

<b>District Court, Pueblo County</b> <b>501 North Elizabeth Street</b> <b>Pueblo, Colorado 81003</b>	DATE FILED October 8, 2024 12:01 PM FILING ID: 987D1880DEC17 CASE NUMBER: 2024CV30485
LYRICS (JOHN) MARTINEZ, Petitioner  v.  DAVID LUCERO, Sheriff of Pueblo County, State of Colorado, Respondent	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Attorneys for Petitioner:  Timothy R. Macdonald, #29180 Emma Mclean-Riggs, #51307 Anna I. Kurtz, #51525 American Civil Liberties Union Foundation of Colorado 303 E. 17 <sup>th</sup> Avenue, Suite 350 Denver, CO 80203 tmacdonald@aclu-co.org emcleanriggs@aclu-co.org akurtz@aclu-co.org (303) 777-5482	Case No.    Div.
<b>PETITION FOR WRIT OF HABEAS CORPUS</b>	

The Petitioner, Lyrics (John) Martinez, through counsel, petitions the Court for a writ of habeas corpus pursuant to C.R.S. § 13-45-103(2). In support of her petition, Ms. Martinez states:

### **INTRODUCTION**

Ms. Martinez is being unlawfully detained in the Pueblo County Jail for missing court dates under what the Pueblo Municipal Code calls “Contempt of Court,” P.M.C. § 1-6-12, even though she was never provided a charging document adequate to prepare a defense to these alleged crimes. The United States and Colorado Constitutions require that a person charged with a crime receive a charging document adequate to prepare a defense and to protect against prosecution for the same offense in the future. U.S. Const. amend. VI; amend. XIV; Colo. Const. art. II, § 16; art. II, § 25. Ms. Martinez was charged with and convicted of 21 municipal crimes without any charging document at all. The jurisdiction of the Pueblo Municipal Court never attached to these cases and the convictions resulting from them are void. This Court must order her immediate release.

## JURISDICTION AND VENUE

This Court has jurisdiction to hear Ms. Martinez’s petition for writ of habeas corpus pursuant to C.R.S. § 13-45-101 and Colo. Const. art. II, § 21. Venue is proper in any District Court in Colorado, including the Pueblo County District Court. *Stilley v. Tinsley*, 385 P.2d 677, 688 (Colo. 1963).

## PARTIES

Lyrics Martinez<sup>1</sup> is a 34-year-old transgender woman currently incarcerated in the Pueblo County Jail due to 21 convictions of Municipal Contempt, imposed for missed court dates. These 21 cases originated from Pueblo municipal citations E122599, E123062, E123472, E123715, E124799, E124898, and E136357. Ms. Martinez is serving a municipal jail sentence of 240 days—over six months. Ms. Martinez has been in custody since July 30, 2024.

David Lucero is the Sheriff of Pueblo County. He is the Colorado official responsible for Ms. Martinez’s imprisonment. He is therefore the proper respondent to Ms. Martinez’s petition. *Johnson v. Gunter*, 852 P.2d 1263, 1265 (Colo. 1993).

## FACTS

### **Contempt of Court Under Pueblo Municipal Code § 1-6-12**

Pueblo’s Municipal Code identifies Contempt of Court (hereinafter “Municipal Contempt”) as a substantive offense comprising four separate crimes:

- (1) Disobedience or resistance of any person to or interference with any lawful writ, process, order, rule, decree, or command of the Municipal Court; or
- (2) Failure by any person, without adequate excuse, to obey a summons, subpoena, or court order; or
- (3) Any act or omission of a person which is offensive to the authority or dignity of the Municipal Court or which obstructs or interferes with the administration of justice; or
- (4) Failure by any person to conduct themselves in a manner consistent with the decorum and respect inherent in the concept of judicial proceedings in the Municipal Court.

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<sup>1</sup> Ms. Martinez’s correct name is Lyrics Athens Martinez. Her legal name, John Justin Martinez, was used in all documents in this case. Although Ms. Martinez identified her correct name to the Pueblo Municipal Court in December 2021, as recorded in the court comments, the court comments misgender Ms. Martinez throughout. This petition uses Ms. Martinez’s correct name and gender.

