

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

MICHELLE REYNOLDS,

Plaintiff,

v.

BRIAN FLYNN, Chief Judge of the Twenty-First Judicial District, in his individual capacity;
JOE PELLE, the Boulder County Sheriff, in his official capacity;
MATT LEWIS, the Mesa County Sheriff, in his official capacity;

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Michelle Reynolds, by and through her counsel, Mark Silverstein and Arielle Herzberg of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, and John A. Culver and Anna C. Fullerton of BENEZRA & CULVER, P.C., in cooperation with the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, respectfully alleges for her Complaint and Jury Demand as follows:

INTRODUCTION

1. “One charged with crime is entitled to have bail fixed, and to be given [her] liberty pending the disposition of his case. This [s]he has as a matter of constitutional right . . .” *Palmer v. Dist. Court of Denver*, 156 Colo. 284, 286-87, 289 (1965) (internal citations omitted). In this case, Plaintiff Michelle Reynolds was deprived of this constitutional right. She was held in jail for 15 days without bail being set due to the Defendants’ actions.

2. On August 23, 2019, Ms. Reynolds was incarcerated in the Mesa County Detention Facility based on a warrant issued by a Boulder County court for which no bond had been set. Ms. Reynolds had no criminal history and had never before been incarcerated.

3. Ms. Reynolds had a video appearance before a Mesa County judge four days after she was arrested, but the judge refused to set bond because Defendant Chief Judge Brian Flynn had issued an Administrative Order, based on an erroneous interpretation of Colorado law, which prohibited judges in Mesa County from modifying bond on out-of-county warrants.

4. Ms. Reynolds and her criminal defense attorney pleaded with the transport departments of the Mesa and Boulder County Sheriff's Offices to bring Ms. Reynolds to the Boulder Court for her bond to be set, but the Sheriff's Offices and their Transport Coordinators followed lackadaisical policies that allowed them to delay transportation until convenient for them, without regard to Ms. Reynolds languishing in jail without bond.

5. It took 15 days before Ms. Reynolds was finally brought before the Boulder Court. The Boulder Court immediately released Ms. Reynolds on her personal recognizance. The prosecutor soon afterwards dismissed the entire case against Ms. Reynolds.

6. As a result of her 15-day detention, Ms. Reynolds suffered serious damages. She was physically assaulted multiple times while in jail. She lost her employment as a hospice caregiver. Ms. Reynolds suffered and continues to suffer emotional distress and fear from her lawless incarceration that appeared to be without purpose or end.

JURISDICTION AND VENUE

7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. This action is authorized and instituted pursuant to 42 U.S.C. § 1983.

8. The acts described herein were committed within the District of Colorado. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

9. Plaintiff Michelle Reynolds, at all times relevant to this Complaint, was a resident of, and domiciled in, the State of Colorado.

10. At all times relevant to this Complaint, Defendant Brian Flynn was the Chief Judge of the Twenty-First Judicial District. Defendant Flynn is sued in his individual capacity.

11. Defendant Joe Pelle is the Sheriff of Boulder County, Colorado. He is sued in his official capacity.

12. Defendant Matt Lewis is the Sheriff of Mesa County, Colorado. He is sued in his official capacity.

13. At all times relevant to this Complaint, all Defendants were acting under the color of state law.

FACTUAL ALLEGATIONS

Ms. Reynolds's Arrest

14. On August 23, 2019, Michelle Reynolds was driving through Mesa County on her way to watch her niece's volleyball game when she was pulled over by the Colorado State Patrol.

15. The officer who pulled Ms. Reynolds over saw that there was an outstanding warrant for her arrest. It had been issued by a Boulder County court regarding an incident from October 2018, almost a year prior.

16. Ms. Reynolds had no idea that there was an outstanding warrant for her arrest.

17. The warrant indicated "no bond pending first appearance in court."

18. The officer arrested Ms. Reynolds, and Ms. Reynolds was booked into the Mesa County Detention Facility.

19. The Colorado State Patrol immediately informed the Boulder County Sheriff's Office that Ms. Reynolds was arrested on the Boulder County Court's warrant and that she was being booked into the Mesa County Detention Facility. The Colorado State Patrol informed the Boulder County Sheriff's Office that it needed to extradite Ms. Reynolds.

20. After Ms. Reynolds was booked into the Mesa County Detention Facility, the Mesa County Sheriff's Office also informed the Boulder County Sheriff's Office that Ms. Reynolds was being held there, and it asked the Boulder County Sheriff's Office to make transport arrangements with the Mesa County Sheriff's Office.

21. Both the Mesa County Sheriff's Office and the Boulder County Sheriff's Office received messages indicating that the affidavit for arrest warrant said that there will be "no bond until seen by judicial officer."

