courts to take this step is:

- Limiting the jurisdiction of municipal courts that lack a robust and independent public defender system to non-jailable offenses.¹²⁴

c. Establish written ability-to-pay assessment criteria that courts must consider when sentencing and when establishing payment plans.¹²⁵

d. Require courts to individualize sentences by considering the particular facts of each case and each defendant's financial circumstances, and imposing sentences that are proportional to the gravity of the particular offense and the defendant's ability to pay.¹²⁶

e. Establish a state-wide study group to collect data, study municipal court practices and make further recommendations to address injustices in the municipal courts. The group should include, at least, municipal and county court judges, representatives from community advocacy groups, legislators, affected members of the community subject to municipal court practices, and municipal prosecutors and public defenders.

2. The Colorado Supreme Court

The Colorado Supreme Court is uniquely situated to investigate, understand, and enact rules to regulate municipal courts. As a starting point, to address abuses in municipal courts, the Supreme Court should convene a permanent



An entrance to Alamosa at Denver Ave. and E. 4th St.

municipal court rules committee that meets regularly with the initial goal of studying and understanding current municipal court practices. Once the study is complete, the committee should formulate municipal court rules to address the constitutional and statutory violations occurring in municipal courts and to bring municipal court practice in line with national best practices.¹²⁷ Many of the recommendations for legislative action noted above could be at least initially addressed through promulgation of rules.

VII. ACKNOWLEDGMENTS

This report was principally researched and investigated by Becca Curry, Research and Policy Associate at the ACLU of Colorado. The report was co-authored by Becca Curry and Rebecca Wallace, Staff Attorney and Policy Counsel at the ACLU of Colorado. Vanessa Michel, New Media Strategist at the ACLU of Colorado was the lead designer of this report. Sara Neel, Staff Attorney at the ACLU of Colorado conducted an initial investigation which exposed abuses at the Alamosa Municipal Court. Jessica Howard, Legal Assistant with the ACLU of Colorado supported investigation with dozens of records requests. This report was edited by Mark Silverstein, Legal Director at the ACLU of Colorado, as well as Nusrat Choudhury, Senior Staff Attorney with the ACLU's Racial Justice Program.

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Finally, we thank the Alamosa Municipal Court defendants who shared their personal experiences. We particularly thank the brave, selfless defendants who allowed the ACLU to publically share their stories despite fear of retaliation, in the hopes of highlighting the dire need for change in the Alamosa Municipal Court.

APPENDIX 1

ALAMOSA MUNICIPAL COURT DOCKET #
ADVISEMENT OF RIGHTS – ORDINANCE

*******THESE ARE IMPORTANT***** READ BEFORE SIGNING*******

This is an arraignment and you are expected to enter a plea to the charge(s) which have been brought against you, either guilty, not guilty, or nolo contendere (no contest).

Any plea you make must be voluntary and not the result of undue influence or coercion.

You have the right to be represented by an attorney at any stage of the proceedings. If you have not had the opportunity to talk to an attorney, you can continue your case to a later date. If a jail sentence could be imposed, the court is required to appoint an attorney to represent you if you cannot afford one. Appointment of an attorney is controlled by law and your income.

A deferred sentence may be requested at the time of your appearance with the Judge.

You have the right to a trial by the judge or jury. You may testify at your own choosing, subpoena witnesses, present evidence and cross examine witnesses. The charge(s) made against you must be proven beyond a reasonable doubt.

To request a jury trial, you must file a written request and pay a \$25 fee within 20 days after arraignment or entry of plea. If you do not file a written request and pay the fee, you waive your right to a jury trial.

To have witnesses subpoenaed you must provide names and addresses to the Court at least two (2) weeks prior to the trial date. The required fee for service will need to be paid for in advance. **IF YOU PLEAD NOT GUILTY AND THIS MATTER IS SET FOR TRIAL, YOU MUST HAVE YOUR WITNESSES PRESENT AT THE TRIAL. CONTINUANCES WILL NOT BE GRANTED FOR WITNESSES WHO ARE NOT PRESENT UNLESS THEY WERE SUBPOENAED.**

You have the right to remain silent, because any statement you make may be used against you. Your silence cannot be held against you.

A copy of the Ordinance upon which you are charged may be furnished upon request.

You may appeal any judgment to the District Court; however if you plead guilty, you waive your right to appeal.

MAXIMUM penalty which may be assessed by the court is \$2,650.00 and/or 365 days in jail.

COURT STAFF CANNOT GIVE ANY LEGAL ADVICE, INCLUDING HOW YOU SHOULD PLEA.

If you are under 21 years old and are convicted of Possession or Consumption of Alcohol, the conviction will be reported to the Department of Motor Vehicles which may cause your drivers license to be revoked.

By signing this form, I have read and understand the above rights.

- enter a plea of Not Guilty and set this matter for trial;
- enter a plea of Guilty; enter a plea of No Contest to the charges; (see attached definition)
- delay entering a plea in order to request a pre-trial

Date _____ Defendant's Signature _____

Parent or Guardian's signature _____

If defendant is under 18

My current mailing address is _____

END NOTES

¹ Local courts—whether termed municipal courts, police magistrate’s courts, or police courts—have existed since the State of Colorado was founded in 1876, with the jurisdiction to address violations of city ordinances. See *A Jurisdictional History of the Colorado Courts*, 65 U. Colo. L. Rev. 577, 609–11 (1994). Colorado’s current system of municipal courts was established in 1969, when the legislature mandated that cities and towns create municipal courts. See 1969 Colo. Sess. Laws 273 (“The municipal governing body of each city or town shall create a municipal court to hear and try all alleged violations of ordinance provisions of such city or town”).