P.M.C. §1-16-12(a). Municipal Contempt is a Class 1 municipal offense, P.M.C. § 1-6-12(e), punishable by up to 364 days in county jail and up to a \$1000 fine.<sup>2</sup>

The Municipal Contempt ordinance purports to offer two kinds of adjudication for these violations that on their face are lesser than the procedures afforded other municipal prosecutions: summary punishment, for those violations that happen in the presence of the Municipal Judge, or a hearing to the court before the Municipal Judge that “charged” the Class 1 municipal offense. P.M.C. § 1-6-12. As illustrated by Ms. Martinez’s case, the reality of the municipal court’s practice under the Ordinance falls short of even these contemplated, yet inadequate, procedures.

### **Ms. Martinez Pleads No-Contest to Eight Uncharged Municipal Contempt Cases for Six Months of Probation**

Ms. Martinez was first cited in the above-captioned cases in August 2021. She was unhoused, moving from place to place, or living on the street, as she remained throughout this case. Ms. Martinez was cited for theft from merchant, which is a Class 2 municipal offense in the City of Pueblo, punishable by up to \$1000 in fines but not by jail. P.M.C. §§ 11-1-401(b); 11-1-103(c). The City, consistent with Colorado Municipal Court Rule of Procedure 204(a), commenced prosecution of Ms. Martinez for the alleged offense by filing a Uniform Summons and Complaint, which contained Ms. Martinez’s name, the date of the alleged offense, its approximate location, the name of the ordinance she was being charged under, and a citation to that ordinance. The Municipal Court assigned the matter case number E122599.

In September 2021, Ms. Martinez was cited for trespass, which is also a Class 2 municipal offense in the City of Pueblo, punishable by up to \$1000 in fines but not by jail. P.M.C. §§ 11-1-406; 11-1-103(c). The City commenced prosecution of Ms. Martinez, in accordance with C.R.M.P. 204(a), for the alleged trespass offense by filing a Uniform Summons and Complaint, which contained Ms. Martinez’s name, the date of the alleged trespass offense, its approximate location, the name of the ordinance she was being charged under, and a citation to that ordinance. The Municipal Court assigned the matter case number E123062.

On October 3, 2021, Ms. Martinez was cited for trespass, battery, and theft from a merchant (later assigned case number E123472). Trespass and theft are Class 2 municipal crimes, punishable by up to \$1000 in fines but not by jail. P.M.C. §§ 11-1-406; 11-1-407; 11-1-103(c). Battery is a Class 1 municipal crime, punishable by up to 364 days jail and up to a \$1000 fine. P.M.C. §§ 11-1-301(b); 11-1-103(b). Ms. Martinez was cited for trespass again on October 9, 2021 (later assigned case number E123578)<sup>3</sup>, and again on October 15, 2021 (later assigned case number E123715). Because these trespass charges were her third and fourth charges, Ms. Martinez was potentially subject to the Pueblo Municipal Code's habitual offender ordinance, which makes otherwise non-jailable Class 2 municipal crimes Class 1 municipal crimes when a

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<sup>2</sup> “Municipal Contempt” under P.M.C §1-6-12 is separate and distinct from a court’s inherent contempt power, which is not at issue here.

<sup>3</sup> This citation was later dismissed by the City.

person has two prior convictions for the same offense. P.M.C. § 1-2-1(g). In all three cases, the City commenced prosecution of Ms. Martinez for the alleged offenses, in accordance with C.R.M.P. 204(a), by filing a Uniform Summons and Complaint, which contained Ms. Martinez's name, the date of the alleged trespass offense, its approximate location, the name of the ordinance she was being charged under, and a citation to that ordinance.

Ms. Martinez was arrested on October 26, 2021. Ms. Martinez remained incarcerated pretrial until at least December 10, 2021 – the court records are unclear as to exactly when she was released. On December 21, 2021, she was cited for trespass and harassment, both Class 1 municipal crimes, due to her eligibility to be prosecuted under Pueblo's habitual offender ordinance. P.M.C. §§1-2-1(g), 11-1-303(d). Consistent with C.R.M.P. 204(a), the City commenced prosecution for the alleged offenses by filing a Uniform Summons and Complaint, which contained Ms. Martinez's name, the date of the alleged offenses, their approximate location, the names of the ordinance she was being charged under, and citations to those ordinances. The Municipal Court assigned the matter case number E124799.