Rule 5 of the Colorado Rules of Criminal Procedure

22. Rule 5 of the Colorado Rules of Criminal Procedure requires an arresting jurisdiction to take a person arrested before the nearest available court without unnecessary delay for a first appearance. Colo. R. Crim. P. 5(a)(1). At the first appearance, the court is to inform the defendant of the right to remain silent, the right to counsel or to request appointment of counsel, the nature of the charges, the right to a jury trial, the right to bail, and the amount of bail set by the court. Colo. R. Crim. P. (5)(a)(2).

23. Rule 5 further requires that if bail has not been set, the court is to set it. Rule 5 specifically states that a judge in a county that did not issue an arrest warrant must set bond at a first appearance even if the defendant is being held on an out-of-county warrant. Colo. R. Crim.

P. 5(a)(3) (“If the defendant is taken before a county court which did not issue the arrest warrant, **the court shall** inform the defendant of the matters set out in subsection (a)(2)(I through VII) of this Rule and, allowing time for travel, **set bail** returnable not less than 14 days thereafter before the court which issued the arrest warrant”) (emphasis added).

24. Rule 5 also requires sheriffs in the issuing jurisdiction to transport a defendant held outside the county if the defendant does not make bail within 48 hours to the county court that issued the warrant. Colo. R. Crim. P. 5(a)(3) (“In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.”).

Ms. Reynolds’s Video Appearance Before a Mesa County Judge

25. On August 27, 2019, four days after her arrest, Ms. Reynolds appeared by video before Judge Henderson of the Mesa County Court.

26. Judge Henderson did not set bond as required by Rule 5. Instead, Judge Henderson advised Ms. Reynolds that she had a “no bond” warrant out of Boulder County and that Boulder County was responsible for transportation.

27. In declining to set bond, Judge Henderson was following Administrative Order 2018-07, issued by Defendant Chief Judge Flynn in May 2018.

Chief Judge Flynn’s Administrative Order

28. Defendant Flynn’s Administrative Order 2018-07 instructed judges in Mesa County that when a defendant appears on an out-of-county arrest warrant, the judge should not modify bond.

29. Defendant Flynn issued his Administrative Order in order to “establish[] a uniform procedure for the 21st Judicial District on how to process out-of-county warrants.”

30. Defendant Flynn issued the Administrative Order in response to the Mesa County Sheriff's Office adoption of two new policies. First, the Mesa County Sheriff's Office, for the first time, started complying, in part, with Rule 5's directive to take people held on out-of-county warrants before the nearest county court. Second, while the Mesa County Sheriff's Office assumed joint responsibility with the issuing jurisdiction for transport of the defendant detained on an out of jurisdiction warrant, it expressly permitted such transport as long as fourteen days after arrest before returning an out-of-county arrestee to the jurisdiction that initiated the criminal charge.

31. Despite his knowledge that defendants held in the Mesa County Detention Facility on out-of-county warrants may be detained for weeks before being returned to the prosecuting jurisdiction, Defendant Flynn instructed judges in the Administrative Order not to set or modify bond in these cases.

32. More specifically, the Administrative Order states: **“No bond modification shall occur regarding the out-of-county warrant. *People v. Garcia*, 746 P. 2d 560 ([Colo.] 1987) (the court has no authority to set bond in such cases).”**

33. The *People v. Garcia* case that Defendant Flynn relied on in his Administrative Order stands for the exact opposite of what he claims it stands for. In *People v. Garcia*, the Colorado Supreme Court relied on Rule 5 of the Colorado Rules of Criminal Procedure's mandate that judges set bond at a first appearance regardless of who issued the warrant, holding that “[i]f the accused is taken before a court which did not issue the warrant, then, in addition to informing the accused of the matters set out in Crim. P. 5(a)(2), **the judge must set bail.**” 746 P. 2d at 562 (emphasis added).

34. Judge Flynn's Administrative Order also violates C.R.S. § 16-4-103(1), which mandates that **“[a]t the first appearance of a person in custody before any court or any person**

designated by the court to set bond, the court or person shall determine the type of bond and conditions of release unless the person is subject to the provisions of section 16-4-101.” (emphasis added).

35. As a direct result of Defendant Flynn’s Administrative Order, Ms. Reynolds did not receive a prompt bond setting. Because the Mesa County Court would not modify bond and Ms. Reynolds was being held on a “no bond” warrant, Ms. Reynolds was required to remain incarcerated until she could appear before the Boulder County Court.

Ms. Reynolds’s Attempts to be Transported

36. Both the Boulder and Mesa County Sheriff’s Offices knew on the day Ms. Reynolds was arrested—August 23, 2019—that she was being held in the Mesa County Detention Facility on an out-of-county warrant, on which no bond had been set, and that she would need to be transported to Boulder. Nevertheless, Ms. Reynolds was not transported to appear before a Boulder County judge for bond-setting until September 6, 2019.

37. Ms. Reynolds made daily requests and submitted numerous kites while in the Mesa County Detention Facility asking to be transported to Boulder, to no avail.

