

<p>District Court, Summit County, Colorado 501 N. Park Ave., Breckenridge, CO 80424</p>	<p>DATE FILED May 22, 2026 4:26 PM FILING ID: 9CA87E3A4CD7F CASE NUMBER: 2025CV30234</p> <p style="text-align: center;">Δ COURT USE ONLY Δ</p>
<p>Appeal from the Municipal Court, Town of Silverthorne Honorable Ronald W. Carlson, Municipal Court Judge Case No. 68272</p>	
<p>Plaintiff–Appellee: The People of the Town of Silverthorne</p> <p>v.</p> <p>Defendant–Appellant: Carlos Esteban Tettamanti</p>	
<p>Timothy R. Macdonald, Reg. #29180 Emma Mclean-Riggs, Reg. #51307 Anna I. Kurtz, Reg. #51525 ACLU Foundation of Colorado 303 E. 17th Ave., Ste. 350 Denver, CO 80203 (303) 777-5482 emcleanriggs@aclu-co.org</p> <p>Andrew Sidley-MacKie, Reg. #52471 Sidley-MacKie LLC PO Box 272269 Fort Collins, CO 80527 (970) 305-5870 andrew@sidley-mackie.com</p>	<p>Case No. 25CV30234</p> <p>Courtroom: R</p>
<p>OPENING BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all applicable requirements of C.R.C.P. 10(a) and (d) & 411(d) and C.A.R. 28(a) and (b).

Specifically, the undersigned certifies that:

- The brief complies with the applicable page limits set forth in C.R.C.P. 411.
- The brief complies with the standard of review requirements set forth in C.A.R.

28(a)(7)(A). For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of the applicable rules.

/s/ Emma Mclean-Riggs
Emma Mclean-Riggs

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INTRODUCTION

Mr. Tettamanti was accused of not completing a municipal sentence stemming from an unleashed dog ticket. Instead of affording Mr. Tettamanti any meaningful process, the municipal court summarily sentenced him to three days in jail based on the allegedly contemptuous statement “No, I'm here to change my plea.”

Mr. Tettamanti committed no contumacious conduct, let alone conduct so offensive to the dignity of the court that he could be held in contempt and jailed with no warning. He made a constitutionally protected statement, in response to the municipal court’s direct question. The government may not imprison a person for constitutionally protected speech, uttered at an appropriate time, in an appropriate forum.

Even if the conduct had been contumacious, which it wasn't, the municipal court provided utterly insufficient process. The municipal court styled the punishment as for direct contempt, committed within its presence and so severe as to warrant no warning. If it was direct contempt, Mr. Tettamanti received none of his constitutionally guaranteed rights. If it was indirect contempt, the process was even more deficient. Courts cannot use their inherent contempt powers as substitutes for sentencing procedures provided by the legislature, to punish constitutionally protected speech, or to summarily imprison people merely because they are annoyed by them. This Court should vacate the contempt order on any or all of these grounds.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether alleged noncompliance with a sentence condition to complete a class may be punished through a contempt proceeding.
2. Whether there was insufficient evidence to hold Mr. Tettamanti in direct contempt.
3. Whether the municipal court abused its discretion by summarily punishing Mr. Tettamanti for statements that were not offensive to the authority and dignity of the court.

4. Whether the municipal court punished Mr. Tettamanti for constitutionally protected speech.

5. Whether the municipal court violated Mr. Tettamanti's due process rights during the contempt proceedings.

STATEMENT OF THE CASE

A. Original municipal proceedings

On June 21, 2024, the Silverthorne Police Department cited Mr. Tettamanti with "Running at Large – Failure to Control a Pet Animal" under Silverthorne Municipal Code § 2-2-6. R.1–4.¹ On August 21, 2024, Mr. Tettamanti appeared before the municipal court and pleaded guilty. Hr'g Audio 8/21/24 at 2:25–2:33; R.6.

The municipal court sentenced Mr. Tettamanti to a \$100 fine and a specific online "Animal Ordinance Compliance" class offered by a private agency. Hr'g Audio 8/21/24 at 4:03–4:54; R.7. The municipal court also imposed \$50 in court costs. R.6. The municipal court did not place Mr. Tettamanti on probation or suspend any jail time based on successful completion of the class. Hr'g Audio 8/21/24 at 4:03–4:54.

B. Alleged failure to complete the sentence and Mr. Tettamanti's objections to the process

On October 18, 2024, the municipal court issued an Order to Show Cause based on Mr. Tettamanti's alleged failure to comply with the sentence and directed him to appear on November 20, 2024. R.8. The record contains no motion or affidavit filed in support of the order to show cause or other indication of whose "allegations" formed the basis of the order. Nor does

¹ The record as certified by the municipal court was produced in a series of documents without consistent pagination. Together with this brief, the defense is filing a combined, paginated version of the record. References to "R.#" are to the pagination of that document.

the record include any indication that Mr. Tettamanti was served with the October 18, 2024, show-cause order. On that date, the municipal court issued a bench warrant, alleging that Mr. Tettamanti had failed to appear. R.9. On February 4, 2025, Mr. Tettamanti posted a personal recognizance bond with a return date of February 19, 2025. R.10–12. On that date, the municipal court issued a “Payment Schedule Order” setting forth a three-month payment plan for the \$150 Mr. Tettamanti allegedly owed. R.13.