On January 14, 2022, Ms. Martinez missed her court date. The court stayed issuance of a warrant for her arrest, as she was apparently also set for January 18, 2022, on a different citation, although the court notes are unclear. On January 18, 2022, she was cited for trespass. In accordance with C.M.R.P. 204(a), the City commenced prosecution of Ms. Martinez for the alleged trespass by filing a Uniform Summons and Complaint, which contained Ms. Martinez's name, the date of the alleged trespass offense, its location, the name of the ordinance she was being charged under, and a citation to that ordinance. The Municipal Court assigned the matter case number E124898.

On February 3, 2022, the Pueblo Municipal Court issued a warrant for Ms. Martinez's arrest. The Pueblo Municipal Court, however, also did something highly unusual: the court, sua sponte, initiated a criminal prosecution against Ms. Martinez under the Municipal Contempt ordinance. A court clerk wrote in the electronic comments, "BW issued per Judge." This notation called into existence case number E122599FC, a charge of "contempt of court." For missing court on January 14, 2022, Ms. Martinez was now exposed to an additional 364 days in jail. Ms. Martinez was not provided a charging document for the alleged Municipal Contempt offense.

On February 10, 2022, Ms. Martinez called the court to say she did not have transportation to court and could not be there for the appearance apparently set for that day (there is no other record of this date in the court file). The court set a hearing for February 14, 2022, which Ms. Martinez attended, clearing all her active warrants. On February 28, 2022, Ms. Martinez was set for hearing in E123062 only. In one set of court comments,<sup>4</sup> there is no

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<sup>4</sup> The court file contains two sets of court comments. The first is marked as being retrieved on July 31, 2024, and begins on December 30, 2021. This appears to have been the copy provided to Ms. Martinez's court-appointed attorney on August 1, 2024. The second is marked as being

documentation of this date. In the other, a clerk has noted “Cont to next trial date per CLS [the initials of former Presiding Judge Carla Sikes], Def and CA working on plea agreement.” There is no notation that Ms. Martinez missed this date. Nevertheless, E123062FC was created, “charging” another Class 1 municipal crime, exposing Ms. Martinez to another 364 days in jail. Ms. Martinez was not provided a charging document for the alleged Municipal Contempt offense. This “charge” brought Ms. Martinez’s total exposure to almost a decade in jail.

On March 11, 2022, it appears that E123472 went to jury trial. One set of court comments notes that Ms. Martinez checked in for jury trial on March 11, 2022. The other set of court comments states on March 11, 2022: “Def to sign PP on E123472. Muni CT closed when verdict was given.” There are signed verdict forms from E123472 in the court file finding Ms. Martinez guilty of all three charges, but the verdict forms are undated. There is no documentation of the sentence imposed for this case in the court file, except for a later notation on June 12, 2023, that Ms. Martinez owed 35 hours of community service at that time. This sentence appears not to have included incarceration. The court comments reflect that a court date was set, but not when it was set for.

Although it is not clear from the court file when, whether or how a court hearing was set on March 21, 2022, Ms. Martinez did not come to court that day. In the court comments retrieved after undersigned counsel’s motion for the court file, there is no entry for March 21, 2021. But in the set of court comments disclosed to Ms. DeHaro-Brown, a court clerk wrote, “Def FTA, per CLS [the initials of former Presiding Judge Carla Sikes] warrants to issue, no bond hold. Def will be held until trial. Next trial is April 11<sup>th</sup>.” This notation created four more Class 1 municipal cases: E123472C, E123715C, E124799FC, and E124898FC. E123472C appears to stem from E123472, the case where Ms. Martinez had already been found guilty at jury trial – it is unclear from the record what that case was set for, or what other behavior could have been the source of this “charge.” Ms. Martinez was not provided a charging document for any of the alleged Municipal Contempt offenses, which exposed her to four more years in jail.

On April 11, 2022, Ms. Martinez did not come to court, for her court date that had been set previously, in February 2022. A court clerk wrote in the court comments: “Judge issues contempt with no bond hold warrant.” This notation created two new Class 1 municipal offenses, E122599FD and E123062FD. Ms. Martinez was not provided a charging document for the alleged Municipal Contempt offenses, which exposed her to an additional two years in jail.

On June 12, 2023, Ms. Martinez appeared in the custody of the Pueblo County Jail. She entered a plea of no contest to all her open cases, including all eight cases of Municipal Contempt, never charged by the City. This plea also included E123062FC, the case that appeared in the court records, seemingly without any notation on the docket indicating that Ms. Martinez was not in court on February 28, 2022. She was sentenced to six months of probation, as well as

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retrieved on September 11, 2024, after undersigned counsel requested the court file in this case on August 22, 2024. That copy begins on August 20, 2021. The court comments differ significantly, with various entries being included in one and omitted in the other throughout.

ten days of jail for the Municipal Contempt offenses, although neither set of court comments or the mittimus reflect which Municipal Contempt case carried the jail sentence, or whether each case carried some portion, or whether ten days was imposed on each, running concurrently. Ms. Martinez was also sentenced to an unaffordable \$4,110.00 in fines.

