

District Court, Pueblo County 502 North Elizabeth Street Pueblo, Colorado 81003	DATE FILED October 2, 2024 1:30 PM FILING ID: B8FCC23E1065B CASE NUMBER: 2024CV30471
DEAN LOPEZ, 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 th Avenue, Suite 350 Denver, CO 80203 tmacdonald@aclu-co.org emcleanriggs@aclu-co.org akurtz@aclu-co.org (303) 777-5482	Case No. Div.
PETITION FOR WRIT OF HABEAS CORPUS	

The Petitioner, Dean Lopez, 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. Lopez states:

INTRODUCTION

Mr. Lopez 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 purported 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. Lopez was charged with and convicted of 31 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. Lopez’s petition for writ of habeas corpus pursuant to C.R.S. § 13-45-101. 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

Dean Lopez is a 55-year-old father and grandfather currently incarcerated in the Pueblo County Jail due to 31 convictions of Municipal Contempt, imposed for missed court dates. These 31 cases originated from Pueblo municipal citations E109815, E114609, E118619, E123255, E138682, E138739, and E138953. Mr. Lopez is serving a municipal jail sentence of 575 days—over a year and a half. Mr. Lopez has been in custody since January 16, 2024.

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

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

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:

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.

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

Mr. Lopez Pled Guilty to 335 Days of Suspended Jail in Uncharged Municipal Contempt Cases

Mr. Lopez was first cited in the above-captioned cases in December 2019. Mr. Lopez was cited for trespass, 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. §§ 11-1-406; 11-1-103(c). The City, consistent with the Colorado Municipal Court Rules of Procedure Rule 204, commenced prosecution of Mr. Lopez for the alleged trespass offense by filing a Uniform Summons and Complaint, which contained Mr. Lopez’s name, the date of the alleged trespass offense, its appropriate location, the name of the ordinance he was being charged under, and a citation to that ordinance. The matter was assigned the case number E109815.

On May 6, 2020, Mr. Lopez was due in court on E109815. When he missed his court date, the Pueblo Municipal Court, upon the request of the City Attorney, issued a warrant for his arrest. The Pueblo Municipal Court, however, also did something highly unusual: the court, sua sponte, initiated a criminal prosecution against Mr. Lopez under the Municipal Contempt ordinance. Mr. Lopez’s first contempt citation was initiated by a handwritten note, on the bottom of a proposed plea agreement prepared by the City Attorney. The City Attorney wrote at the top of the proposed plea agreement that Mr. Lopez had failed to appear on May 6, 2020. At the bottom of the proposed plea agreement there is a space for the defendant’s signature, the City Attorney’s pre-filled signature, and next to it, a space for the Municipal Court Judge to identify whether the plea is approved or disapproved, and then a space for the judge’s signature. In this case, the Court signed the proposed plea (even though Mr. Lopez had not agreed to the plea), noted that Mr. Lopez had failed to appear, circled “approved,” and wrote “issue contempt – default.” This notation called into existence case number E109815FC. For missing court on May 6, 2020, Mr. Lopez was now exposed to 364 days in jail, despite never having been charged by the City with a crime that carried any jail time at all. Mr. Lopez was not provided a charging document for the alleged Municipal Contempt offense.

In June 2020, Mr. Lopez was cited for living in an unsafe structure, a Class 1 municipal offense. P.M.C. §§ 4-8-4; 4-8-8. He was living in a condemned building, as he did not have anywhere else to go. The City commenced prosecution, in compliance with C.R.M.P. 204(a), for the alleged offense of living in an unsafe structure by filing a Uniform Summons and Complaint, which contained Mr. Lopez’s name, the date of the alleged offense, its appropriate location, the name of the ordinance he was being charged under, and a citation to that ordinance. The Municipal Court assigned the matter case number E114609. At that time, Mr. Lopez was unhoused, as he remained throughout these cases.

On July 7, 2020, after Mr. Lopez had missed another court date, the Court wrote in the electronic comments: “Def FTA for WR. Issue contempt warrant with no bond hold.” This

notation created case number E109815FD, exposing Mr. Lopez to another 364 days in jail. Mr. Lopez was not provided a charging document for this alleged Municipal Contempt offense. Mr. Lopez was not exposed to any jail time when he was first charged in E109815 (for trespass), and only exposed to 364 days when he was charged in E114609 (for living in an unsafe structure). Because of these two missed court dates alone, Mr. Lopez faced two years in county jail, a potential sentence greater than the maximum time that can be imposed for a first-degree misdemeanor in state court.

Mr. Lopez was contacted by the Pueblo Police Department in August of 2020. They issued him a personal recognizance bond and a new court date, a common practice in the City. The properly charged trespass and living in an unsafe structure cases were both listed on the bond he was issued, but only one court date and time was specified. The Municipal Contempt charges were not listed on the bond. Mr. Lopez's court date was set for September 29, 2020, and he did not appear.