² The Colorado Supreme Court has the power to promulgate rules of procedure applicable to Colorado municipal courts. See *Colorado Municipal Court Rules*. However, the Supreme Court rarely exercises this power and appears hesitant to exert control over municipal courts in light of the principle of home rule. In December, 2016, Colorado Supreme Court Chief Justice Nancy Rice reported to the Colorado legislature that the Supreme Court lacks “any authority over municipal judges because they are not part of the state system, they’re hired by each city . . . they’re not part of the state judicial system, and in fact we don’t have anything to do with these folks.” *Testimony by Chief Justice Rice* on December 16, 2015, at a hearing before the legislative committee on State Measurement for Accountable, Responsible and Transparent Government, available at http://coloradoga.granicus.com/MediaPlayer.php?view_id=16&clip_id=8398&meta_id=158685 (testimony begins at 25:00).

³ Municipal courts benefit from Article XX, Section 6 of the Colorado Constitution, titled “Home Rule Cities and Towns,” which states: “The people of each city or town of this state, having a population of two thousand . . . shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.” Further, “[s]uch city or town, and the citizens thereof, shall have the . . . power to legislate upon, provide, regulate, conduct and control: . . . the creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof.”

⁴ “The effect is a system of modern day debtors’ prisons, where indigent citizens are policed for minor offenses, fined beyond their means, and eventually jailed for nonpayment of these fines.” Torie Atkinson, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors’ Prisons*, 51 Harv. C.R.–C.L. L. Rev. 189–238 (2016), at 202.

⁵ See 1877 Colo. Gen. Laws (§ 2655) 874, 888 (“The city council and board of trustees in towns shall have the following powers: . . . to pass ordinances, rules, and make all regulations necessary to carry into effect the powers granted to cities or town, with such fines and penalties as the council or the board of trustees shall deem proper; provided, no fine or penalty shall exceed three hundred (300) dollars, and no imprisonment shall exceed ninety days for one offense”).

⁶ See C.R.S. § 13-10-113(1)(a) which states: “any person convicted of violating a municipal ordinance in a municipal court of record may be incarcerated for a period not to exceed one year or fined an amount not to exceed \$2,650, or both.” Section (1)(b) requires the limitation on municipal court fines be adjusted for inflation, according to the annual percentage change consumer price index for Denver-Boulder. Using the consumer price index for Denver-Boulder to adjust for inflation (available at https://www.bls.gov/regions/mountain-plains/co_denver_msa.htm)—the limitation on municipal court fines is \$2,827 in 2017, a \$177 increase since 2013.

⁷ Municipalities are categorically prohibited from regulating felonies, because Colorado’s district courts have exclusive jurisdiction to do so. *Quintana v. Edgewater Mun. Court*, 498 P.2d 931, 932 (Colo. 1972).

⁸ See e.g., Aurora Sentinel, “Inmate Debate: City says county cap on inmates too risky; Sheriffs say jail overcrowded with minor offenses” (June 7, 2013), available at <http://www.aurorasentinel.com/news/inmate-debate-city-says-county-cap-on-inmates-too-risky-sheriff-says-jail-overcrowded-with-minor-offenses/> (Adams County Sheriff Doug Darr stated that municipal inmates are the “lowest level, nonviolent offenders” in the jail, so it makes the most public safety sense to limit them, as opposed to other inmates who pose a greater threat to the community.”); KOAA News 5, “Pueblo sheriff introduces plan to ease overcrowding at jail” (June 10, 2015), available at <http://www.koaa.com/story/29291219/pueblo-sheriff-introduces-plan-to-ease-overcrowding-at-jail>; accord Alamosa News “Crime leaves county with large bill” (April 2017), available at <https://alamosanews.com/article/crime-leaves-county-with-large-bill>.

⁹ See e.g., Denver Post, “Sheriff’s deputies plead for end to overcrowding at Denver jail” (February 22, 2017), available at <http://www.denverpost.com/2017/02/22/denver-jail-overcrowding-sheriffs/>; Coloradoan, “Sheriff: Larimer jail to hit capacity this weekend” (April 22, 2016), available at <https://www.coshocentribune.com/story/news/2016/04/22/smith-larimer-jail-hit-max-capacity-weekend/83406318>; Pueblo Chieftain, “Pueblo County jail population soaring; booking rate unchanged over past decade.” (September 22, 2016), available at http://www.chieftain.com/news/crime/pueblo-county-jail-population-soaring-booking-rate-unchanged-over-past/article_92229480-bb95-5b70-8039-b8a496248607.html

¹⁰ “Virtual court watching” refers to review of audio and/or video footage of courtroom appearances obtained pursuant to Colorado’s open records laws.

¹¹ See e.g., letters challenging the practice of incarcerating poor people for failure to pay fines—sent by the ACLU of Colorado to the Colorado Supreme Court on October 10, 2012 (available at

<http://static.aclu-co.org/wp-content/uploads/2013/12/2012-10-10-Bender-Dailey-Wallace.pdf>), as well as to various municipalities, including Wheat Ridge, Northglenn, and Westminster on December 16, 2013 (available at <http://static.aclu-co.org/wp-content/uploads/2014/02/2013-12-16-Jay-ACLU.pdf>; <http://static.aclu-co.org/wp-content/uploads/2014/02/2013-12-16-Downing-ACLU.pdf>; and <http://static.aclu-co.org/wp-content/uploads/2014/02/2013-12-16-Atchison-ACLU.pdf>); see also Denver Post, “Colorado cities jail poor who can’t pay fines for minor offenses” (December 14, 2013), available at <http://www.denverpost.com/2013/12/14/colorado-cities-jail-poor-who-cant-pay-fines-for-minor-offenses/>.

¹² In 2016, legislators passed HB 16-1309, which requires that all municipal courts provide counsel to incarcerated defendants at first appearance and for setting of bond. HB 16-1309 takes effect on July 1, 2018. See HB 16-1309 at https://leg.colorado.gov/sites/default/files/documents/2016a/bills/2016A_1309_enr.pdf; see also the ACLU of Colorado’s fact sheet in support of HB 16-1309 here: <http://aclu-co.org/blog/fact-sheet-hb-1309-bill-safeguard-right-counsel-municipal-court/>; see also letter sent March 24, 2016 from Alice Norman, Denver’s Chief Municipal Public Defender, to Governor Hickenlooper in support of HB 16-1309.