### **Facing Nearly Fifteen Years in County Jail, Ms. Martinez Pleads Guilty to An Additional 13 Uncharged Municipal Contempt Cases, for a Total of 190 Days in Jail**

Ms. Martinez was released from the Pueblo County Jail on July 5, 2023. Although the court records do not indicate that a court hearing was set for July 7, 2023, the records do reflect that Ms. Martinez accrued six Municipal Contempt cases from July 7, 2023: E122599FE, E123062FE, E123715CC, E123472CC, E124799FD, and E124898FD. There is no documentation of a court date at this time, and the location of the alleged offenses is listed as “200 S Main Street,” the address of the Pueblo Municipal Court, in a document later provided to her court-appointed attorney. That document, known as a “pretrial packet,” does not include any further information or any citation to the Municipal Contempt ordinance. What created these cases is indiscernible from the court record. Ms. Martinez was not provided a charging document for these alleged six Municipal Contempt offenses. For whatever criminalized conduct was alleged on this single day, Ms. Martinez faced six years in county jail.

On July 11, 2023, Ms. Martinez was cited for trespass. At this time, she was unemployed and once again living on the street. A warrant did not issue for Ms. Martinez’s arrest until August 8, 2023. On August 29, 2023, Ms. Martinez came to the Municipal Court to address her warrants. She was promptly remanded and seen in-custody the next day. On August 30, 2023, the Municipal Court set bond and set all current cases for September 13, 2023. Ms. Martinez posted bond shortly after, and appeared at her September 13, 2023 court date.

Ms. Martinez missed her next court date, October 20, 2023. A clerk wrote in the court comments: “Per CLS [the initials of former Presiding Judge Carla Sikes] contempt warrant to issue for today. Atty DeHaro-Brown was not able to get in contact with Def to appear.” This notation created seven Class 1 municipal offenses, E122599FF, E123062FF, E123472CD, E123715CD, E124799FE, E124898FE, and E136357FC. Ms. Martinez was not provided a charging document for the alleged Municipal Contempt offenses. For missing court on this single day—October 20, 2023—Ms. Martinez faced almost seven years in county jail. In total, Ms. Martinez now faced almost fourteen years in county jail, almost all of them stemming from violations uncharged by the City of Pueblo.

On April 19, 2024, Ms. Martinez was arrested again. She remained in the Pueblo County Jail until May 1, 2024, when she entered her second plea. She pled no-contest to violating her probation in all the cases she had previously pled to and to the thirteen new Municipal Contempt

cases, all of which stemmed from missing *two* court dates. At least<sup>5</sup> 190 days of her total 240-day sentence were imposed for Municipal Contempt cases, for which she had never received any charging document.

The plea contemplated Ms. Martinez’s release to the in-patient substance use disorder treatment program Crossroads Turning Points, if she were accepted there, with her remaining jail sentence suspended upon successful completion. Ms. Martinez was released to Crossroads Turning Points shortly after entering her plea. Ms. Martinez relapsed and was expelled from the program on June 3, 2024. On July 12, 2024, she was cited for trespass again. The City commenced prosecution of Ms. Martinez for the alleged trespass offense by filing a Uniform Summons and Complaint, which contained Ms. Martinez’s name, the date of the alleged trespass offense, its location, the name of the ordinance she was being charged under, and a citation to that ordinance, and assigned the matter case number E143432.

On July 30, 2024, Ms. Martinez was arrested and held in the Pueblo County Jail. On August 30, 2024, the Municipal Court imposed the remaining jail time from Ms. Martinez’s May 1, 2024, sentence: 226 days. Ms. Martinez pled no contest to E143432 and was sentenced to 74 days in jail to run concurrently with her suspended time. She received 61 days’ presentence confinement credit, meaning that she had thirteen days left to serve on E143432, and 165 days left to serve on never-charged Municipal Contempt convictions.