On June 27, 2025, the municipal court issued a new Order to Show Cause. R.15. This order again stated that the court had been “apprised by allegations” that Mr. Tettamanti had not paid his court fines and costs or completed the class. R.15. The order directed him to appear and show cause why he should not be held in contempt, but the date for appearance was left blank. R.15. The order further stated that when he appeared he would be “advised of [his] right to an attorney and right to a hearing and such additional applicable rights.” R.15. This order was emailed to Mr. Tettamanti by the court clerk, who directed him to appear on July 16, 2025. R.14.

On July 16, 2025, the municipal court issued a bench warrant alleging that Mr. Tettamanti had failed to appear. R.16. On September 16, 2025, Mr. Tettamanti posted bond on that warrant, with a return date of October 15, 2025. R.17–19.

On September 25 and October 13, 2025, Mr. Tettamanti filed several motions raising concerns about the process followed in his case up to that point. R.20–29, 32–38. The municipal court granted portions of Mr. Tettamanti’s requests and denied the rest. R.30–31, 39.

C. Summary contempt finding and imprisonment

On October 15, 2025, Mr. Tettamanti appeared in the municipal court. The municipal court summarized the procedural posture of the case, with some errors, and then asked Mr. Tettamanti why he had not completed his sentence and why he had missed a prior court date. Hr’g Audio 10/15/25 at 0:00–1:23; Unofficial TR-10/15/25, p.1:1–9. In response, Mr. Tettamanti

raised concerns about the motions he had filed. Hr’g Audio 10/15/25 at 1:23–47; Unofficial TR-10/15/25, p.1:10–13. When the municipal court pointed out that Mr. Tettamanti had already pled guilty, Mr. Tettamanti stated that he wanted to change his plea and alleged that he could “prove that there was a violation of my constitutional rights.” Hr’g Audio 10/15/25 at 1:47–2:13; Unofficial TR-10/15/25, p.1:14–2:2.

During the ensuing back-and-forth, the municipal court initially told Mr. Tettamanti he was “too late” to change his plea, then that he could “file a motion to set aside [his] plea,” and then that he “need[s] to file a motion to set aside [his] plea,” not change it. Hr’g Audio 10/15/25 at 1:58–2:00, 2:13–22, 3:54–59; Unofficial TR-10/15/25, pp:1:19, 2:3–4, 3:7. In response to multiple questions from the municipal court about whether he intended to complete the class, Mr. Tettamanti responded that, instead of taking the class, he intended to change his plea. Hr’g Audio 10/15/25 at 3:26–32, 3:41–4:13; Unofficial TR-10/15/25, pp.2:20–21, 3:4–11. Ultimately, the exchange ended as follows:

THE COURT: You are under a court order to complete a sentence, alright? Are you going to do it or are you not going to do it?

MR. TETTAMANTI: Again, my—I’m here to change my plea.

THE COURT: You need to file a motion to set aside your plea. You’re not changing it.

MR. TETTAMANTI: What I’ve been told is you can file motions orally in this municipal court. [unintelligible] I have it in writing but you guys say something and then you do the opposite.

THE COURT: Are you going to do the class or not?

MR. TETTAMANTI: No. I’m here to change my plea.

THE COURT: I’m finding you in direct contempt since you’re disobeying my order that I’m giving you here orally. Will you take this gentleman into custody? I’m sentencing you to three days in jail— [unintelligible]

MR. TETTAMANTI: That’s it? What is this? What is this? What is this? Sir, this is not fair, man. I’m trying to talk to you about the case—

THE COURT: File - file a motion.

MR. TETTAMANTI: Is this a court of record?

THE COURT: It is.

MR. TETTAMANTI: Okay. This will be in—

THE COURT: You can appeal.

MR. TETTAMANTI: Okay. [Unintelligible] This is fucked up, bro.

THE COURT: Three days.

MR. TETTAMANTI: I have a son, I have sole custody of my son, what do I do? Can we postpone this outside the three days?

THE COURT: You're allowed to make phone calls. You can make phone calls.

MR. TETTAMANTI: Can I speak to my attorney?

THE COURT: You've had six months to do this.

MR. TETTAMANTI: So do I have to serve the three days today? You start now? That's my jacket, sir. I can't get bailed out?

BAILIFF: Grab that right now. I'll grab it now.

MR. TETTAMANTI: How does it work, sir? Can I get bailed out?

Hr'g Audio 10/15/25, 3:41–5:15; Unofficial TR-10/15/25, pp.3:4–4:10.

Despite stating that it was sentencing Mr. Tettamanti for “direct contempt,” the municipal court then signed a Mittimus / Order for Sentencing stating that the sentence was for “2-2-6 Failure to Control Pet.” R.48. The bailiff report from that day indicated that a bench warrant issued for Contempt of Court, R.55, but no such bench warrant appears in the record. Attached to the report is the November 20, 2024, bench warrant for failure to appear. R.56.

On December 8, 2025, Mr. Tettamanti appealed the contempt finding, and this Court accepted his Notice of Appeal on January 20, 2026.

SUMMARY OF THE ARGUMENT

The Silverthorne Municipal Court subjected Mr. Tettamanti to a contempt proceeding and three-day jail sentence that strayed far beyond the contempt power's limits, all because he said he intended to withdraw his guilty plea rather than attend a court-mandated class. In the first instance, the municipal court lacked the power to punish noncompletion of the class as contempt, as that kind of sentence is properly enforced only through probation.