¹³ In 2017, legislators enacted HB 17-1338, which requires that defendants held in custody be brought swiftly to court for a bond hearing. HB 17-1338 takes effect on January 1, 2018. See HB 17-1338, available at https://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017A_1338_signed.pdf. See also the ACLU of Colorado’s fact sheet in support of HB 17-1338—with examples of unreasonably lengthy delay from across the state—here: <http://static.aclu-co.org/wp-content/uploads/2017/07/Muni-Delay-Fact-Sheet-2017-04-20-FINAL.pdf>.

¹⁴ *Id.* HB 17-1338 passed with the support of the ACLU of Colorado, the Colorado Municipal League, and the Colorado Municipal Judges Association.

¹⁵ See HB 14-1601 and HB 16-1311 (with the intent to end debtor’s prisons), available at [http://www.leg.state.co.us/clics/clics2014a/csl.nsf/billcontainers/F26528F6451383A-287257C4A007189AA/\\$FILE/1061_enr.pdf](http://www.leg.state.co.us/clics/clics2014a/csl.nsf/billcontainers/F26528F6451383A-287257C4A007189AA/$FILE/1061_enr.pdf) and https://leg.colorado.gov/sites/default/files/documents/2016a/bills/2016A_1311_enr.pdf; HB 16-1309 (providing counsel to in-custody municipal defendants for first appearance), *supra* note 12; HB 17-1338 (to end lengthy pretrial incarceration without the opportunity to see a judge), *supra* note 13.

¹⁶ For instance, municipal judges in the cities of Aurora, Boulder, Northglenn, and Golden are closely examining their bail practices to decrease or eliminate the practice of holding defendants in jail pre-trial on monetary bonds they cannot afford to pay.

¹⁷ See United States Census Bureau at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk (population estimate as of July 1, 2016; average percent of people living below the poverty line). The median income in Alamosa is under \$28,000, though women earn close to \$7,000 less than men.

¹⁸ *Id.* In Alamosa, 47% of the population is Hispanic, which is more than double the statewide average of 21%.

¹⁹ Sessions of the Alamosa Municipal Court are held every 1st, 2nd, and 4th Monday for Sentencings and every 2nd, 3rd, and 4th Wednesday for Trials and Pre-Trials. See <http://cityofalamosa.org/departments/municipal-court/>. However, in practice, if one of these regularly-scheduled dates falls on a holiday, it is skipped rather than re-scheduled.

²⁰ Of the total 475 warrants issued by Judge Powell during 2016, 438 were for non-violent conduct and break down as follows: theft (62.3%), trespass (9.26%), possession/consumption of drugs/alcohol/paraphernalia (6.53%), traffic-related violations (5.26%), property offenses (4.21%), animal-related offenses (2.95%), contempt of court (1.26%), defrauding a public establishment (0.21%) and panhandling (0.21%). Less than 8% of the total 475 warrants issued during 2016 are for offenses that may have involved some level of violence. Possibly violent offenses include: resisting/obstructing (17 warrants, 3.6%), harassment (16 warrants, 3.4%), and assault (4 warrants, 0.8%).

²¹ The majority (62%) of warrants issued were for the underlying offense of theft (296 warrants issued), and most of these warrants were for theft under \$100 (179 warrants issued).

²² *Supra* note 20.

²³ Bench warrants data for 2016 were compared among the following representative sample of 22 municipal courts of varying sizes and localities across Colorado: Alamosa, Aurora, Boulder, Broomfield, Buena Vista, Colorado Springs, Commerce City, Denver, Eagle, Edgewater, Fort Collins, Fort Morgan, Grand Junction, Greeley, Lakewood, Manitou Springs, Monte Vista, Pueblo, Rifle, Steamboat Springs, Thornton, and Westminster. In 2016, the Alamosa Municipal Court issued a total of 446 bench warrants, for 297 individual defendants, which constitutes about 3% of Alamosa’s population. As such, Alamosa issued bench warrants at a rate at least 1.8 times the average per capita rate (18.5 warrants per 1000, 95% confidence interval 12.0–25.0) of the sample jurisdictions. This represents the second highest number of bench warrants issued per capita of any other jurisdiction studied, at 46.5 warrants issued per 1000 population. Only Manitou Springs issued more bench warrants per capita than Alamosa, with 66 warrants issued per 1000 residents.

²⁴ See Alamosa Municipal Court case 2015-1773 (Theft Under \$100).

²⁵ See, e.g., *People v. Smith*, 673 P.2d 1026, 1027 (Colo. App. 1983) (hospitalization is a valid

excuse for failing to appear in court).

²⁶ See Denver Post, “Drug overdose deaths hit records levels in rural southern Colorado” (February 2016), available at: <http://www.denverpost.com/2016/02/10/drug-overdose-deaths-hit-record-levels-in-rural-southern-colorado/>; Durango Herald, “Rural Colorado hard hit by opioid addiction crisis” (February 2017), available at <https://durangoherald.com/articles/137606>.

²⁷ See Alamosa Municipal Court case 2016-0690 (Theft Under \$100).

²⁸ See Alamosa Municipal Court case 2016-0855 (Harassment).

²⁹ See Alamosa Municipal Court cases 2015-1124 (Theft Under \$100) and 2015-1579 (Disturbing the Peace).

³⁰ See Alamosa Municipal Court case 2016-0705 (Theft Under \$100).

³¹ See Alamosa Municipal Court cases 2015-1857 (Disturbing the Peace), 2015-1940 (Theft Between \$100 and \$500), 2016-0427 (Theft Between \$100 and \$500), 2016-0504 (Theft Under \$100), 2016-0523 (Theft Under \$100), 2016-0636 (Theft Under \$100), 2015-1267 (Theft Between \$100 and \$500), 2015-1946 (Disturbing the Peace), 2016-0988 (Disturbing the Peace), and 2016-0990 (Theft Under \$100).