Ms. Martinez has served more than four months in the Pueblo County Jail and will not be released until November 22, 2024, at the earliest. She has already served any time imposed from her properly charged citations. Ms. Martinez is housed in an all-male unit inconsistent with her gender identity and has been for the duration of her incarceration. Recently, she was transferred from one housing unit to another due to her concerns about her safety. She is unaware of any plans to move her to more appropriate housing. Ms. Martinez remains in Pueblo County Jail.

## **LAW AND ARGUMENT**

### **I. Ms. Martinez is entitled to a writ of habeas corpus.**

The Colorado Constitution grants the right to seek a writ of habeas corpus, Colo. Const. art. II, § 21, which the Colorado Supreme Court has described as “the precious safeguard of personal liberty,” *Geer v. Alaniz*, 331 P.2d 260, 261 (Colo. 1958), and “the great writ of freedom in Anglo-American jurisprudence.” *Jones v. Williams*, 2019 CO 61, ¶ 19. The Habeas Corpus Act, C.R.S. § 13-45-101 to –119, sets out the procedures implementing that constitutional right. *Jones*, ¶ 18. But as “there is no higher duty [for a court] than to maintain [the writ] unimpaired,”

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<sup>5</sup> Because the plea agreement contained in the court file is obscured by what appears to be a sticky note and neither set of court comments is explicit regarding how much jail was imposed by “convert[ing]” sentences to jail, the record is unclear as to exactly what conviction was punished with what jail sentence.

*Geer*, 331 P.2d at 261, its exercise “is not to be hedged or in anywise circumscribed with technical requirements.” *Jones*, ¶ 18; *see also Naranjo v. Johnson*, 770 P.2d 784, 786 (Colo. 1989) (“[T]he essential purpose of the writ of habeas corpus ‘demands that it be administered with the initiative and flexibility to insure that miscarriages of justice within its reach are surfaced and corrected.’”).

The question in a habeas corpus proceeding is whether a petitioner is being unlawfully detained. *Horton v. Suthers*, 43 P.3d 611, 615 (Colo. 2002), *as modified on denial of reh'g* (Mar. 4, 2002); *see also Mulkey v. Sullivan*, 753 P.2d 1226, 1232 (Colo.1988) (“The Habeas Corpus Act . . . provides a civil remedy for the purpose of determining whether the person instituting the proceeding is being unlawfully detained by the respondent who is holding him in custody.”). The Act provides for habeas relief where, as here, “the [sentencing] court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person,” *id.* § 103(2)(a); “the process is defective in some substantial form required by law”; *id.* § 103(2)(c); or “the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue,” *id.* §103(2)(d). Rule 235 of the Colorado Rules of Municipal Court Procedure, which provides for the correction or reduction of sentence, does not afford an adequate remedy for these particular defects. The Colorado Supreme Court has recognized that habeas corpus is the “appropriate remedy where a conviction is void,” rather than merely incorrect. 753 P.2d at 1232 (citing *Hart v. Best*, 119 Colo. 569, 580, 205 P.2d 787, 793 (1949)); *Ryan v. Cronin*, 553 P.2d 754, 755 (Colo. 1976) (“Void judgments are subject to attack by use of habeas corpus.”). A judgment is void for purposes of habeas corpus relief when the court lacks jurisdiction over the subject matter or over the person. 753 P.2d at 1232; *see also Titmus v. Tinsley*, 384 P.2d 728, 730 (Colo. 1963) (“The application for the writ . . . must plead facts which, if true, show either (1) that the trial court had no jurisdiction of the person of the defendant, or (2) that the trial court had no jurisdiction of the offense charged, or (3) that the sentence imposed was not within the limits prescribed by law.”).

As set forth in Part II, below, Ms. Martinez is being unlawfully detained. “The allegation that a petitioner is entitled to immediate release is a proper basis for petitioning for the writ.” *Horton*, 43 P.3d at 616–17. This Court must issue a writ of habeas corpus forthwith and, upon return of the writ, set a hearing within five days. C.R.S. § 13-45-103(1); *Cardiel v. Brittan*, 833 P.2d 748, 751–52 (Colo. 1992).

- II. **Ms. Martinez is entitled to immediate release from custody for her contempt convictions, which are void.**
  - A. **The sentencing court never acquired jurisdiction over any of Ms. Martinez’s Municipal Contempt cases.**
    1. **Jurisdiction over a criminal prosecution cannot attach without a charging document.**



For a court’s jurisdiction to attach to a criminal case, including a municipal case, a substantively adequate charging document must be served on the defendant. Where no charging document exists at all, as in Ms. Martinez’s case, jurisdiction cannot attach.