The municipal court also exercised the power inappropriately. It found Mr. Tettamanti in direct contempt based on a statement that he intended to seek postconviction relief rather than comply with the sentence order, at a time when he could not immediately comply with the order. That statement could not itself comprise willful disobedience to the order. To the extent the municipal court intended to punish Mr. Tettamanti's past alleged noncompliance with the sentence order, that would have constituted, at most, indirect rather than direct contempt. The municipal court also improperly punished Mr. Tettamanti summarily even though his statement was not offensive to the authority and dignity of the court. On the contrary, the statement was protected under the United States and Colorado Constitutions and punishing Mr. Tettamanti for uttering it was unreasonable and constituted viewpoint discrimination.

Finally, even if the municipal court had evidence on which to base a contempt finding, direct or indirect, the process it afforded Mr. Tettamanti was severely insufficient. On any or all of these grounds, the municipal court's contempt order must be reversed.

ARGUMENT

II. Alleged noncompliance with a sentence condition to complete a class may not be punished through contempt.

A. Standard of Review and Preservation

While a contempt finding is within the discretion of the court, “a court abuses its discretion when its decision . . . is based on a misapplication of the law.” *In re Marriage of Sheehan*, 511 P.3d 708, 715 (Colo. App. 2022). Whether the district court violated separation of powers principles is a question of law that is reviewed de novo. *People v. Reyes*, 409 P.3d 501, 506 (Colo. App. 2016). Sufficiency of the evidence claims are also reviewed de novo regardless of preservation, including when such claims involve preliminary questions of law. *McCoy v. People*, 442 P.3d 379, 387 (Colo. 2019).

B. Municipal courts may not evade the procedural and substantive limitations of their probationary power by invoking contempt to punish noncompliance with sentencing conditions.

The legislature has prescribed the procedure for imposing a criminal sentence that includes conditions, like taking a class, where noncompliance carries the potential penalty of imprisonment: probation. *See* C.R.S. § 13-10-113(2). In municipal court, probation is limited to one year. *Id.* If a defendant is alleged to have violated a condition of probation, the probation officer or prosecution may initiate proceedings for revocation of probation. C.R.S. § 16-11-205(5). The court must advise the defendant of the same rights that apply to an original charge, except for the right to a jury trial. C.R.S. §§ 16-7-207, 16-11-206(1). The defendant is entitled to a hearing and the prosecution must prove the violation, either by a preponderance of the evidence or beyond a reasonable doubt depending on the nature of the violation, before the court can impose jail time. C.R.S. § 16-11-206(3). The total sentence imposed on a probation

violation, including credit for time previously imposed, cannot exceed the maximum sentence for the original offense. *See* C.R.S. § 16-11-206(5); *see also* *People v. Widhalm*, 991 P.2d 291, 294–96 (Colo. App. 1999) (holding that a defendant whose probation is revoked is entitled to credit against any new sentence imposed for time served in work release as a condition of probation).

By contrast, contempt proceedings—especially summary direct contempt proceedings, as occurred in this case—lack many of the procedural protections afforded in probation revocation hearings. While constitutional due process rights require certain procedures in contempt proceedings, no statute or court rule explicitly adopts contempt procedures binding on municipal courts. *See* Part IV, *infra*. Allowing a municipal court to utilize the contempt power as it did herewould mean municipal courts could evade the statutory limit on the length of probation, impose so-called sentence conditions for an unlimited period of time, and enforce them through contempt—in essence imposing lifetime probation in municipal court. And contempt sentences can be stacked even to exceed the maximum sentence for the original offense.

No legal provision allows municipal courts to evade the defined procedures and protections afforded by probation by wielding an amorphous contempt power to punish noncompliance with sentence conditions. “The authority to punish contempt derives from the court’s inherent power to enforce obedience to its orders.” *In re Lopez*, 109 P.3d 1021, 1023 (Colo. App. 2004). However, “courts must use caution in exercising [inherent] powers so as to not usurp or intrude upon the powers of the other two governmental branches.” *In re Court Facilities for Routt County*, 107 P.3d 981, 984 (Colo. App. 2004). The separation of powers doctrine “bars a court from intruding into the affairs of the legislative or executive branches.” *Bd. of Cnty. Comm’rs of Weld Cnty. v. Nineteenth Judicial Dist.*, 895 P.2d 545, 548 (Colo. 1995). “Subject to constitutional limitations . . . it is the prerogative of the legislature to define crimes and prescribe punishments.” *Fierro v. People*, 206 P.3d 460, 461 (Colo. 2009). In the municipal context, this authority is shared between the General Assembly—which prescribes maximum

sentences for municipal offenses, *see, e.g.*, C.R.S. § 13-10-113(1)(a)—and the legislative authority of the municipality. Courts may not use the judicial contempt power to fashion consequences for noncompliance with sentence conditions instead of the statutorily prescribed probation procedure.

The same principle underlies the Colorado Supreme Court’s pronouncements concerning the relationship between probation and the judicial power to suspend sentences. Prior to the adoption of the Criminal Code and Criminal Procedure Code, courts could impose probation-like conditions by suspending imprisonment for completion of certain conditions. *Fierro*, 206 P.3d at 461–62. The modern criminal statutes replaced that procedure with a more specifically defined probation power, which led the Colorado Supreme Court to hold that courts could no longer suspend sentences to imprisonment, even in conjunction with granting probation. *Id.* at 462 (citing *People v. Dist. Ct.*, 673 P.2d 991 (Colo. 1983) and *People v. Flenniken*, 749 P.2d 395 (Colo. 1988)).

