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| District Court, Pueblo County 501 North Elizabeth Street Pueblo, Colorado 81003 | DATE FILED October 8, 2024 5:33 PM FILING ID: 2709425E68F23 CASE NUMBER: 2024CV30488 <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> |
| MICHAEL TAFOYA, Petitioner v. DAVID LUCERO, Sheriff of Pueblo County, State of Colorado Respondent | |
| Attorneys for Petitioner: Timothy R. Macdonald, #29180 Emma Mclean-Riggs, #51307 Anna I. Kurtz, #51525 Sara R. Neel, #36904 American Civil Liberties Union Foundation of Colorado 303 E. 17 th Avenue, Suite 350 Denver, CO 80203 tmacdonald@aclu-co.org emcleanriggs@aclu-co.org akurtz@aclu-co.org sneel@aclu-co.org (303) 777-5482 | Case No. Div. |
| PETITION FOR WRIT OF HABEAS CORPUS | |

The Petitioner, Michael Tafoya, through counsel, petitions the Court for a writ of habeas corpus pursuant to C.R.S. § 13-45-103(2). In support of his petition, Mr. Tafoya states:

INTRODUCTION

Mr. Tafoya 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 he 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. Mr. Tafoya was charged with and convicted of 17 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 his immediate release.

JURISDICTION AND VENUE

This Court has jurisdiction to hear Mr. Tafoya’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

Michael Tafoya is a 47-year-old son and brother currently incarcerated in the Pueblo County Jail due to 17 convictions for Municipal Contempt, imposed for missed court dates in Pueblo municipal cases E114155, E132096, E134375, E139740, and U57755. Mr. Tafoya is serving a municipal jail sentence of 315 days—more than 10 months. He has been in custody since June 24, 2024.

David Lucero is the Sheriff of Pueblo County. He is the Colorado official responsible for Mr. Tafoya’s imprisonment. He is therefore the proper respondent to Mr. Tafoya’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 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.

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.¹

¹ “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.

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 in Mr. Tafoya’s case, the reality of the municipal court’s practice under the Ordinance falls short of even these inadequate contemplated procedures.

Mr. Tafoya Pleads Guilty to Four Uncharged Municipal Contempt Cases

Mr. Tafoya was first cited in the above-captioned cases in May 2020. At the time, Mr. Tafoya was inconsistently housed and inconsistently employed, as he remained throughout the municipal cases from which this Petition arises. Mr. Tafoya was cited for trespass and resisting arrest. Trespass 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. §§ 11-1-406; 11-1-103(c). Resisting arrest is a Class 1 municipal crime, punishable by up to 364 days in jail and up to a \$1000 fine. P.M.C. §§ 11-1-501(c); 11-1-103(b). The City, consistent with Colorado Municipal Court Rules of Procedure 204(a), commenced prosecution of Mr. Tafoya for the alleged offenses by filing a Uniform Summons and Complaint, which contained Mr. Tafoya’s name, the date of the alleged offense, its approximate location, the name of the ordinance he was being charged under, and citations to that ordinance. The Municipal Court assigned the matter case number E114155.

Mr. Tafoya appeared in court five times on E114155, in June 2020, July 2020, and August 2020. Mr. Tafoya then missed his September 15, 2020, court date. The Municipal Court issued a bench warrant. On September 18, 2020, Mr. Tafoya came into court to clear his warrant, and another continuance was granted. On September 29, 2020, Mr. Tafoya pled not guilty and set the citation for trial. Mr. Tafoya attended court in October 2020. His trial date was subsequently moved due to the Municipal Court’s closure in December 2020 in response to the COVID-19 pandemic. The Municipal Court mailed notice of the changed court date to a prior address.

On January 4, 2021, Mr. Tafoya called the Municipal Court to find out his next court date. He was set for jury trial on January 28, 2021. Due to the lack of stability in his life, Mr. Tafoya had extreme difficulty remembering and tracking his court dates. He did not come to court on January 28, 2021, but called the Municipal Court that afternoon to ask when his jury trial was set for. He was told it had been that morning, and that he would need to appear to clear the warrant for his arrest. A clerk wrote “Def FTA trial BW issue” in the electronic court comments. A warrant issued. The Pueblo Municipal Court, however, also did something highly unusual: the court, sua sponte, initiated a criminal prosecution against Mr. Tafoya under the Municipal Contempt ordinance. The FTA notation created E114155FC, charging a Class 1 municipal offense. For missing court on January 28, 2021, Mr. Tafoya was now exposed to an additional 364 days in jail. Mr. Tafoya was not provided a charging document for the alleged Municipal Contempt offense.