Every accused person has the right to be informed of the nature and cause of the accusation against them, under the Sixth Amendment and Due Process Clause of the United States Constitution, as well as article II, section 16 and article II, section 25 of the Colorado Constitution. *Rosen v. United States*, 161 U.S. 29, 33–34 (1896); *Hamling v. United States*, 418 U.S. 87, 117 (1974). To effectuate these rights, the state must produce a sufficient charging document to the defendant. A charging document is sufficient if it “fairly informs a defendant of the charge against which he must defend, and . . . enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *Hamling*, 418 U.S. at 117. When a charging document is substantively defective, the court lacks jurisdiction over the defendant and any conviction entered on the associated charge is void. *People v. Curtis*, 498 P.3d 677, 681 (Colo. App. 2021).

Municipal criminal defendants are no less entitled to charging documents that fairly inform them of the charge they must defend against and enable them to protect themselves from being prosecuted again for the same offense. *Alessi v. Municipal Court*, 556 P.2d 87, 88-89 (Colo. App. 1976); *City of Colo. Springs v. Forance*, 776 P.2d 1107, 1110 (Colo. 1989). With the constitution as a backstop, the sufficiency of a municipal charging document is measured against the Colorado Municipal Court Rules of Procedure, which bind all municipal courts in Colorado. C.M.C.R. 201; Colo. Const. Art. VI, § 21; C.R.S. 13-10-103; *Hardamon v. Municipal Court*, 497 P.2d 1000, 1002 (Colo. 1972); *see also Mulkey v. Sullivan*, 753 P.2d 1226, 1230 (Colo. 1988) (courts must interpret Colorado Municipal Court Rules of Procedure to protect individual constitutional rights).

A charging document that does not exist cannot fulfill its substantive constitutional purposes. The Colorado Municipal Court Rules of Procedure explicitly require the production of a charging document, in the form of a complaint. C.R.M.P. 204(a). Prosecution “shall be commenced” in one of four ways. *Id.* Each of those four methods of initiating prosecution involves a complaint; the only difference between them lies in how the complaint relates chronologically to the summons. *Id.* A summons is replaceable with a warrant under limited circumstances, but there is no substitute for a complaint. C.R.M.P. 204(b)(2). Rule 204 also requires complaints to be filed “with the court,” presuming that the court would never be filing a criminal prosecution.

**2. None of Ms. Martinez’s contempt prosecutions were initiated by a charging document.**

Ms. Martinez was prosecuted for 21 counts of Municipal Contempt under P.M.C. 1-6-12. Yet there is not a single charging document for that alleged crime in her municipal court case files.

To provide fair notice of the charge to be defended against, the charging document must be issued before a person is convicted of the charge. U.S. Const. amend. VI; amend. XIV; Colo. Const. art. II, §16; art. II, § 25. The charging document must also contain certain pieces of information delineated by the Colorado Municipal Court Rules of Procedure. C.R.M.P. 204(b)(4); *Alessi*, 556 P.2d at 88-89. A municipal charging document “shall contain the name of the defendant; the date and approximate location of the offense; identification of the offense charged, citing the charter or ordinance section alleged to have been violated; and a brief statement or description of the offense charge, which statement or description shall be sufficient if it states the type of offense to which the charter or ordinance relates.” C.R.M.P. 204(b)(4).

Here, fair notice also requires a notation of the statutory subsection of P.M.C. § 1-6-12 because the elements that would need to be proved to convict someone of “Contempt of Court” under each of the four subsections are substantially different. Colorado tests the sufficiency of charging documents against the fundamental objectives they serve, rather than technical requirements. *People v. Williams*, 984 P.2d 56, 60 (Colo. 1999). What is required in a charging document may change depending on the text of the law defining the offense. *Id.* at 62. The language of P.M.C. 1-6-12(a) and the wide variation in the elements to be proved demands a citation to the subsection. A person defending against a charge brought under subsection 1-6-12(a)(2) must prepare to defend against the allegation that they had no “adequate excuse” for failing to obey, while a person defending against a charge brought under subsection 1-6-12(a)(3) may need to prepare themselves against a charge that their conduct “obstruct[ed]” or “interfere[d]” with the administration of justice. Defense strategy would vary widely depending on which of the four crimes constituting Municipal Contempt was charged. Additionally, as a practical matter, Municipal Contempt under P.M.C. § 1-6-12 could be charged for a wide variety of behavior, including failure to respond to subpoena. A person faced with a charge of “Contempt of Court,” with only a citation to the overarching ordinance, has no meaningful ability to prepare a defense.