³² Based on information provided to the ACLU by the Colorado State Public Defenders Office in December 2016.

³³ There is a nationwide movement condemning detention on money bail as cruel, counterproductive, and violative of the Equal Protection and Due Process Clauses of the United States Constitution. See, e.g., *O'Donnell v. Harris County*, No. 4:2016cv01414 (S.D.Tex. Apr. 28, 2017). The problem of money bail is exacerbated in municipal courts, particularly those that meet infrequently. The Alamosa Municipal Court meets at most 6 days per month. As a result, poor defendants charged with low level offenses wait in jail for as long as two weeks to see Judge Powell on bonds that they cannot afford.

³⁴ HB 17-1338, *supra* note 13, was enacted to end lengthy pretrial incarceration without the opportunity to see a judge. This law will go into effect on January 1, 2018, and should address the concern of lengthy jail waits in Alamosa, provided that Judge Powell follows the requirement that in-custody defendants be brought swiftly to court for a bond hearing.

³⁵ See, e.g., Lisa Foster, Office for Access to Justice, *Remarks at the American Bar Association's 11th Annual Summit on Public Defense* (Feb. 6, 2016), available at <https://www.justice.gov/opa/speech/director-lisa-foster-office-access-justice-delivers-remarks-aba-s-11th-annual-summit>.

³⁶ See, e.g., Dobbie, Goldin, and Yang, *The Effects of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges* (Princeton University, July 2016), available at: https://scholar.princeton.edu/sites/default/files/wdobbie/files/dgy_bail_0.pdf. See also Lowenkamp, VanNostrand and Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (Laura and John Arnold Foundation, November 2013), available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.

³⁷ See, e.g., Cynthia E. Jones, *Give Us Free: Addressing Racial Disparities in Bail Determinations*, 16 *Legislation & Pub. Pol'y* 919 (2013); *O'Donnell v. Harris County*, *supra* note 33, at 112-113, citing Lisa Foster, Office for Access to Justice, *Remarks at the American Bar Association's 11th Annual Summit on Public Defense* (Feb. 6, 2016).

³⁸ See “Agency Billing Report” obtained from the Alamosa County Sheriff’s Office. 258 people were incarcerated in the Alamosa County Jail solely on an Alamosa Municipal Court warrant between May 5, 2016 and May 5, 2017.

³⁹ *Id.*; see also “2016 Budget Booklet,” reflecting the FY 2016 budget for the municipal court as \$305,460.00, at page 33, available at <http://cityofalamosa.org/wp-content/uploads/2014/03/2016-Budget-Booklet.pdf>.

⁴⁰ See Alamosa Municipal Court case 2015-0985 (Disturbing the Peace).

⁴¹ See, e.g., Valley Courier, *Crime leaves county with large bill* (April 2017), available at <https://alamosanews.com/article/crime-leaves-county-with-large-bill>; Valley Courier, County cuts from detention center, still over budget (May 2017), available at: <https://alamosanews.com/article/county-cuts-from-detention-center-still-over-budget>; Valley Courier, *Alamosa officials hash out the jail* (May 2017), available at <https://alamosanews.com/article/alamosa-officials-hash-out-the-jail>.

⁴² *Alamosa officials hash out the jail, Id.*

⁴³ *Id.* (At an April 2016 meeting of Alamosa County Commissioners, “county officials and staff discussed concerns they had with inmates detained on municipal holds when the jail was already overcrowded.”); see also *Crime leaves county with large bill, supra* note 41 (The Alamosa County Attorney “gave an example of an inmate that’s being held almost a month longer than they should be.” Further, “[i]n seeking the authority to reject municipal inmates, Alamosa County Sheriff Robert Jackson stated that the public would not be in danger because: “It’s my understanding that most of those are nonviolent . . . The worst-case scenario is that they’re shoplifters and things like that. Some of them are failure to appear warrants. There are no felony cases at all.”

⁴⁴ See Alamosa Municipal Court cases 2013-1348 (Theft Under \$100, involving \$28.61 of merchandise from City Market—including a padlock, makeup and fabric softener), 2015-1100 (Theft Under \$100, involving \$37.94 of merchandise from Walmart—including two boxes of Tide laundry pods, and fireworks) and 2015-1516 (Theft Under \$100, involving \$69.00 of merchandise from Walmart—including razors, two bras, and a heating blanket).

⁴⁵ *Crime leaves county with large bill, supra* note 41.

⁴⁶ *Id.*

⁴⁷ See Alamosa Municipal Court cases 2014-2055 (Theft Under \$100) and 2014-2056 (Resisting/Obstructing), in which A.J. was convicted after taking merchandise (including flash drives) valued at \$59.89, and then fleeing from police. A.J. explained to Judge Powell, “. . . I have been so broke that I can’t even pay court fines and I keep getting letters from collections saying I have to pay. I was trying to make a quick penny to make a court payment. The idea was to steal the flash drives and sell them.” Then, after fleeing, “I was scared, I seen the red light on his gun and I was scared for my life. I put my hands up and I was shaking and I got on my knees. I let him arrest me and I told him I’m sorry that I didn’t come out, I should have, I froze up, I was scared.”

⁴⁸ See e.g., Texas SB 17-1913, Section 4(a-1) (“[A] court may impose a fine and costs only if the court makes a written determination that the defendant has sufficient resources or income to pay all or part of the fine and costs. In making that determination, the court shall consider the defendant’s financial history and any other information relevant to the defendant’s ability to pay . . .”), effective September 1, 2017; Louisiana HB 17-249, Section 1(C)(1) (“[P]rior to ordering the imposition or enforcement of any financial obligations as defined by this Article, the court shall determine whether payment in full of the aggregate amount of all the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. . . .”), effective August 1, 2018; Mo. Rev. Stat. Section 560.026(1) (courts “shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual”). Ohio Supreme Court Bench Card, *Collection of Court Costs & Fines in Adult Trial Courts* (mandating that “Ability to pay must be considered when assessing and collecting fines and describing factors courts may consider when assessing ability to pay”), available at <https://www.supremecourt.ohio.gov/publications/jcs/finescourtcosts.pdf>.