Nearly two years later, on December 12, 2022, Mr. Tafoya was cited for theft from merchant, 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 Mr. Tafoya for the alleged offenses by filing a Uniform Summons and Complaint, which contained Mr. Tafoya's name, the date of the alleged offense, its approximate location, the name of the ordinance he was being charged under, and citations to that ordinance. The Municipal Court assigned the matter case number E132096. He was issued a personal recognizance bond and a new court date for E114155 and E132096.

Mr. Tafoya missed court on January 10, 2023. A court clerk wrote in the comments "Def FTA WR BW issue per court policy." This notation created another Class 1 municipal crime, E114155FD. Mr. Tafoya was not provided a charging document for the alleged Municipal Contempt offense. Mr. Tafoya had contact with police in early March 2023 and he was issued a personal recognizance bond, as well as a new court date. On March 21, 2023, Mr. Tafoya was cited a second time for theft from merchant. The City, consistent with Colorado Municipal Court Rule of Procedure 204(a), commenced prosecution of Mr. Tafoya for the alleged offenses by filing a Uniform Summons and Complaint, which contained Mr. Tafoya's name, the date of the alleged offense, its approximate location, the name of the ordinance he was being charged under, and citations to that ordinance. The Municipal Court assigned the matter case number U57755.

On March 30, 2023, Mr. Tafoya was cited a third time with theft from merchant. Because this theft from merchant charge was his third, Mr. Tafoya was subject to the Pueblo Municipal Code's habitual offender ordinance, which makes otherwise non-jailable Class 2 municipal crimes punishable as Class 1 municipal crimes. P.M.C. § 1-2-1(g). The City, consistent with Colorado Municipal Court Rule of Procedure 204(a), commenced prosecution of Mr. Tafoya for the alleged offenses by filing a Uniform Summons and Complaint, which contained Mr. Tafoya's name, the date of the alleged offense, its approximate location, the name of the ordinance he was being charged under, and citations to that ordinance. The Municipal Court assigned the matter case number E134375.

On April 4, 2023, Mr. Tafoya missed his court date. A court clerk wrote "Def FTA BW issue per court policy," in the electronic comments. Because Mr. Tafoya had now been charged with two violations of the Pueblo Municipal Code, with different citation numbers, this notation created E114155FE and E132096FC, two more Class 1 municipal crimes. He had missed only one court date. Mr. Tafoya was not provided a charging document for either alleged Municipal Contempt offense. At this point, Mr. Tafoya faced more jail time – almost three years – on his Municipal Contempt charges than on the underlying charges for which he missed court.

On June 2, 2023, Mr. Tafoya was arrested. On the advisement docket, he took his first plea. He pled no contest to all four open citations, E114155, E132096, U57755, and E134375, as well as four counts of Municipal Contempt, E114155FC, E114155FD, E114155FE, and E132096FC. He was sentenced to six months of probation, a total of \$3880 in fines, and 170

hours of mandatory community service. Each Municipal Contempt charge carried a \$100 fine and 10 hours of mandatory community service.

Mr. Tafoya Pleads Guilty to Four Additional Uncharged Municipal Contempt Cases for Missing a Single Court Date

On July 7, 2023, Mr. Tafoya missed another court date. A court clerk wrote “Def FTA HR BW issue per court policy,” in the electronic comments. From this notation, four more Class 1 municipal offenses - E114155FF, E132096FD, E134375FC, and U57755FC - appeared. Mr. Tafoya was not provided a charging document for any of the alleged Municipal Contempt offenses. For missing a single court date, Mr. Tafoya faced an additional nearly four years in county jail.