Shortly thereafter, the General Assembly readopted the provision allowing courts to suspend sentences—but without explaining the relationship between the reenacted power to suspend sentences and the more detailed probationary power. *Fierro*, 206 P.3d at 462 (citing 1988 Colo. Sess. Laws 679, 682). In *Fierro*, the Colorado Supreme Court rejected an interpretation of the reenacted suspension power as allowing courts to bypass the rules governing probation. *Fierro*, 206 P.3d at 464–65. Instead, the Court concluded that, “[p]roperly understood, the power to suspend a sentence was re-enacted for the specific purpose of permitting it to function in conjunction with a statutorily authorized sentence of probation.” *Id.*, 206 P.3d at 465.

Just as the use of suspended sentences as an alternative to probation would have undermined the legislative scheme governing probation, permitting contempt to be used as a penalty for noncompliance with a portion of a sentencing order, without legislative authorization, would allow municipal courts to evade legislatively prescribed procedures for probation

revocation proceedings and exceed limitations on punishment. Regulating compliance with the terms of a sentence—and defining the consequences of noncompliance—is just as much a legislative concern as defining the permissible sentences in the first place. It therefore falls outside the court’s inherent contempt power. A municipal court that wishes to enforce a sentencing condition like the class ordered in this case must do so by placing the defendant on probation and adjudicating alleged noncompliance through a motion to revoke probation—while remaining bound by the overall maximum sentence for the underlying offense—not through contempt.

III. There was insufficient evidence to hold Mr. Tettamanti in direct contempt.

A. Standard of Review and Preservation

This Court “review[s] the record de novo to determine whether the evidence was sufficient to sustain the contempt judgment.” *K.P.*, 517 P.3d at 75. Sufficiency of the evidence claims are reviewed de novo regardless of preservation. *McCoy*, 442 P.3d at 387.

B. Mr. Tettamanti had no ability to obey the court’s oral order while in court, did not actually violate the order, and did not even state an unambiguous intent to violate the order.

The municipal court purported to hold Mr. Tettamanti in direct contempt of court for violating an oral order issued by the court on October 15, 2025. Direct contempt is contempt that has been “seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court’s warning to desist.” C.R.C.P. 107(a)(2). Indirect contempt, by contrast, “occurs out of the direct sight or hearing of the court.” C.R.C.P. 107(a)(3). There was insufficient evidence to support the municipal court’s finding of direct contempt because Mr. Tettamanti never had the ability to comply with the order issued on October 15, 2025, and never violated it; he at most threatened a future violation of the order.

The municipal court stated that it was holding Mr. Tettamanti in “direct contempt since you’re disobeying my order that I’m giving you here orally.” Hr’g Audio 10/15/25 at 4:14–19; Unofficial TR-10/15/25, p.3:12–13. The order in question appears to be the municipal judge’s reiteration that Mr. Tettamanti was “under a court order to complete a sentence,” Hr’g Audio 10/15/25 at 3:41–46; Unofficial TR-10/15/25, p.3:4—specifically, to complete the class that was ordered as part of the original sentence. The alleged contempt appears to be Mr. Tettamanti’s statement that he did not intend to complete the class because he intended instead to change his plea. Hr’g Audio 10/15/25 at 4:11–13; Unofficial TR-10/15/25, p.3:11.

Contempt requires that “the contemnor had the ability to comply with the order” and that “the contemnor willfully refused to comply with the order.” *People ex rel. State Engineer v. Sease*, 429 P.3d 1205, 1210 (Colo. 2018). As to the court’s order “that I’m giving you here orally,” Hr’g Audio 10/15/25 at 4:16–19; Unofficial TR-10/15/25, p.3:12–13 Mr. Tettamanti had no ability to comply with the order and did not actually violate the order. In order to comply with that order, he would have had to sign up for a future offering of the class and attend it through an outside agency. He could not take those actions in the middle of the court hearing. A statement of intent to violate a court order may be evidence that future violations of the order are willful, but the statement is not itself a violation of the order and therefore does not constitute contempt.

Mr. Tettamanti did not even state an unambiguous intent not to comply with the court’s order. Instead, Mr. Tettamanti stated that he would not complete the class *because* he intended to seek legal relief from his obligation to do so: “No. I’m here to change my plea.” Hr’g Audio 10/15/25 at 4:11–13; Unofficial TR-10/15/25, p.3:11. Stating an intent to seek relief from a legal obligation rather than complying with the legal obligation is not contempt. *Cf.* Colo. RPC 3.4(c)

(“A lawyer shall not: . . . (c) knowingly disobey an obligation under the rules of a tribunal *except for an open refusal based on an assertion that no valid obligation exists.*”) (emphasis added).²

To the extent this Court construes the contempt finding as based on Mr. Tettamanti’s alleged failure to comply with the *prior* orders to complete the class, that alleged inaction is also not direct contempt. “The fundamental distinction between direct contempt and indirect contempt lies in the location of the contumacious act. Direct contempt takes place in the court’s presence before a judge who has personal knowledge of the act, while indirect contempt doesn’t.” *In re A.C.B.*, 507 P.3d 1078, 1083 (Colo. App. 2022). In *In re Marriage of Johnson*, 939 P.2d 479 (Colo. App. 1997), the district court held an attorney in contempt for appearing for a hearing by telephone without permission. *Id.* at 480. The Court of Appeals reversed, explaining that the failure to appear in person did not occur in the presence of the court. *Id.* at 482. “As such, no purpose was served by the imposition of punishment for direct contempt: No order was required to be restored and no immediate sanction could bring [the attorney] back to Colorado so that proceedings could continue.” *Id.* The judge’s inquiry into why the attorney had not appeared in person, and her responses, did “not convert her action into a direct contempt. An inquiry by a judge is no substitute for proper notice and a hearing on the adequacy of the excuse for a failure to appear.” *Id.*