⁴⁹ The only questions Judge Powell typically asks of defendants at sentencing are the following: (1) Do you have any witnesses here to testify on your behalf? (2) How old are you? and (3) Are you employed or attending school?

⁵⁰ Alamosa Municipal Court’s fee schedule includes the following: Court Costs of \$50 (applied in virtually all cases upon conviction), \$20 to Victims Assistance (applied in virtually all cases upon conviction), \$10 Late Fee (may be assessed repeatedly in a single case), \$30 Warrant Fee (may be assessed repeatedly in a single case), \$15 Payment Plan Fee (applied in all cases in which full payment is not immediately received), \$25 PD Surcharge (applied in virtually all cases), \$10 Fee to Drop Charges (applied when charges dropped), and \$65 Sealed Records Fee (applied to dismissed cases). See “Court Costs,” available at <http://cityofalamosa.org/wp-content/uploads/2014/03/FEE-SCHEDULE.pdf>.

⁵¹ The former \$185 penalty included: a \$100 fine, \$50 court costs, \$20 to Victims Assistance, and a \$15 payment plan fee assessed when the defendant cannot pay in full.

⁵² An example of the current \$210 standard penalty is Alamosa Municipal Court case 2016-1185 in which M.C. was convicted of petty theft after taking \$4.68 worth of merchandise—a beverage and gummy candy—from Safeway. He was sentenced in February, 2017, to pay fines and fees totaling \$210, though he was unemployed and only 18 years old. The current \$210 standard penalty for petty thefts includes: a \$100 fine, \$50 court costs, \$20 to Victims Assistance, a \$15 payment plan fee assessed when the defendant cannot pay in full, as well as a new “PD Surcharge” of \$25. This “PD Surcharge” is applied in *all* criminal and traffic cases, though many defendants are impoverished and lack the ability to pay the \$25. Almost certainly, Alamosa’s “PD Surcharge,” which the City began charging in 2017, is an effort to pass on the cost of implementing HB 16-1309 to criminal defendants. HB 16-1309, which will take effect on July 1, 2018, requires that municipalities provide counsel to in-custody defendants for first appearance, including for setting of bond. Rather than offloading the costs of public defenders onto indigent defendants, who are entitled to representation free of charge when their liberty is at stake, Alamosa and other cities have many cost-effective alternatives to implement HB16-1309. See HB 16-1309 and the ACLU of Colorado’s fact sheet in support of HB 16-1309, *supra* note 12.

⁵³ See Alamosa Municipal Court case 2016-1185 (Theft Under \$100), appearance on August 8, 2016.

⁵⁴ See Alamosa Municipal Court case 2016-0877 (Theft Under \$100), appearance on July 11, 2016.

⁵⁵ See “Court Costs,” *supra* note 50.

⁵⁶ See Alamosa Municipal Court case 2016-1119 (Injury to Property).

⁵⁷ See Alamosa Municipal Court cases 2014-0484 (traffic offenses of Compulsory Insurance and Speeding 20-39 Over) and 2016-0335 (Theft under \$100).

⁵⁸ See, e.g., *Tate v. Short*, 401 U.S. 395, 398 (1971) (holding that “jailing an indigent for failing to make immediate payment of any fine” violates the Equal Protection Clause); *Bearden v. Georgia*,

461 U.S. 660, 667 (1983) (holding, when a probationer was jailed for failing to make a court-ordered monetary payment: “if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it”).

⁵⁹ See HB 16-1311, *supra* note 15.

⁶⁰ *Supra* note 11.

⁶¹ See HB 14-1061, *supra* note 15; see also legislative testimony of Denise Maes, Public Policy Director at the ACLU of Colorado, in support of HB 14-1061 (February 25, 2014), available at <http://aclu-co.org/prepared-testimony-aclu-public-policy-director-denise-maes-hb-1061-eliminate-prison-inability-pay-fines/>; Denver Post, “Strengthen Colorado’s laws on debt and jail time” (February 20, 2014), available at <http://www.denverpost.com/2014/02/20/strengthen-colorados-laws-on-debt-and-jail-time/>; The Colorado Independent, “House Judiciary says no to Colorado debtors’ prisons” (February 26, 2014, available at: <http://www.coloradoindependent.com/146209/house-judiciary-says-no-to-colorado-debtors-prisons>); The Denver Post, “Bill to prohibit jail time for not paying court fines moves forward” (April 16, 2014), available at: <http://www.denverpost.com/2014/04/16/bill-to-prohibit-jail-time-for-not-paying-court-fines-moves-forward/>.

⁶² *Id.*

⁶³ Nationwide best practices require that Community service “[h]ours ordered should be proportionate to the violation and take into consideration any disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities of the individual.” See, Bench Card for Judges by the National Task Force on Fines, Fees and Bail Practices concerning lawful collection of legal financial obligations, available at http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx.

⁶⁴ See Alamosa Municipal Court case 2013-1746 (ordinance violation unknown), appearance on October 13, 2014.

⁶⁵ See the ACLU of Colorado’s fact sheet in support of HB 16-1311, available at <http://aclu-co.org/blog/fact-sheet-hb-1328-bill-end-debtors-prisons-colorado/>; Denver Post, “Colorado lawmakers look to close ‘debtor’s prison’ loophole” (April 26, 2016), available at: <http://www.denverpost.com/2016/04/26/colorado-lawmakers-look-to-close-debtors-prison-loophole/>; The Gazette, “Under proposed bill, Colorado’s municipal courts would be unable to jail someone for failure to pay” (April 27, 2016), available at: <http://gazette.com/under-proposed-bill-colorados-municipal-courts-would-be-unable-to-jail-someone-for-failure-to-pay/article/1574972>.

⁶⁶ See HB 16-1311, *supra* note 15.