38. Ms. Reynolds’s attorney also made numerous phone calls over the course of Ms. Reynolds’s incarceration to the Mesa and Boulder Sheriff’s Offices’ transport departments asking for Ms. Reynolds to be immediately transported to Boulder so that her bond would be set. The Boulder County Sheriff’s Office Transport Coordinator, Amanda Pelletier, and Mesa County Sheriff’s Office Transport Coordinator, Carla Dittman, were both advised of these requests.

39. On August 28, 2019, five days after Ms. Reynolds’s arrest, the Mesa County Sheriff’s Office re-notified the Boulder County Sheriff’s Office that Ms. Reynolds was being held in the Mesa County Detention Facility and that she needed to be transported to the Boulder Court.

40. On that same date, Ms. Reynolds's attorney also spoke personally with Ms. Pelletier about the need to transport Ms. Reynolds immediately.

41. Ms. Pelletier was notified that bond had not been set for Ms. Reynolds.

42. Ms. Pelletier emailed Ms. Dittman, that day and stated sarcastically that she had had the "pleasure" of speaking with Ms. Reynolds's attorney about transport.

43. Ms. Dittman responded that she would coordinate transportation the following week.

44. Ms. Pelletier tacitly agreed to not arrange transportation and, instead, wait for Ms. Dittman to plan transportation at some point the following week. Ms. Pelletier did not push back on the timing and did not coordinate alternative earlier transportation.

45. On August 30, 2019, Ms. Dittman emailed Ms. Pelletier and the Jefferson County Transport Coordinator, notifying them that the Mesa transport department had to go to two other out-of-county facilities for other transports, so they planned to drop Ms. Reynolds off in Jefferson County on September 5, 2019, on the way.

46. No one from Boulder or Mesa told Ms. Reynolds or her attorney about their plan to transport Ms. Reynolds on September 5, 2019.

47. On September 3, 2019, someone from the Mesa County Sheriff's Office responded to one of Ms. Reynolds's kites by stating that Boulder was aware that Ms. Reynolds needed to be picked up, but she did not know when Ms. Reynolds would be transported.

48. The response to the kite reflected the policy, custom or practice of both the Mesa and Boulder Sheriff's Offices that transport could be delayed as long as fourteen days from the date of Ms. Reynolds's video appearance on August 27, 2019.

49. The response to the kite did not mention that Ms. Dittman and Ms. Pelletier had emailed regarding an expected transport for September 5, 2019.

Ms. Reynolds's Transport

50. The transport department of the Mesa County Sheriff's Office finally transported Ms. Reynolds in the middle of the night on September 5, 2019.

51. They dropped Ms. Reynolds off in the early morning at the Jefferson County Jail, where she waited for hours in the tank-top she was wearing the day she was arrested. The cell she was put into was extremely cold.

52. The transport department of the Boulder County Sheriff's Office picked Ms. Reynolds up on the afternoon of September 5, 2019 and booked Ms. Reynolds into the Boulder jail for another night.

53. Ms. Reynolds finally appeared before a Boulder judge on September 6, 2019.

54. Both Boulder and Mesa had been aware of the situation since August 23, 2019, but Ms. Reynolds did not see the judge until after 15 days of incarceration.

Ms. Reynolds's Bond Setting and Criminal Case

55. When Ms. Reynolds, who had no criminal history, finally appeared before a Boulder County judge on September 6, 2019, she was immediately released on a personal recognizance bond.

56. Shortly thereafter, on September 19, 2019, her entire case was dismissed.

Ms. Reynolds's Physical, Emotional, and Financial Harm

57. Ms. Reynolds has suffered and continues to suffer damages as a direct result of Defendants' unconstitutional conduct.

58. While in jail for 15 days, Ms. Reynolds lost her employment as a hospice caregiver. She has been subjected to substantial financial hardship as a result.

59. Ms. Reynolds was also physically assaulted in the Mesa County Detention Facility multiple times.

60. Ms. Reynolds suffered fear and hopelessness at her seemingly endless incarceration. She continues to suffer distress from her experience.

Each Defendant is Liable for Ms. Reynolds's Unconstitutional Detention.

Defendant Chief Judge Flynn

61. Defendant Chief Judge Flynn serves as the administrative head of the Twenty-First Judicial District and makes and is responsible for certain administrative decisions for the District.

62. Defendant Flynn issued Administrative Order 2018-07 in his administrative capacity. This was an administrative order as it was an internal order related to the functioning of the courts, not an adjudication between parties.

63. Defendant Flynn knew or should have known that all defendants, including Ms. Reynolds, have a right to bail under Article II, Section 19 of the Colorado Constitution and under C.R.S. § 16-4-101(4) unless they are charged with crimes that do not apply here. He further knew or should have known that all defendants are entitled to a prompt bail setting under the Due Process Clause of the Fourteenth Amendment.

64. Defendant Flynn knew or should have known that Rule 5 of the Colorado Rules of Criminal Procedure and the Colorado case law that he cited in his Administrative Order require judges to set bond for out-of-county warrants when bond has not been set, so that defendants do not languish in jail without a bond setting.