² The municipal court rules, like the Colorado Rules of Criminal Procedure, allow a defendant, like Mr. Tettamanti, who has been “convicted of a municipal ordinance violation” to “move the court for post-conviction review” on various grounds, including that “said conviction was obtained or sentence imposed in violation of the constitution or laws of the United States, or of the constitution or laws of this state, or of the municipality’s charter or ordinance.” C.M.C.R. 235(c). Such a motion must generally be filed “within six months after the date of conviction,” but can be filed later with a showing of “good cause for the delay.” C.M.C.R. 235(c). Mr. Tettamanti’s statements that he wanted to change his plea, and that his conviction was unconstitutional, Hr’g Audio 10/15/25 at 1:56–58, 2:02–13, 3:25–32, 3:48–53, 4:11–13; Unofficial TR-10/15/25, pp.1:18, 2:1–2, 2:20–21, 3:6, 3:11, clearly evidenced an intent to seek this relief. The municipal court never heard the motion or gave him an opportunity to establish good cause for the late filing.

IV. The municipal court abused its discretion by summarily punishing Mr. Tettamanti for statements that were not offensive to the dignity and authority of the court.

A. Standard of Review and Preservation

This court reviews the decision to impose contempt sanctions for an abuse of discretion. *K.P.*, 517 P.3d at 75. “A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, unfair, or contrary to law.” *Id.* The Colorado Supreme Court has repeatedly instructed lower courts to “exercise[...] patience and self-restraint,” “avoid overacting,” and invoke the contempt power “only when the judicial process has been seriously affronted or disrupted.” *Thrap v. People*, 558 P.2d 576, 577–78 (Colo. 1977). And it has not hesitated to rein-in uses of the contempt power that exceed its appropriately circumscribed role in our judicial system. *See, e.g., id.* at 578 (overturning a contempt finding stemming from on a municipal defendant making an inaudible comment to his wife as he left the courtroom); *People v. Ellis*, 540 P.2d 1082, 1083 (Colo. 1975) (overturning a contempt finding stemming from a defendant’s responses to the court’s questions).

Mr. Tettamanti was not required to contemporaneously object to preserve this issue because he had no meaningful opportunity to do so. *See Zoll v. People*, 425 P.3d 1120, 1125–26 (Colo. 2018); Crim. P. 51 (“But if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.”). The municipal court immediately moved from holding Mr. Tettamanti in contempt to sentencing him to having him handcuffed and removed from the courtroom, and the audio reflects that Mr. Tettamanti—who was appearing pro se—was distraught about who would watch his son. Hr’g Audio 10/15/25 at 4:13–5:15; Unofficial TR-10/15/25, pp.3:12–4:10. Imposing a preservation requirement in this context of this summary procedure would be fundamentally unfair in violation of Mr. Tettamanti’s rights to due process under the United States and Colorado Constitutions.

To the extent any preservation was required, Mr. Tettamanti’s statement that “Sir, this is not fair, man” sufficed. Hr’g Audio 10/15/25 at 4:29–31; Unofficial TR-10/15/25, p.3:15–16; *see People v. Melendez*, 102 P.3d 315, 322 (Colo. 2004) (holding that a party need not “use ‘talismanic language’ to preserve particular arguments for appeal”); *People v. Bergerud*, 223 P.3d 686, 696–97 (Colo. 2010) (pro se arguments should be “broadly construed to ensure [the party] is not denied review of important constitutional issues simply for his inability to articulate his concerns within the legal lexicon.”). The municipal court’s response—“You can appeal,” Hr’g Audio 10/15/25 at 4:37–39; Unofficial TR-10/15/25, p.3:21—also demonstrates that the municipal court understood Mr. Tettamanti was objecting to the contempt finding and was not willing to hear further argument, and Mr. Tettamanti had no way of knowing if making a further record would result in a longer contempt sentence.

B. Mr. Tettamanti’s statement did not warrant summary punishment because it was not offensive to the dignity and authority of the court.

“Summary punishment for direct contempt is necessitated by a court’s need to suppress immediate disturbances in the courtroom so that justice may be properly administered.” *In re Marriage of Johnson*, 939 P.2d 479, 481 (Colo. App. 1997). These circumstances constitute “a narrow exception” to the “due process requirements” that otherwise attach to contempt charges. *In re Oliver*, 333 U.S. 257, 275 (1948). This narrow exception is only appropriate where immediate intervention is required. Therefore, the power to summarily punish for direct contempt “should be invoked only when the judicial process has been seriously affronted or disrupted.” *Thrap*, 558 P.2d at 578.

The municipal court abused its discretion by summarily punishing Mr. Tettamanti because nothing about his conduct seriously affronted or disrupted the judicial process. His stated intent—to file a motion for postconviction relief to withdraw his guilty plea, rather than completing his sentence—is itself part of the judicial process. The municipal court could have

adjudicated his motion on the merits, provided more information about how to file a motion for postconviction relief in a procedurally correct manner, or engaged in any number of other ways. Even when a court is frustrated with a pro se defendant who may not be smoothly navigating the judicial system, “[they] must be cautious to avoid overreacting when persons not familiar with court procedures, through ignorance or frustration, unintentionally cause minor commotions.” *Thrap*, 558 P.2d at 578.

Mr. Tettamanti was also answering the court’s direct question. A “brief colloquy” between the court and the defendant” where “the defendant’s answers offend[] the trial judge” does not present “any facts which would support a finding of contempt.” *People v. Ellis*, 540 P.2d 1082, 1083 (Colo. 1975) (vacating a finding of direct contempt and imposition of summary jail sentence). Both the substance and the context of Mr. Tettamanti’s statement show that the municipal court’s exercise of its summary punishment power was manifestly arbitrary, unreasonable, unfair, and contrary to law.