⁶⁷ HB 16-1311 is codified at C.R.S. § 18-1.3-702. Section (3)(e) states: “The court shall not issue a warrant for failure to pay money, failure to appear to pay money, or failure to appear at any post-sentencing court appearance wherein the defendant was required to appear if he or she failed to pay a monetary amount . . .”

⁶⁸ *Id.* at section (3)(c) (“The court shall not . . . order the defendant to jail for failure to pay unless the court has made findings on the record, after providing notice to the defendant and a hearing, that the defendant has the ability to comply with the court’s order to pay a monetary amount due without undue hardship to the defendant of the defendant’s dependents and that the defendant has made a good-faith effort to comply with the order.”)

⁶⁹ At least one day per month focuses on “review hearings.” On such days, it is not uncommon for over 90% of the out-of-custody docket to be made up of defendants appearing to check their payment status. Examples include September 12, 2016; October 3, 2016; November 7, 2016, and December 5, 2016.

⁷⁰ It takes the defendant failing at the 3-month plan, racking up additional fees, and appearing regularly in court on mandatory monthly “payment review dates,” before Judge Powell might consider reauthorizing the payment plan over a longer period of time.

⁷¹ Offenses deemed non-jailable “infractions” are listed in Colorado’s Model Traffic Code, available at: <https://www.codot.gov/library/traffic/traffic-manuals-guidelines/fed-state-co-traffic-manuals/model-traffic-code>. Alamosa has adopted Colorado’s Model Traffic Code in Alamosa Municipal Code Sec. 19-21.

⁷² In Alamosa, most animal offenses are subject to the fine-only penalty of Alamosa Municipal Code Sec. 3-13, which states that violators of Chapter 3 (concerning ‘Animals’) “shall be assessed a fine . . . ,” excluding a second or subsequent conviction for “Animal Cruelty.”

⁷³ See warrants 160000046 (issued for a non-jailable traffic infraction), 160000056 (issued for a non-jailable traffic infraction), 160000081 (issued for a non-jailable traffic infraction), 160000115 (issued for a non-jailable traffic infraction), 160000157 (issued for a non-jailable traffic infraction), 160000181 (issued for a fine-only animal offense), 160000203 (issued for a fine-only animal offense), 160000211 (issued for a non-jailable traffic infraction), 160000273 (issued for a fine-only animal offense), 160000336 (issued for a fine-only animal offense), 160000373 (issued for a fine-only animal offense), 160000403 (issued for a non-jailable traffic infraction), 160000442 (issued for a fine-only animal offense).

⁷⁴ According to data received from the Alamosa Municipal Court, the 7 arrest warrants issued in non-jailable traffic infraction cases during 2016 involved the following infractions: Fail to Stop at Stop Sign (twice), Safety Belt, Child Restraint, Unsafe Backing, Speeding 10-19 over (twice).

⁷⁵ See C.R.S. § 42-4-1710 (4)(b)—concerning the penalty for failure to pay a fine for a traffic infraction: “In no event shall a bench warrant be issued for the arrest of any person who fails to appear for a hearing . . .” Rather, in the case of nonappearance or nonpayment, the court has the option to enter a default judgment or cancel the defendant’s driver’s license.

⁷⁶ See Alamosa Municipal Court case 2015-0691 (two counts of “Dog at Large”).

⁷⁷ See Alamosa Municipal Court case 2015-1045 (for “Failing to Stop at a Stop Sign”).

⁷⁸ Pursuant to C.R.S. § 16-4-201 and Colorado Municipal Court Rule 246(a)(1), post-conviction bail is permitted only in limited circumstances inapplicable here—either in arrest of judgment or during a stay of execution on appeal.

⁷⁹ *Supra* notes 67 and 68.

⁸⁰ See Alamosa Municipal Court cases 2014-0484 (traffic offenses of Compulsory Insurance and Speeding 20-39 Over) and 2016-0335 (Theft Under \$100).

⁸¹ *Supra* note 67 at section (2): “When the court imposes a sentence, enters a judgment, or issues an order that obligates a defendant to pay any monetary amount, the court shall instruct the defendant as follows: . . . (b) if the defendant lacks the present ability to pay the monetary amount due without undue hardship to the defendant or the defendant’s dependent, the court shall not jail the defendant for failure to pay.”

⁸² *Supra* note 58.

⁸³ See Alamosa Municipal Court cases 2014-2017 (Theft Under \$100, in which M.C. was convicted of taking clothing valued at \$22.88 from Walmart); 2015-0364 (Theft Between \$100 and \$500, in which M.C. was convicted of taking a cell phone).

⁸⁴ *Supra* note 50.

⁸⁵ See Alamosa Municipal Court case 2016-0880 (Theft Between \$100 and \$500).

⁸⁶ For those defendants who fail to appear on their initial summons, Judge Powell issues an arrest warrant. Once arrested, these defendants, if they cannot post the bond that is set on the warrant, wait in jail for the Alamosa Municipal Court to meet. These in-custody defendants are among the few who appear before Judge Powell prior to sentencing.

⁸⁷ See Alamosa Municipal Court cases 2013-0634, 2014-0426, 2014-0434, and 2015-1274—in which Silva was sentenced to pay \$115 for “Child Restraint System,” \$120 for “Seat Belt Required,” \$90 for “Parking Wrong Side/Direction” and \$235 for “Theft Under \$100” respectively. She was also assessed at least \$100 in late fees.

⁸⁸ See Alamosa Municipal Court case 2015-0034 (Theft Under \$100, in which M.R.M. was convicted of taking \$7.45 of merchandise from Walmart including hardware screws and make-up).

⁸⁹ Adverse driving conditions were reported in the National Weather Service’s daily summary for La Veta Pass on April 11, 2016, which noted fog, snow, and high winds.

⁹⁰ See *supra*, Section V(D)1, “Illegal arrest warrants against impoverished debtors”—at page 10.

⁹¹ See *supra*, Section V(D)3, “Using post-conviction bond to collect debt”—at page 11.

⁹² The Alamosa County Sheriff’s Office charges the City of Alamosa \$63.53 per day per inmate. See “Agency Billing Report,” *supra* note 38.