65. Indeed, any reasonable person would have known of this clearly established constitutional obligation.

66. Yet, Defendant Flynn issued the Administrative Order instructing judges in the Twenty-First Judicial District to not set bail for defendants held on out-of-county warrants whose bond had not been set in their warrants.

67. Defendant Flynn's Administrative Order set in motion a chain of events that caused Ms. Reynolds to be detained in violation of her due process rights.

68. Defendant Flynn's issuance of his Administrative Order created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Ms. Reynolds in this case and evinced deliberate indifference to Ms. Reynolds's due process rights.

69. Moreover, when Defendant Flynn issued his Administrative Order, he knew that the Mesa County Sheriff's Office had a practice, policy, and/or custom in which they could delay transporting out-of-county detainees held in the Mesa County Detention Facility for as long as 14 days.

70. Thus, Defendant Flynn knew that his order could cause defendants to be deprived of pretrial liberty for weeks without bond being set before they appeared before a judge who would set bond.

Defendant Joe Pelle, Boulder County Sheriff

71. Defendant Pelle is the Boulder County elected official with final policymaking authority for the Boulder County Sheriff's Office, including with respect to the Boulder County Jail.

72. By statute, Sheriff's Office policy, and official practice, Defendant Pelle is the official responsible for establishing final policy to ensure Boulder County Sheriff's Office's

compliance with the federal and state constitutions and the Colorado Rules of Criminal Procedure. Those policies include policies regarding the transport of individuals detained under a warrant issued by a Boulder Court who are arrested and detained in another jurisdiction. Those policies also include training for officers, including Boulder's Transport Coordinator, on how to handle that type of situation.

73. Defendant Pelle knew or should have known that all detainees, including Ms. Reynolds, have a right to bail under Article II, Section 19 of the Colorado Constitution and under C.R.S. § 16-4-101(4) unless they are charged with certain specific crimes that do not apply here. He further knew or should have known that all detainees are entitled to the procedure of a prompt bail setting under the Due Process Clause of the Fourteenth Amendment.

74. Defendant Pelle knew or should have known that Rule 5(a)(3) of the Colorado Rules of Criminal Procedure requires the sheriff of the jurisdiction that issued the warrant to bring a defendant before a judge in the court that issued the warrant if the person does not make bail within 48 hours.

75. In the course of performing his duties, Defendant Pelle learned that individuals subject to a "no bond" Boulder warrant were frequently arrested and detained in other jurisdictions. He also learned that Judges in the detaining jurisdiction frequently did not set bond for the person detained on the Boulder warrant. Consequently, Defendant Pelle knew that there existed a significant foreseeable risk that without timely transport, defendants in a Boulder case would be held without bond for an unjustifiably long time after their arrest.

76. Despite knowledge of that risk, Defendant Pelle failed to implement policies designed to ensure prompt and timely transport. Boulder County Sheriff's Office employees with transport responsibilities were not meaningfully trained regarding the need to ensure prompt

transport to Boulder and prompt appearance at a bail hearing for defendants who are detained in other jurisdictions on “no bond” Boulder warrants.

77. In this regard, Defendant Pelle allowed an official custom, policy, and/or practice to take root, by which Boulder County Sheriff’s Office employees routinely fail to transport detainees held in out-of-county jails on “no bond” Boulder warrants in a timely fashion.

78. Additionally, instead of creating policies to ensure compliance with the Colorado Constitution and Colorado Rules of Criminal Procedure, the Boulder County Sheriff established and maintains an official custom, policy and/or practice of ignoring its responsibility under Rule 5 of the Colorado Rules of Criminal Procedure and the U.S. and Colorado Constitutions to promptly transport a detainee held in an out-of-county jail on a Boulder County warrant who does not post bond or whose bond has not been set. Rather than ensuring prompt transport to a judge in the issuing jurisdiction, the Boulder County Sheriff routinely agrees to wait for the county holding the detainee to arrange transportation, regardless of whether this is timely.

79. The Boulder County Sheriff also had no policy requiring that electronic messages regarding out-of-county detainees needing transport be acted upon or that the county track the length of time detainees held in other county jails based on warrants issued by Boulder County courts have been waiting for transport.

80. Due to the absence of such policies and related training, it was foreseeable that Sheriff’s Office employees would fail to comply with their obligations to take individuals like Ms. Reynolds before a Boulder judge for a prompt bond setting and there was an obvious and substantial risk that people held in out-of-county jails on “no bond” warrants would languish in jail for an unreasonably long time without having bond set.

81. Defendant Pelle's customs, practices, and/or policies—and lack of policies and training—evinced deliberate indifference to Ms. Reynolds's due process rights.

82. These customs, policies, and/or practices (and the lack of policies and training) were the moving forces and proximate causes of Ms. Reynolds's lengthy, unlawful detention without a bond setting. These customs, policies, and/or practices (and the lack of policies and training) were consciously implemented and approved by Defendant Pelle and represent deliberate decisions to follow a course of action made from among various alternatives.