V. The municipal court punished Mr. Tettamanti for constitutionally protected speech.

A. Standard of Review and Preservation

This court reviews whether restrictions on speech on government property can constitutionally be regulated de novo. *Lewis v. Colorado Rockies Baseball Club, Ltd.*, 941 P.2d 266, 271 (Colo. 1997). In the First Amendment context, the court has a special “obligation to make an independent review of the record to assure that the judgment does not impermissibly intrude on the field of free expression.” *People v. Chase*, 411 P.3d 740, 754 (Colo. App. 2013). For the reasons discussed above, the nature of the summary proceedings means that Mr. Tettamanti was not required to lodge a specific objection to preserve this issue. See Part III.A, *supra*. Moreover, this Court may not “presume acquiescence in the loss of fundamental

constitutional rights, and [must] therefore indulge every reasonable presumption against waiver.” *Forgette v. People*, 524 P.3d 1, 7 (Colo. App. 2023). Mr. Tettamanti’s statement that “Sir, this is not fair, man” sufficed to preserve appellate review. Hr’g Audio 10/15/25 at 4:29–31; Unofficial TR-10/15/25, p.3:15–16.

B. Mr. Tettamanti’s speech was constitutionally protected.

In Colorado, “every person shall be free to speak, write, or publish whatever he will on any subject,” Colo. Const. art. II, § 10, “[c]ourts of justice shall be open to every person,” Colo. Const. art. II, § 6, and “[t]he people have the right . . . to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance,” Colo. Const. art. II, § 24. The United States Constitution protects these rights as well. U.S. Const. amend. I (“Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances.”). The municipal court jailed Mr. Tettamanti based on his statement that he did not intend to complete the class he was sentenced to because he intended instead to change his plea. Hr’g Audio 10/15/25 at 4:09–23; Unofficial TR-10/15/25, p.3:10–14. This speech is constitutionally protected.

Speech is constitutionally protected unless it falls within certain unprotected categories, like fighting words, true threat, and obscenity. U.S. Const. amend. I; Colo. Const. art. II, § 10; *People v. Moreno*, 506 P.3d 849, 853 (Colo. 2022). In addition, “the First Amendment right to petition the government for redress of grievances necessarily includes the right of access to the courts.” *Lauren Corp. v. Century Geophysical Corp.*, 953 P.2d 200, 202 (Colo. App. 1998). Mr. Tettamanti’s statement—“No. I’m here to change my plea.”—does not fall within an unprotected category and instead reflects a core component of seeking access to the courts to redress grievances.

In the context of a courtroom, Mr. Tettamanti's protected speech could be restricted only if two conditions were met: (1) the restrictions were reasonable and (2) the government was not suppressing the speech merely because the public official opposed the speaker's viewpoint. *People v. Aleem*, 149 P.3d 765, 776 (Colo. 2007); *see also Lauren Corp.*, 953 P.2d at 202. Neither of these conditions have been met here.

C. The municipal court's restriction was unreasonable and constituted viewpoint discrimination.

The reasonableness of a restriction on speech depends on "the purposes of the forum and all of the surrounding circumstances." *Aleem*, 149 P.3d at 777. In *Aleem*, the Colorado Supreme Court laid out the First Amendment analysis applicable to defendants' speech in the courtroom. In that case, the Court concluded that ordering a defendant to remove his political t-shirt during a jury trial was a reasonable restriction on speech given that the shirt's message would be distracting and risked improperly influencing the jury. *Id.* (reversing the court's ultimate finding of contempt based on Defendant's refusal to comply with that order.)

Neither of those considerations are present here, let alone justify the imprisonment of a *pro se* defendant for seeking to understand and assert his rights in a court proceeding. The speech the municipal court criminally punished contained no message that might distract any participant or introduce irrelevant information. No jury was present. Mr. Tettamanti merely expressed his intended course of action in the adjudication of his municipal case; directly relevant to the core purpose of a municipal court and his right to petition the government. Nor was Mr. Tettamanti's statement disruptive to courtroom decorum in any way that might justify restricting it. Mr. Tettamanti did not make the statement during another person's case or even at any procedurally inappropriate time in his own. In fact, the statement was made in response to the municipal court's *direct question*. Mr. Tettamanti and the municipal court spoke over each other a few times, and the municipal court admonished him not to interrupt. However, these instances did not

come close to the level of contempt. Finding Mr. Tettamanti in contempt and sentencing him to three days in jail was not reasonable to protect the purpose of the forum, to preserve courtroom decorum, or to ensure any party's right to a fair proceeding.

Not only was the punishment of Mr. Tettamanti's speech not reasonable, it was viewpoint discrimination. In a nonpublic forum, such as a courtroom, the government may constitutionally restrict the general subject matter of speech. *Aleem*, 149 P.3d at 779. It may not, however, suppress a specific point of view because the public official disagrees with it. *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993); *Mesa v. White*, 197 F.3d 1041, 1049 (10th Cir. 1999). It was Mr. Tettamanti's viewpoint—that he was not going to do the class because he would instead pursue postconviction relief—that led to his punishment. Had he said he would do the class, he would not have been punished. A restriction more based on viewpoint is difficult to imagine. The municipal court therefore violated Mr. Tettamanti's rights under the United States and Colorado Constitutions by unreasonably punishing him for protected speech and stating his intent to petition the court for redress of grievances.