Here, with respect to Ms. Martinez, Pueblo did not prepare and serve a complaint for the alleged Municipal Contempt “charges.” Instead, these prosecutions were commenced by notations on the court docket, in clear violation of Rule 204(a). Because no charging document exists for Ms. Martinez’s Municipal Contempt prosecutions *at all*, none of the required information was provided. Indeed, no document provided by the Pueblo Municipal Court regarding contempt charges, regardless of how it is styled, fulfilled the requirements of the Rules or the Constitution. The Municipal Contempt “charges” that Ms. Martinez faced are mentioned in the court file in three types of documents: the mittimus, plea agreements, and a “pretrial packet.” A mittimus or signed plea agreement certainly cannot be said to provide fair notice of the charge to be defended against, as these documents are issued either at the moment a person agrees to plead guilty or afterward. Court comments are not usually produced to the defendant or defense counsel, so they can provide no fair notice of the charges faced. In this particular case, the court comments provided to court appointed counsel were incomplete; entries appear in the copy retrieved for undersigned counsel on September 11, 2024, that do not appear in the copy apparently retrieved for court-appointed counsel on July 31, 2024. Even if they were, most of the

court comments that appear to have spawned these charges do not even mention the word contempt, let alone any citation to the Municipal Contempt ordinance or any of its subsections.

Even those documents produced before the conviction and to the defendant do not provide adequate information under Rule 204(b)(4) or the Constitution. What appear to be proposed plea agreements used as setting slips, documenting the defendant's failure to appear or desire to reset, like the one dated August 14, 2024, do not contain dates or approximate locations of the violation or any citation to the ordinance alleged to have been violated. Some of them contain citations to a Pueblo ordinance, but not an ordinance that defines a municipal crime. Many of the documents titled "Mittimus," but clearly used as setting slips found in Ms. Martinez's file, such as the "Mittimus" dated April 22, 2024, cite P.M.C. § 1-2-1(c), an ordinance that authorizes the Municipal Court to impose alternative sentencing instead of jail. It would be impossible to prepare a defense from this information, or to show that a prosecution stemming from any particular conduct had already been resolved.

The "pretrial packet," which undersigned counsel has been informed is typically issued to defense counsel at the time of appointment, contains no citation to any ordinance, let alone to the specific subsection. This is particularly problematic given the approximate location given. The approximate location given on the "pretrial packet" for each count of contempt is "200 Main Street," the address of both the Municipal Court and the Municipal Probation Department. Whether this "Contempt of Court" is charged for failure to appear at a court date, failure to attend a probation appointment, or some entirely separate behavior at the Municipal Courthouse is indecipherable, especially for someone like Ms. Martinez, who was on probation at the time some of her Municipal Contempt cases arose.

No complaint was ever issued to Ms. Martinez for any charge of Municipal Contempt; for that reason alone, the Municipal Court's jurisdiction never attached, and her resulting convictions are invalid. To the extent any other document is argued to be a substantive replacement for a complaint, none contain the information required to fulfill a charging document's constitutional purposes. Ms. Martinez continues to be detained unlawfully and is entitled to immediate release from the Pueblo County Jail.

## **CONCLUSION**

The Pueblo Municipal Court never acquired jurisdiction over the 21 cases of Municipal Contempt that now hold Ms. Martinez in jail, because prosecution was not constitutionally initiated. A criminal charge cannot spring from thin air or from a court clerk's notation in a docket. The 240-day sentence that Ms. Martinez is currently serving, at this stage entirely for missed court dates, stemming from convictions the court had no jurisdiction to impose, cannot stand. Her continued illegal and unconstitutional incarceration is in violation of the Sixth Amendment and Due Process Clauses of the United States Constitution, article II, section 16 and article II, section 25 of the Colorado Constitution, and C.R.S. § 12-45-101.

Ms. Martinez respectfully requests that this Court issue a Writ of Habeas Corpus directing Sheriff Lucero to make return on the Writ and cause Ms. Martinez to be brought before this Court forthwith for the Court to determine the legality of Sheriff Lucero's continued incarceration of Ms. Martinez.

Date: October 8, 2024

Respectfully submitted,

/s/ Emma Mclean-Riggs

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