83. If Defendant Pelle had had a policy or procedure to ensure that Boulder County followed the mandates of Rule 5 and the Colorado and U.S. Constitutions, his Sheriff's Office employees would have promptly transported Ms. Reynolds to appear before a Boulder judge for a bond setting and she would have secured timely release.

84. Moreover, Defendant Pelle delegated final policymaking authority regarding transport decisions for individuals detained on Boulder warrants in other jurisdictions to Boulder's Transport Coordinator, Ms. Amanda Pelletier. Specifically, by that delegation, and her job description, Ms. Pelletier had the final authority to decide when and how such a defendant would be transported to a Boulder court. Ms. Pelletier had the responsibility to decide whether to permit the detaining jurisdiction to take responsibility for the transport or whether Boulder would assume the responsibility. She had sole responsibility regarding how to respond to notice that a defendant has been detained for more than 48 hours without bond being set.

85. Defendants detained under a Boulder warrant in another jurisdiction have no meaningful way of contacting the Sheriff about the need for transport and no way to appeal the decision of a Boulder Transport Coordinator regarding how and when the defendant will be

transported to a Boulder court. No Sheriff's Office employee reviews the Transport Coordinator's decisions regarding how and when transports occur.

86. As described herein, Ms. Pelletier had actual knowledge that Ms. Reynolds was being held in the Mesa County Detention Facility solely on a Boulder County court-issued warrant, that bail had not been set, that bail would not be set until she appeared before a Boulder County judge, and that Ms. Reynolds would languish in the Mesa County Detention Facility without bail until transported.

87. With this knowledge, Ms. Pelletier had an obligation to ensure prompt transport of Ms. Reynolds from the Mesa County Detention Facility to the Boulder Court.

88. Ms. Pelletier took no action to effectuate Ms. Reynolds's constitutional right to be brought before a court for a prompt bond setting.

89. Ms. Pelletier did not make arrangements to pick up Ms. Reynolds from the Mesa County Detention Facility, and instead waited until it was convenient for the transport department of the Mesa County Sheriff's Office to drop off Ms. Reynolds at a stop in between the two jails.

90. Ms. Pelletier did not ask the Mesa County Sheriff's Office to transport Ms. Reynolds more promptly.

91. Ms. Pelletier did not make alternative arrangements through her own transport department once it was clear that the transport department of the Mesa County Sheriff's Office was not making prompt arrangements.

92. Ms. Pelletier (and her transport department team) also did not immediately pick up Ms. Reynolds from the drop off location.

93. Ms. Pelletier's failure to act on Ms. Reynolds's behalf was a motivating force and proximate cause behind the illegal extended incarceration without bond.

94. Had Ms. Pelletier taken action to transport Ms. Reynolds in a timely fashion, Ms. Reynolds would have been brought before the Boulder Court and released on personal recognizance shortly after her initial incarceration.

95. Given the information Ms. Pelletier had, her failure to act on Ms. Reynolds's behalf created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Ms. Reynolds in this case and evinced deliberate indifference to Ms. Reynolds's due process rights.

96. Ms. Pelletier also evinced deliberate indifference by writing sarcastic emails that she had had the "pleasure" of speaking with Ms. Reynolds's attorney and that the attorney did not "lik[e] my answers" about when she would transport Ms. Reynolds.

97. These emails, coupled with the fact that Ms. Pelletier did not coordinate earlier transportation based on the conversation with Ms. Reynolds's attorney about the need for transportation, shows deliberate indifference to the fact that Ms. Reynolds was languishing in jail with no opportunity for pretrial release, because bail had not been set.

Defendant Matt Lewis, Mesa County Sheriff

98. Defendant Lewis is the Mesa County elected official with final policymaking authority for the Mesa County Sheriff's Office, including with respect to the Mesa County Detention Facility.

99. By statute, Sheriff's Office policy, and official practice, Defendant Lewis is the official responsible for establishing final policy to ensure Mesa County Sheriff's Office's compliance with the federal and state constitutions and the Colorado Rules of Criminal Procedure. Those policies include policies regarding the transport of individuals detained by Mesa under a

warrant issued by another jurisdiction. Those polices also include training for officers, including Transport Coordinators, in how to handle that type of situation.

100. Defendant Lewis knew or should have known that all defendants, including Ms. Reynolds, have a right to bail under Article II, Section 19 of the Colorado Constitution and under C.R.S. § 16-4-101(4) unless they are charged with certain specific crimes that do not apply here. He further knew or should have known that all defendants are entitled to the procedure of a prompt bail setting under the Due Process Clause of the Fourteenth Amendment.