VI. The municipal court violated Mr. Tettamanti's due process rights during the contempt proceedings.

A. Standard of Review and Preservation

Whether Mr. Tettamanti received sufficient process when he was held in contempt is a question of law this Court reviews de novo. *In re A.C.B.*, 507 P.3d at 1083.

For the reasons discussed above, this Court must indulge every reasonable presumption against waiver, and the nature of the summary proceedings means that Mr. Tettamanti was not required to lodge a specific objection to preserve this issue at all. *See* Part III.A, *supra*. To the extent he was, his statement that “Sir, this is not fair, man” sufficed. Hr’g Audio 10/15/25 at 4:29–31; Unofficial TR-10/15/25, p.3:15–16.

B. The municipal court did not give Mr. Tettamanti sufficient process before finding him in direct contempt of court and sending him to jail.

Both the United States Constitution and the Colorado Constitution guarantee due process of law. *See* U.S. Const. amend. V, XIV; Colo. Const. art. II, § 25. The district court violated Mr. Tettamanti’s due process rights when finding him in direct contempt because it failed to warn him that his conduct would result in a contempt finding if he persisted, failed to give him a chance to make a statement in mitigation, and failed to make adequate express findings to support the contempt finding.

When evaluating what process is due in a contempt proceeding, even one occurring in municipal court, this Court should look to Colorado Rule of Civil Procedure Rule 107 for guidance. Municipal courts are not bound by the Colorado Rules of Civil Procedure; they operate under the Municipal Court Rules of Procedure, which provide simplified processes. But the municipal court rules do not expressly address the contempt power at all, and Civil Procedure Rule 107 does not merely lay out technicalities or logistics; it reflects constitutional rights that a defendant has as much claim to in a municipal court as he does in a district court. Thus, to the extent a municipal court exercises the contempt power, the further it deviates from the rules of civil procedure, the more it risks constitutional deficiencies.

In cases of direct contempt, Rule 107 implements both fundamental components of due process: “notice and the opportunity to be heard.” *Delta County Memorial Hosp. v. Industrial Claim Appeals Office*, 495 P.3d 984, 992 (Colo. App. 2021). Notice is embodied in Rule 107’s requirement that direct contempt must be “repeated despite the court’s warning to desist,” unless the conduct “is so extreme that no warning is necessary.” C.R.C.P.107(a)(2). The warning requirement was added to Rule 107 “to bring the rule into conformity with Colorado case law requiring a prior warning.” *Aleem*, 149 P.3d at 783 (citing *Ellis*, 540 P.2d at 1083–84). Warnings are especially necessary “for ‘borderline conduct’ that the contemnor may not be aware is

contumacious,” and for non-attorneys who are “held to a lesser standard of awareness of what constitutes proper conduct in the courtroom.” *Aleem*, 149 P.3d at 783 (quoting *United States v. Thoreen*, 653 F.2d 1332, 1341 (9th Cir. 1981)).

Opportunity to be heard is protected by Rule 107’s requirement that “[p]rior to the imposition of sanctions, the person shall have the right to make a statement in mitigation.” C.R.C.P. 107(b); *see also Taylor v. Hayes*, 418 U.S. 488, 498 (1974) (“even where contempt is punished summarily “the contemnor has normally been given an opportunity to speak in his own behalf in the nature of a right of allocution.”) (internal quotation marks omitted); *Malee v. District Court*, 911 P.2d 831, 834 (Mont. 1996).

When going beyond the basics of notice and an opportunity to be heard, “the ‘specific dictates of due process’ can be understood by consideration of three factors: (1) the private interests at stake; (2) the risk of the erroneous deprivation of that interest and the probability that the procedural safeguards that have been proposed will mitigate that risk; and (3) the government’s interest, including the ‘fiscal and administrative burdens’ of implementing the proposed procedure.” *A.M. v. A.C.*, 296 P.3d 1026, 1035 (Colo. 2013) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Rule 107 requires that trial courts, when imposing summary punishment for direct contempt, make specific findings “reciting the facts constituting the contempt, including a description of the person’s conduct, a finding that the conduct was so extreme that no warning was necessary or the person’s conduct was repeated after the court’s warning to desist, and a finding that the conduct is offensive to the authority and dignity of the court.” C.R.C.P. 107(b).

These requirements are constitutionally required under the *Mathews* balancing test. The private interest in avoiding unjust imprisonment that can be imposed for contempt is substantial and fundamental. *Cf. Perez v. People*, 302 P.3d 222, 225 (Colo. 2013) (recognizing the presumption of innocence as a fundamental right). The summary nature of direct contempt

proceedings and the lack of adversarial hearings increases the risk that judges will disregard the required elements for a finding of contempt, while requiring that the findings be made explicitly mitigates that risk. *See In re Terry*, 128 U.S. 289, 313 (1888) (recognizing that the contempt power is “arbitrary in its nature and liable to abuse”). Meanwhile, the burden imposed by requiring courts to explain their decisions and actions is minimal. In addition, explicit findings promote meaningful appellate review of contempt findings.