⁹³ In fact, summons issued by the Alamosa Police Department read: “You are hereby notified to appear for arraignment in municipal court clerk’s office” [emphasis added].

⁹⁴ The arraignment is set when a defendant is issued a citation for violating municipal law. The citation itself indicates a date and time at which the defendant is summoned to appear for arraignment with the clerk.

⁹⁵ *Coleman v. Frantz*, 754 F.2d 719, 724 (7th Cir. 1985) (listing the following “traditional components of a first appearance [] and the rights enforced by them: (1) inform the suspect of the charge — Sixth Amendment (“the accused shall enjoy the right . . . to be informed of the nature and the cause of the accusation”); (2) inform the defendant of the right to counsel and determine if the defendant is indigent and desires the assistance of appointed counsel — Sixth Amendment (“the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence”); (3) inform the suspect of the right to remain silent under the privilege against self-incrimination — Fifth Amendment (“No person . . . shall be compelled in any criminal case to be a witness against himself”); (4) set or review bail — Eighth Amendment (“Excessive bail shall not be required”)) (internal citations omitted).

⁹⁶ Colorado Municipal Court Rule 210(b)(1)-(2) (emphasis added).

⁹⁷ As the United States Supreme Court has explained:

A defendant who enters [a guilty] plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by

jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

Boykin v. Alabama, 395 U.S. 238, 243, n.5 (1969) (internal quotation marks omitted); *accord United States v. Ruiz*, 536 U.S. 622, 625, 122 S. Ct. 2450, 2453 (2002).

⁹⁸ As the Colorado Supreme Court has explained: "These findings must be made before the trial court accepts a defendant's guilty plea to ensure that the defendant's plea is constitutionally entered." *Mulkey v. Sullivan*, 753 P.2d 1126 (Colo. 1988) (discussing Colorado Rule of Criminal Procedure 11, the state corollary to C.M.C.R. 211(b), and holding that the mandates of both rules are applicable in Colorado municipal courts "to ensure that the defendant's plea is constitutionally entered").

⁹⁹ *People v. Randolph*, 488 P.2d 203, 204 (Colo. 1971); see also *Boykin*, 395 U.S. at 242 (holding guilty plea must be set aside when record showed no evidence of a colloquy between trial court and defendant regarding entry of the plea).

¹⁰⁰ The only defendants who are arraigned by Judge Powell, rather than by the clerk, are those who are in custody at the time of arraignment. Even for these defendants, Judge Powell typically makes no meaningful efforts to assess whether a defendant's guilty plea is knowingly and voluntarily made. The entirety of Judge Powell's standard "colloquy" with defendants is consistently:

- Judge Powell: "Did you sign the advisement form?"
- Defendant: "Yes."
- Judge Powell: "Do you have any questions?"
- Defendant: "No."

¹⁰¹ *Rothgery v. Gillespie County*, 554 U.S. 191, 211-213 (2008).

¹⁰² See *Iowa v. Tovar*, 541 U.S. 77, 80-81 (2004) ("The Sixth Amendment safeguards to an accused who faces incarceration the right to counsel at all critical stages of the criminal process").

¹⁰³ See Alamosa Municipal Code, Sec. 1-17 (establishing as general penalty for municipal offenses "a fine or imprisonment or both"). Even trivial offenses—such as making a noise in a religious meeting, obstructing the sidewalk, failing to return a library book, or keeping an inoperative vehicle on private property—carry the possibility of jail time as a penalty. See Alamosa Municipal Code Sec. 11-41 (Disturbing religious meeting), Sec. 11-49 (Obstructing; hindering transportation), Sec. 11-101 (Library property), and Sec. 14-33 (Junked, wrecked or inoperable vehicles on private property).

¹⁰⁴ See *supra*, Section V(D)4, "Using the threat of jail to collect debt"—at page 12.

¹⁰⁵ See *United States v. Reilly*, 948 F.2d 648, 654 (10th Cir. 1991) ("We thus hold that a conditionally suspended sentence of imprisonment cannot be imposed on a defendant who has been denied counsel."); *accord United States v. Jackson*, 493 F.3d 1179 (10th Cir. 2007).

¹⁰⁶ See Monte Vista Municipal Court case 2015-0618.

¹⁰⁷ The Rio Grande Sheriff's Office charges the City of Monte Vista \$45.00 per day per inmate.

¹⁰⁸ See Alamosa Municipal Court cases 2016-0590 (Theft Between \$100 and \$500, in which Daimon was convicted of taking \$135.84 of merchandise from Walmart, the collective value of goods taken by both Daimon and his sister), 2016-1177 (Theft Under \$100, in which Daimon was convicted of taking shorts valued at \$24.99 from JC Penney).

¹⁰⁹ In a letter to Judge Powell dated February 7, 2017, Daimon explained the impact of losing his sister to heroin on December 17, 2016. He wrote: "Ever since my sister . . . passed away I've been lost. I'm literally losing my mind and taking it very hard. I'm trying my absolute hardest to keep it together and ease my broken heart . . . Your honor, I'm not trying to feed you some sob story in attempts to gain your sympathy, all I'm asking is for you to show a little bit of empathy and understanding how the loss of my sister greatly affected me, in ways I myself haven't come to terms with just yet. Let me prove myself to you, if you do give me one more chance to do so."

¹¹⁰ See Alamosa Municipal Court case 2016-1604 (Theft Between \$100 and \$500, in which Daimon was convicted of attempting to take boots valued over \$100 from Big R Stores).

¹¹¹ See the Alamosa Municipal Court's Advisement of Rights form, at Appendix 1, which states: "You have the right to be represented by an attorney at any stage of the proceedings. If you have not had the opportunity to talk to an attorney, you can continue your case to a later date. If a jail sentence could be imposed, the court is required to appoint an attorney to represent you if you cannot afford one. Appointment of an attorney is controlled by law and your income."

¹¹² *Boyd v. Dutton*, 405 U.S. 1, 1 (1972) (internal quotation marks omitted).