101. In the course of performing his job duties, Defendant Lewis learned that the Mesa County Detention Facility frequently housed individuals detained on “no bond” arrest warrants issued by counties other than Mesa. Further, he was aware that Mesa County Court Judges, following Judge Flynn’s Administrative Order, would not modify or set bail for such out-of-county detainees. He also knew that defendants held on out-of-jurisdiction warrants are often detained in the Mesa County Detention Facility for as long as two weeks or longer without bond being set.

102. Despite knowledge of the risk of these unjustifiable delays in cases of persons held on out-of-county “no bond” warrants, Defendant Lewis failed to implement policies to avoid subjecting detainees to such lengthy periods of incarceration without the opportunity for pretrial release. Sheriff’s Office employees with transport responsibilities were not meaningfully trained regarding the need to ensure either prompt transport to the issuing jurisdiction or prompt appearance before a judge who would set bail.

103. Colorado Rule of Criminal Procedure 5(a)(1) placed responsibility on Defendant Lewis to take those arrested before the “nearest *available* county court” without unnecessary delay. Colo. R. Crim. P 5(a)(1).

104. The Mesa County Court was not the “nearest *available* court” for defendants held on out-of-jurisdiction “no bond” warrants because when Sheriff’s Office staff brought these individuals to the Mesa County court, the Mesa courts were not available to conduct a full first appearance, because the County’s Judges refused to set bail as required in Rule 5.

105. Nonetheless, Defendant Lewis knew that his staff did not routinely bring defendants held on “no bond” out-of-county warrants, like Ms. Reynolds, to any court for a first appearance within 48 hours of their arrest. He also knew that his staff often did not bring such defendants before the nearest *available* county court that would set bond.

106. Additionally, even though Rule 5(a)(3) of the Colorado Rules of Criminal Procedure places the duty on the sheriff of the jurisdiction that issued the warrant to bring a defendant who has not made bail before a judge in the issuing jurisdiction, Defendant Lewis has authorized his employees to take on the responsibility for transporting detainees held in the Mesa County Detention Facility on out-of-county warrants.

107. Defendant Lewis’s responsibility under Rule 5(a)(3) derives from his policy to transport detainees held in the Mesa County Detention Facility on out-of-county warrants, rather than requiring the jurisdiction that issued the warrant to transport the detainee independently. Defendant Lewis thus takes on the responsibility of transporting the detainee in conjunction with Boulder County.

108. Despite Defendant Lewis’s responsibilities under Rule 5, Defendant Lewis established and maintained an official custom, policy and/or practice of transporting detainees out of the county only when convenient for Mesa County, as long as transport occurred within 14 days, whenever a detainee is held in Mesa on a warrant from another county.

109. Defendant Lewis's policy fails to require or ensure prompt transportation for detainees held in the Mesa County Detention Facility on "no bond" out-of-county warrants. It neither requires Mesa to promptly take detainees held on out-of-county "no bond" warrants to a Court that will set bail, nor does it require that such detainees for whom Mesa has accepted transport responsibility be taken promptly to the issuing court where bond will be set.

110. Defendant Lewis had the authority, ability, and duty to ensure that Ms. Reynolds be brought promptly to a court that would set bond.

111. The Mesa County Sheriff's customs, policies, and/or practices evince deliberate indifference to Ms. Reynolds's due process rights.

112. The Mesa County Sheriff's customs, policies, and/or practices were the moving forces and proximate causes of Ms. Reynolds's lengthy, unlawful detention. These customs, policies and/or practices were consciously implemented and approved by the Mesa County Sheriff and represent a deliberate decision to follow a course of action made from among various alternatives.

113. If the Mesa County Sheriff had a policy to follow the federal and state constitutions and Colorado law, Ms. Reynolds would have been promptly brought before a judge for her bond to be set, and she would have secured timely release.

114. The Mesa County Sheriff's official custom, policy or practice caused Ms. Reynolds to sit in jail without bond until convenient for the transport department of the Sheriff's Office to transport Ms. Reynolds.

115. Because the Mesa County Sheriff's Office employees followed the Sheriff's policies that allowed them to take their time and delay Ms. Reynolds transport until September 5, 2019, her constitutional rights were violated.

116. Moreover, Defendant Lewis delegated final policymaking authority regarding transport decisions for individuals detained on out-of-jurisdiction “no bond” warrants to Mesa’s Transport Coordinator, Ms. Carla Dittman. Specifically, by that delegation, and her job description, Ms. Dittman had the final authority to decide when and how such a defendant would be transported to a court which would set bond. Ms. Dittman had the responsibility to decide whether to permit the issuing jurisdiction to take responsibility for the transport or whether Mesa would assume the responsibility. She had sole responsibility regarding how to respond to notice that a defendant held on an out-of-county “no bond” warrant had been detained for more than 48 hours without bond being set.

117. Defendants detained in Mesa under a warrant issued in another jurisdiction have no meaningful way of contacting the Sheriff about the need for transport and no way to appeal from the decision of the Mesa Transport Coordinator regarding how and when the defendant will be transported to a court in the issuing jurisdiction. No Sheriff’s Office employee reviews the Transport Coordinator’s decisions regarding how and when transports occur.