On January 8, 2024, Mr. Tafoya was cited for resisting arrest, a Class 1 municipal crime, and possession of drug paraphernalia. Possession of drug paraphernalia 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. §§ 11-1-609(c); 11-1-103(c). The City, consistent with Colorado Municipal Court Rule of Procedure 204(a), commenced prosecution of Mr. Tafoya for the alleged offenses by filing a Uniform Summons and Complaint, which contained Mr. Tafoya’s name, the date of the alleged offenses, their approximate location, the name of the ordinance he was being charged under, and citations to those ordinances. The Municipal Court assigned the matter case number E139740. As a result of this citation, Mr. Tafoya was arrested.

Mr. Tafoya appeared on the advisement docket on January 9, 2024, where he entered his second plea. He pled no contest to violating his probation conditions, and probation was revoked and regranting for six months. He also pled no contest in the new citation, E139740. For resisting arrest, he was sentenced to a \$150 fine and 25 hours of mandatory community service. For possession of drug paraphernalia, he was sentenced to a \$75 fine and 25 hours of mandatory community service. Mr. Tafoya also pled guilty to all four open Municipal Contempt charges - E114155FF, E132096FD, E134375FC, and U57755FC. For each, Mr. Tafoya was sentenced to a \$150 fine, 10 hours mandatory community service, and 45 days in jail suspended. He was subject to a total of 260 hours of community service and a total of \$875 in additional fines. For missing a single court date, July 7, 2023, Mr. Tafoya was now facing 180 days in jail, which would be imposed if Mr. Tafoya – unhoused, unemployed, and without a phone – did not successfully complete probation.

Mr. Tafoya is Sentenced to 315 Days in Jail Solely as a Result of Uncharged Municipal Contempt Cases

On January 12, 2024, Mr. Tafoya was granted a payment plan and was given probation paperwork. On January 16, 2024, Mr. Tafoya reported to probation. On February 15, 2024, Mr. Tafoya did not come to his review date. A court clerk wrote in the notes: “Def FTA warrant to issue per court policy. Advised Kramer [a probation officer with the Pueblo Municipal Court] to file motion to revoke probation.” From this notation, E114155FG, E132096FE, E134375FD and

U57755FD, four more Class 1 municipal offenses were created. Mr. Tafoya was not provided a charging document for any of the alleged Municipal Contempt offenses.

In April 2024, Mr. Tafoya was contacted by police and issued a new court date. On April 30, 2024, Mr. Tafoya attended his court date. He missed the next date, set for May 15, 2024. A court clerk wrote in the electronic comments: “BW issued per Judge.” This notation called into existence E114155FH, E132096FF, E134375FE, E139740FC, and U57755FE, five more Class 1 municipal offenses. Mr. Tafoya was not provided a charging document for any of the alleged Municipal Contempt offenses. At this point, Mr. Tafoya faced almost nine years in county jail, stemming from two missed court dates.

On June 24, 2024, Mr. Tafoya was arrested. On June 26, he took his last plea. He pled no contest to violating his probation in E114155, E132096, E134375, E139740, and U57755. His fines and community service were converted to jail. His fines and community service were also converted to jail in the original four cases of Municipal Contempt he pled to in June 2023 - E114155FC, E114155FD, E114155FE, and E132096FC. The plea imposed the previously suspended 180 day jail sentence, but only on E114155FF, one of the Municipal Contempt “charges” issued for July 7, 2024, rather than the days being divided evenly among E114155FF, E132096FD, E134375FC, and U57755FC, as they had been when he was originally sentenced on January 9, 2024. In addition, the plea imposed 45 days of jail running concurrently in E134375FC, U57755FC, and E132096FD.² For missing court on February 15, 2024, Mr. Tafoya was sentenced to 60 days consecutive in E114155FG, and 15 days each, running concurrently, in E132096FE, E134375FD, and U57755FD. For missing court on May 15, 2024, Mr. Tafoya was sentenced to 75 days running consecutively in E114155FH, and 15 days running consecutively in E134375FE, E139740FC, and U57755FE.³ In total, the plea imposed 180 days for missing court on July 7, 2023, in E114155FF, as well as at least 135 more days, for the same missed court date, running concurrently, increasing the sentence originally imposed on January 9, 2024. The plea also imposed 135 days, running consecutively to the previously suspended 180, for two missed court dates: February 15, 2024, and May 15, 2024.