¹¹³ *Boykin*, 395 U.S. at 242. Indeed, to facilitate the inquiry into whether a waiver is intelligent and knowingly given, courts recommend the trial judge engage in an extensive dialogue with the defendant according to the guidelines set forth in the *Colorado Trial Judges' Benchbook*, which lists a series of questions the trial judge should ask the defendant before finding a waiver. *People v. Alengi*, 148 P.3d 154, 159 (Colo. 2006).

¹¹⁴ *Boykin*, 395 U.S. at 242.

¹¹⁵ Some municipalities, such as Colorado Springs, have already foregone a general penalty that applies to all violations of city law, and instead have removed jail as a penalty for certain low-level offenses.

¹¹⁶ See *O'Donnell v. Harris County*, *supra* note 33, at 110 (referencing two charitable bail-fund programs that have achieved 95 to 96 percent appearance rates..." through simple and relatively inexpensive supervision methods, like sending text message reminders of hearings to the misdemeanor defendants." See also Uptrust "What We Do," available at <http://www.uptrust.co/what-we-do> (Text message-based communication platforms can result in an 80% reduction in failures to appear [FTAs]. At one partner site, after a period of 6 months, Uptrust's text message-based communication platform decreased the FTA rate to just 3.9%)

¹¹⁷ HB 17-1338, *supra* note 13, was enacted to end lengthy pretrial incarceration of municipal inmates by requiring that they be brought before a judge promptly after arrest. This law will go into effect on January 1, 2018, and it should reduce the lengthy delays in Alamosa, provided that Judge Powell follows the requirement that in-custody defendants be brought swiftly to court for a bond hearing.

¹¹⁸ See *O'Donnell v. Harris County*, *supra* note 33, at 180 (holding that detaining indigent defendants on a monetary bond that they cannot afford "violat[es] equal protection rights against wealth-based discrimination and violat[es] due process protections against pretrial detention without proper procedures or an opportunity to be heard").

¹¹⁹ For example, C.R.S. § 18-1.3-702, *supra* note 67, at section 4(a) lays out factors the court is to consider when determining whether a defendant's failure to pay is "willful." These same factors, or similar ones, may provide a template for the court's consideration of ability to pay at sentencing and in setting payment plans. The factors include:

- whether the defendant is experiencing homelessness;
- the defendant's present employment, income, and expenses; the defendant's outstanding debts and liabilities, both secured and unsecured;
- whether the defendant has qualified for and is receiving any form of public assistance, including food stamps, temporary assistance for needy families, medicaid, or supplemental security income benefits;
- the availability and convertibility, without undue hardship to the defendant or the defendant's dependents, of any real or personal property owned by the defendant;
- whether the defendant resides in public housing; whether the defendant's family income is less than two hundred percent of the federal poverty line, adjusted for family size; and
- any other circumstances that would impair the defendant's ability to pay.

¹²⁰ Judicial waiver of these fees may not be possible if defendants are required to complete classes or community service through an outside, private company (such as Rocky Mountain Offender Management Systems [RMOMS] in Alamosa, which charges a fee of \$80 to supervise 24 hours of community service). Where a defendant is indigent and waiver of the fee by the court is not possible, the court should either pay the fee for the defendant or waive the community service requirement.

¹²¹ See *People v. Arguello*, 772 P.2d 87 (Colo. 1989) citing the *Colorado Trial Judges' Benchbook* (1981) at Chapter 7 ("Waiver of Counsel") which sets forth guidelines for the trial judge to engage in extensive dialogue with the defendant, and which lists a series of questions the trial judge should ask the defendant before finding a waiver.

¹²² Similar data collection recommendations were urged by the United States Department of Justice, Civil Rights Division, in the 2015 report it released after investigation of the Ferguson Police Department, available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf, at page 97. All data points should be broken down by race and ethnicity.

¹²³ See, e.g., *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, American Bar Association (2011), at 22-23 available at https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf; *Ten Principles of a Public Defense Delivery System*, American Bar Association (2002), see Principle 1 at page 2, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf; *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, The Constitution Project (2009), at 80-82, 185-190, available at <https://constitutionproject.org/wp-content/uploads/2012/10/139.pdf>; and *Guidelines for Legal Defense Systems in the United States*, the National Legal Aid and Defender Association, at 5-6, available at http://www.nlada.net/sites/default/files/nsc_guidelinesforlegaldefensesystems_1976.pdf.

¹²⁴ For a cost-effective approach to creation of an independent public defender's office, city councils of smaller municipalities may consider pooling resources to create regional public defender's offices to serve multiple municipalities.

¹²⁵ For examples of such legislation in other states, see *supra* note 48. Criteria to assist Colorado courts in assessing a defendant's ability to pay have already been adopted by the legislature related to prevention of debtor's prison, but could also be applied at sentencing. See C.R.S. § 18-1.3-702, *supra* note 67, at section 4(a). Further, there are many similarities in the practices and

findings noted in the United States Department of Justice Report on the discriminatory and illegal practices occurring in Ferguson Missouri. In that report, the DOJ recommended, as the ACLU does here, that the court establish a written ability to pay assessment criteria "for conducting an assessment of any individual's ability to pay prior to the assessment of any fine, and upon any increase in the fine or related court costs and fees." *Supra* note 122, at 99.

¹²⁶ *Id.*

¹²⁷ At the urging of leadership within the Colorado Municipal Judges Association, the Colorado Supreme Court has recently empaneled a subcommittee of municipal judges charged with modernizing municipal court rules. While this is a positive step, it falls far short of meeting the ACLU's recommendation for action by the Colorado Supreme Court. The committee is not currently charged with studying and identifying problematic municipal court practices that could be addressed by court rule. Additionally, by limiting committee membership to municipal judges alone, the committee recommendations are less likely to result in meaningful reform. Perspectives from criminal defendants, defense attorneys and criminal justice advocates are essential if the committee is to address the myriad abuses occurring in municipal courts throughout the state.

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