118. Ms. Dittman knew that the Mesa County Detention Facility frequently housed individuals detained on “no bond” arrest warrants issued by counties other than Mesa. Further, she was aware that Mesa County Court judges, following Judge Flynn’s administrative order, would not set bail for such out-of-county detainees.

119. Ms. Dittman assumed responsibility, in conjunction with Boulder County, for Ms. Reynolds’s transport by telling Ms. Pelletier that she would arrange transport.

120. As described herein, Ms. Dittman had actual knowledge that Ms. Reynolds was being held in the Mesa County Detention Facility solely on a warrant issued by the Boulder Court, without bond, and was waiting for transport to Boulder County.

121. Ms. Dittman even logged into the Mesa County Sheriff's Office computer system and printed Ms. Reynolds's booking card out on August 26, 2019, three days after Ms. Reynolds's arrest and a day before her appearance in front of Judge Henderson. This booking card indicated that Ms. Reynolds was being held on an out-of-jurisdiction warrant and that bail had not been set.

122. Ms. Dittman knew that a Mesa judge would not set Ms. Reynolds's bail (and knew, after the video appearance, that the judge indeed did not set bail). She knew that unless and until Ms. Reynolds was transported to a Boulder Court, Ms. Reynolds would not have bond set.

123. By assuming responsibility for Ms. Reynolds's transport, in conjunction with Boulder County, and with her knowledge of Ms. Reynolds's situation, Ms. Dittman had an obligation to ensure prompt transport of Ms. Reynolds from the Mesa County Detention Facility to the Boulder Court.

124. Despite knowing that Ms. Reynolds's bail would not be set and that she did not make bail, Ms. Dittman was deliberately indifferent and delayed transport until convenient for her transport department.

125. Ms. Dittman took no action to effectuate Ms. Reynolds's constitutional right to be brought before a court for a prompt bond setting.

126. Ms. Dittman was not in any hurry to arrange transportation and even though she assumed responsibility for Ms. Reynolds's transportation, in conjunction with Boulder County, she waited to transport Ms. Reynolds until it was convenient for her department to drop off Ms. Reynolds in Jefferson County on September 5, 2019. At that point, Ms. Reynolds had already been incarcerated for 14 days in the Mesa County Detention Facility.

127. Ms. Dittman's failure to act on Ms. Reynolds's behalf was a motivating force and proximate cause behind the illegal extended incarceration without bond.

128. Had Ms. Dittman taken action to transport Ms. Reynolds in a timely fashion, Ms. Reynolds would have been brought before the Boulder Court and released on personal recognizance shortly after her initial incarceration.

129. Given the information Ms. Dittman had and her emails with Ms. Pelletier, her failure to act on Ms. Reynolds's behalf created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Ms. Reynolds in this case and evinced deliberate indifference to Ms. Reynolds's due process rights.

CLAIMS FOR RELIEF

First Claim for Relief

42 U.S.C. § 1983 - Fourteenth Amendment

Denial of Procedural Due Process

(Against All Defendants)

130. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

131. Ms. Reynolds has protected state-created and federal constitutional interests in pretrial liberty and the right to bail, flowing from the Colorado Constitution, Colorado statutes, Colorado case law, and the U.S. Constitution.

132. The Colorado Constitution states that, except for individuals charged with certain specific crimes that do not apply here, “[a]ll persons shall be bailable by sufficient sureties pending disposition of charges.” Colo. Const. Art. II, Section 19.

133. Similarly, after specifying certain exceptions that are not relevant here, C.R.S. § 16-4-101(4), reiterates that “all persons shall be bailable by sufficient sureties.”

134. The Colorado Supreme Court has interpreted the term “bailable” to mean that there is a right to bail and a right to pretrial liberty, stating: “[o]ne charged with crime is entitled to have bail fixed, and to be given his liberty pending the disposition of his case. This he has as a matter

of constitutional right, ‘except for capital offenses, when the proof is evident or the presumption great.’” *Palmer v. Dist. Court of Denver*, 156 Colo. 284, 286-87, 289 (1965) (“The mandate of the constitutional provision is that persons charged with offenses are bailable with the one exception mentioned.”) (internal citations omitted).¹

135. Ms. Reynolds was deprived of these protected interests without constitutionally adequate procedures because Defendants acted and failed to act for Ms. Reynolds to receive a prompt bail setting.

136. Ms. Reynolds was not granted a prompt bail setting: her bail setting was 15 days after her arrest.

137. Defendants did not have any reason for their actions and inactions which caused Ms. Reynolds to be deprived of constitutionally adequate procedures.