Mr. Tettamanti was afforded neither notice nor an opportunity to be heard, and the municipal court failed to make sufficient specific findings. The municipal court never warned Mr. Tettamanti that continuing to insist that he wanted to move to change his plea rather than completing the class would result in him being held in contempt of court. *See Aleem*, 149 P.3d at 784 (noting that a warning was required before holding a defendant who yelled at the court that it was a “demonocracy” during the proceeding). The first time the municipal court mentioned contempt was when it held Mr. Tettamanti in contempt. *See generally* Hr’g Audio 10/15/25; Unofficial TR-10/15/25. Nor did the municipal court provide Mr. Tettamanti with any opportunity to make a statement in mitigation in the moments between the finding and sentencing. Hr’g Audio 10/15/25 at 4:13–23; Unofficial TR-10/15/25, p.3:12–14. Finally, the municipal court’s findings were limited to saying that Mr. Tettamanti was disobeying the order; the municipal court did not find that the conduct continued despite a warning or explain why a warning was unnecessary and did not find that Mr. Tettamanti’s conduct was offensive to the authority and dignity of the court. Mr. Tettamanti sat in the county jail for three days, leaving his young son with no primary parent, on an unsupported, unconstitutionally imposed contempt charge.

C. To the extent this court finds that the municipal court was attempting to hold Mr. Tettamanti in indirect contempt, it afforded him insufficient process.

The municipal court asserted that it was holding Mr. Tettamanti in “direct contempt” for “disobeying” its “oral[]” order. Hr’g Audio 10/15/25 at 4:13–19; Unofficial TR-10/15/25, p.3:12–13. However, if this Court nevertheless construes the municipal court’s order as one finding Mr. Tettamanti in indirect contempt for his alleged past failure to complete the class, then he received entirely insufficient process. In an indirect contempt proceeding, due process requires “more normal adversary procedures.” *Bloom v. Illinois*, 391 U.S. 194, 205 (1968); *see also Dooley v. Dist. Ct. In & For Seventh Jud. Dist.*, 811 P.2d 809, 811 (Colo. 1991). As explained above, this court should look to Colorado Rule of Civil Procedure Rule 107(c) as a barometer for the constitutionally required protections.

In the first instance, the Order to Show Cause issued by the municipal court was constitutionally deficient. Indirect contempt must be “brought to the court’s knowledge” in a “regular and legitimate way.” *Wyatt v. People*, 28 P. 961, 964 (Colo. 1892). The *Wyatt* court, writing before Rule 107 was promulgated, explains that “some proper official or interested party,” must “set forth by affidavit the material facts relied on,” to give the court jurisdiction to proceed in an indirect contempt proceeding. *Id.* at 261. “A proper regard for the liberty of the citizen forbids the arrest of parties upon criminal attachment charged with this kind of contempt, without information *under oath* touching the precise character of the alleged offenses.” *Id.* (emphasis added). Rule 107 codifies this rule. C.R.C.P. 107(c); *see also* Colo. Sup. Ct. Comm. on Rules of Civ. Pro., Minutes at 13 (March 25, 2011) (noting rule committee’s rejection of proposed removal of rule’s two-step process and its consensus that because contempt actions are quasi-criminal, courts should not be permitted to make *ex parte* preliminary contempt finding). The record reveals no affidavit filed in support of the Order to Show Cause; the order itself states

that the court was “apprised by allegations,” but does not even indicate whose allegations. R.15. This Order cannot support an indirect contempt finding.

If the October 15, 2025, hearing was intended to be an indirect contempt proceeding, contemplating punitive sanctions, it should have begun with a specific set of advisements, describing his constitutional protections. C.R.C.P. 107(d)(1). Mr. Tettamanti should have been advised of his right to counsel—in this case, since jail was contemplated and he was indigent, appointed counsel. *In re A.C.B.*, 507 P.3d at 1081. He also should have been advised that he had the right to pled guilty or not guilty, that he was presumed innocent, that the charge must be proven beyond a reasonable doubt, that he had the right to present evidence, to cross-examine any witnesses, to have subpoenaed issued, to remain silent or testify, and to appeal any adverse decision. C.R.C.P. 107(d)(1); *Bloom v. Illinois*, 391 U.S. 194, 205 (1968); *Losavio v. Dist. Ct. In & For Tenth Jud. Dist.*, 512 P.2d 266, 268 (Colo. 1973) (finding that an indirect contempt charge requires, at minimum, a hearing, representation by counsel, and the right to call witnesses); *People v. Razatos*, 699 P.2d 970, 977 (Colo. 1985) (finding that a person has the right to remain silent or testify in any punitive indirect contempt proceeding). If the municipal judge initiated the proceedings, as appears from the record, Mr. Tettamanti should have been “advised of the right to have the action heard by another judge.” C.R.C.P. 107(d)(1); *Harthun v. Dist. Ct. in and for Second Jud. Dist.*, 495 P.2d 539, 542 (Colo. 1972) (“The record in this case reveals that the semblance of due process is a sham when the judge is both prosecutor and judge.”).

Mr. Tettamanti received none of these advisements before he was held in contempt of court, and none of the substantive protections they described either. *See generally* Hr’g Audio 10/15/25. Indeed, he was only advised of his right to appeal after he had already been found in contempt of court and was being shackled by the courtroom bailiff. Hr’g Audio 10/15/25, 4:38–39; Unofficial TR-10/15/25, p.3:21. His liberty was taken from him the space of less than five

minutes. If conceived of as an indirect contempt proceeding, this was so far from what due process required as to make a complete mockery of it.

CONCLUSION

Mr. Tettamanti told the Silverthorne Municipal Court that he intended to change his plea. As a result, in a proceeding bereft of all constitutional protections, he was immediately found in contempt of court and jailed. For the reasons described above, he respectfully requests that this Court vacate the municipal court's contempt finding.

Date: May 22, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2026, I served via the Colorado Court E-Filing System a copy of the foregoing Opening Brief on all parties of record.

/s/ Kara S. Narberes
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