In total, Mr. Tafoya was sentenced to 315 days in jail. An additional 225 days were to run concurrently with those 315 days. The entirety of Mr. Tafoya’s sentence stems from prosecutions initiated by comments written by the court clerk in the electronic docket, without charging documents sufficient to invoke the jurisdiction of the sentencing court.

Mr. Tafoya has served over three months in the Pueblo County Jail. In late September, Mr. Tafoya’s father’s health took a sharp decline. He had been suffering from dementia and chronic obstructive pulmonary disease. In the last week of September, he became unresponsive,

² In the court comments, E132096FD is listed twice. In the first mention, the sentence is specified as “45 days suspended on 1/10/24, imposed concurrent,” and in the second “15 days jail concurrent.” It is unclear which is the accurate sentence.

³ Because E132096FF appears on the mittimus issued June 26, 2024, Mr. Tafoya was likely sentenced on this case as well, but a specific sentence does not appear in the court comments.

and his children came to say goodbye. Mr. Tafoya's sister contacted the Pueblo Municipal Court on September 30, 2024 to request a furlough for Mr. Tafoya to do the same. The hospice team caring for Mr. Tafoya's father likewise contacted the Court to request Mr. Tafoya's temporary release. On the evening of October 1, 2024, the Municipal Court released Mr. Tafoya on a three-hour furlough. Mr. Tafoya sat with his dying father as long as he could, and then checked back into the Pueblo County Jail, as ordered. His father passed, without him, about an hour later. Mr. Tafoya's father's memorial service is scheduled for October 10, 2024. Mr. Tafoya remains in the Pueblo County Jail.

LAW AND ARGUMENT

I. Mr. Tafoya 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,” *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,” C.R.S. § 13-45-103(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.

Indeed, 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*, 205 P.2d 787, 793 (Colo. 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, Mr. Tafoya 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. Brittian*, 833 P.2d 748, 751–52 (Colo. 1992).

II. Mr. Tafoya is entitled to immediate release from custody for his contempt convictions, which are void.

A. The sentencing court never acquired jurisdiction over any of Mr. Tafoya’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 Mr. Tafoya’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.* Notably, while 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 Mr. Tafoya’s contempt prosecutions were initiated by a charging document.

Mr. Tafoya was prosecuted for 17 counts of Municipal Contempt under P.M.C. 1-6-12. Yet there is not a single charging document for that alleged crime in his Municipal Court case file.

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 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 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 Mr. Tafoya, Pueblo did not prepare, file, or 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 Mr. Tafoya’s Municipal Contempt prosecutions *at all*, none of the required information was provided. Indeed, no papers provided by the Pueblo Municipal Court regarding contempt charges, regardless of how the document was styled, fulfilled the requirements of the Rules or the Constitution. The Municipal Contempt “charges” that Mr. Tafoya faced are mentioned in the court file in six types of documents: the mittimus, plea agreements, bench warrants, setting slips, and “pretrial packets.” 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. 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 produced to the defendant do not provide adequate information under Rule 204(b)(4) or the Constitution. Bench warrants ordering Mr. Tafoya’s arrest on contempt charges fail to give a date or approximate location of the offense, and while they provide a citation to *a* Pueblo ordinance, it is not an ordinance that defines a municipal crime. All Mr. Tafoya’s bench warrants listing a “Contempt” charge list 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. What appear to be proposed plea agreements used as setting slips, documenting the defendant’s failure to appear or desire to reset, do not contain dates or approximate locations of the violation or any citation to the ordinance allegedly violated.

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 the packet lists. The approximate location given 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 Mr. Tafoya, who was on probation at the time some of his Municipal Contempt cases arose.

No complaint was ever issued to Mr. Tafoya for any charge of Municipal Contempt; for that reason alone, the Municipal Court’s jurisdiction never attached, and his 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. Mr. Tafoya 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 17 cases of contempt of court that now hold Mr. Tafoya in jail, because prosecution was not constitutionally initiated. A criminal charge cannot spring from a court clerk's notation in a docket or a judge's handwritten notation at the bottom of a proposed plea agreement. The 315-day sentence that Mr. Tafoya is currently serving, entirely for missed court dates, stemming from convictions the court had no jurisdiction to impose, cannot stand. His 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.

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

Date: October 8, 2024

Respectfully submitted,
/s/ Emma Mclean-Riggs

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