138. Ms. Reynolds’s constitutional rights protected by the procedural arm of the Due Process Clause were violated because:

- a. Ms. Reynolds’s interest in pretrial liberty and her right to bail are paramount;
- b. Due to Defendants’ actions and inactions in this case, the risk of erroneous incarceration – meaning lengthy incarceration without a prompt bond setting – were great;
- c. Additional safeguards would have greatly reduced the risk of such erroneous incarcerations, including: (1) Mesa County judges being instructed by Defendant Chief Judge Flynn to follow Rule 5 and set bail at first appearances when it has not been set, rather than follow Defendant Flynn’s Administrative Order; (2) Boulder County Sheriff’s Office ensuring prompt transport of defendants held in out-of-

¹ Although this case was decided when capital cases were the only exceptions to the right to bail in Article II, Section 19, its reasoning still applies even after other exceptions were added.

county jails on “no bond” warrants issued by Boulder courts and training its officers and Transport Coordinators on that duty; (3) Boulder County Sheriff’s Office creating internal procedures for monitoring electronic messages and keeping track of whether detainees held on Boulder County court warrants have received bail settings; (4) Boulder County Sheriff’s Office implementing methods by which defendants held on “no bond” warrants issued by Boulder County can notify Transport Coordinators or the Sheriff’s Office of the need for transport and appeal a decision on how and when transport will occur; (5) Boulder County Sheriff’s Office implementing methods for review of Transport Coordinators’ decisions on transport; (6) Mesa County Sheriff’s Office implementing a policy of transporting out-of-county defendants with no bail set to the nearest available court without unnecessary delay and training officers and Transport Coordinators on that duty; (7) Mesa County Sheriff’s Office only taking on responsibility for transporting defendants held on out-of-county warrants to the issuing jurisdiction if it can transport those defendants in an expedited fashion and training officers and Transport Coordinators on that duty; (8) Mesa County Sheriff’s Office implementing methods by which defendants held in the Mesa County Detention Facility on “no bond” warrants issued by a different county can notify Transport Coordinators or the Sheriff’s Office of the need for transport and appeal a decision on how and when transport will occur; and (9) Mesa County Sheriff’s Office implementing methods for review of Transport Coordinators’ decisions on transport.

- d. The Defendants have no legitimate interest in maintaining their current customs, practices, policies, and/or procedures that resulted in the constitutional violations in this case, and the burdens of adopting the policies and procedures described herein would be minimal and would have prevented Ms. Reynolds's unlawful detention without a bail setting.

139. By taking actions and failing to take actions for Ms. Reynolds to receive a prompt bail setting, as detailed herein, Defendants were deliberately indifferent to her welfare as a detainee and the ongoing violation of her constitutional rights.

140. The acts or omissions of these Defendants, as described herein, were a legal and proximate cause of Ms. Reynolds's injuries.

141. The acts or omissions of these Defendants have caused and continue to cause Ms. Reynolds damages, including economic and emotional damages.

142. The acts or omissions of these Defendants as described herein deprived Ms. Reynolds of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America.

Second Claim for Relief

42 U.S.C. § 1983 - Fourteenth Amendment

Denial of Substantive Due Process

(Against All Defendants)

143. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

144. The right to a prompt first appearance, which includes a prompt bail setting, is clearly established and protected by the Due Process Clause.

145. Ms. Reynolds's lengthy detention without a prompt bail setting constituted arbitrary and oppressive government action, did not further a legitimate government objective, and reflects an exercise of governmental power that shocks the conscience.

146. By failing to take action to bring Ms. Reynolds before a judge for a bond-setting, as detailed herein, each Defendant was deliberately indifferent to her welfare as a detainee and the ongoing violation of her constitutional rights.

147. The act or omissions of each Defendant, as described herein, were a legal and proximate cause of Ms. Reynolds's injuries.

148. The acts or omissions of the Defendants have caused and continue to cause Ms. Reynolds damages, including economic and emotional damages.

149. The actions or omissions of Defendants as described herein deprived Ms. Reynolds of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants, and grant:

- (a) Compensatory and consequential damages, on all claims allowed by law in an amount to be determined at trial;
- (b) All economic losses on all claims allowed by law;
- (c) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (d) Attorneys' fees and the costs associated with this action on all claims allowed by law;
- (e) Pre and post-judgment interest at the lawful rate.

(f) Any further relief that this Court deems just and proper, and any other relief as allowed by law.

PLAINTIFF REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 27th day of April, 2021.

s/ Mark Silverstein

Mark Silverstein
Arielle K. Herzberg
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF COLORADO
303 E. 17th Street #350
Denver, Colorado 80203
Phone: (720) 402-3104
msilverstein@aclu-co.org
aherzberg@aclu-co.org

s/ Anna C. Fullerton

John A. Culver
Anna C. Fullerton
BENEZRA & CULVER, P.C.
633 17th St. Suite 1450
Denver, CO 80202
Phone: (303) 716-0254
jaculver@bc-law.com
acfullerton@bc-law.com

IN COOPERATION WITH THE AMERICAN CIVIL
LIBERTIES UNION FOUNDATION OF
COLORADO

ATTORNEYS FOR PLAINTIFF