The following notation appears in the electronic comments: "Def FTA warrant return, Judge Sikes issues warrant, contempt with no bond hold." This notation, written by the court clerk, created two new cases based on contempt charges – E109815FE and E114609FC – both Class 1 municipal offenses. Mr. Lopez was not provided a charging document for these alleged Municipal Contempt offenses. Mr. Lopez had missed a single court date, but because he had two underlying citations, he was exposed to two more years in the county jail. At this point, Mr. Lopez was facing almost five years in county jail, and only one of the years was a result of a crime the City charged.

The Pueblo Police Department issued Mr. Lopez another personal recognizance bond and a new court date in November of 2020. The Municipal Court closed for the month of December, due to the COVID-19 pandemic. The Municipal Court mailed notice of his new court date to Mr. Lopez using a prior physical address. Mr. Lopez was still unhoused at that time and moving from place to place.

On January 11, 2021, Mr. Lopez was again charged with trespass. The City commenced prosecution for the alleged trespass offense by filing a Uniform Summons and Complaint, which contained Mr. Lopez's name, the date of the alleged trespass offense, its appropriate location, the name of the ordinance he was being charged under, and a citation to that ordinance, and assigned case number E118619. Because this trespass charge was his third charge, Mr. Lopez was 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 person has two prior convictions for the same crime. P.M.C. § 1-2-1(g). Mr. Lopez then faced up to almost two years in jail on the three alleged municipal offenses for which he was actually charged and up to almost four more years in jail on the Municipal Contempt prosecutions for failing to appear that were notated in electronic court comments, without any proper charging documents.

On January 25, 2021, Mr. Lopez called the Municipal Court to find out his next court date, which he learned was set for the following day. Unfortunately, as a result of his ongoing

struggle to survive on the street, Mr. Lopez was unable to appear for his January 26, 2021 court date. On January 26, 2021, a clerk wrote in the electronic comments: “Def FTA BW issue per court policy.” This notation appears to have created two new cases – E109815FF and E11409FD – both Class 1 municipal charges. Mr. Lopez was not provided a charging document for these alleged Municipal Contempt offenses. Mr. Lopez then faced almost eight years in county jail, almost all of which stemmed from improper Municipal Contempt prosecutions.

In March of 2021, the Pueblo Police Department again issued Mr. Lopez a personal recognizance bond, instead of taking him to court to face a judge on bail, and issued a summons for a court appearance on March 23, 2021. Mr. Lopez missed this court date. Again, a clerk wrote in the electronic comments: “Def FTA warrant return, Judge Jones issues warrant, contempt with no bond hold.” This notation created two more Class 1 municipal charges – E109815FH and E114909FD. Mr. Lopez was not provided a charging document for these alleged Municipal Contempt offenses. Mr. Lopez now faced almost ten years in the county jail, almost all of them for crimes that had never been charged.

In July of 2021, Mr. Lopez received another personal recognizance bond from the Pueblo Police Department, summoning him to court on August 17, 2021. Like all the previous bonds, that bond does not mention any contempt charges. Mr. Lopez missed this court date. Again, the notation of a court clerk – “Def FTA BW issued per court policy” – created three more criminal charges for Municipal Contempt – E109815, E114609FF, and E118619FC. These three separate crimes were all charged based on the same missed court date. Mr. Lopez was not provided a charging document for these alleged offenses. Mr. Lopez faced almost thirteen years in the county jail, almost all for uncharged crimes.

Mr. Lopez was still unhoused. In September 2021, he was again charged with trespass, which was treated as a Class 1 municipal offense because of his potential status as a habitual offender. He had no further contact with police until August of 2022, when he was given another personal recognizance bond and another new court date. On the morning of his next court date, September 20, 2022, Mr. Lopez called the Municipal Court to ask if he could change the date of his next court appearance, as he had secured work that required him to be out of town. The clerk said no, and when Mr. Lopez did not come to court, the clerk wrote “Def FTA WR BW to issue per court policy.” And once again, Class 1 Municipal Contempt charges resulted from the notation – four of them this time, E109815FI, E118619FD, E114609FG, and E123255FC. Although he had been set only one court date, he received four new citations. Again, Mr. Lopez was not provided a charging document for these four new alleged Municipal Contempt offenses. Mr. Lopez now faced almost seventeen years in the county jail, predominantly as a result of the improper Municipal Contempt notations.

Mr. Lopez was contacted again by the Pueblo Police Department in October 2022. He was issued a personal recognizance bond and issued a new court date for October 25, 2022, with no mention of the contempt charges he was facing. Mr. Lopez, who was still unhoused, missed the October 25 court date. A clerk noted “Def FTA WR FW issue per court policy,” and four more Class 1 municipal offenses appeared on the electronic record – E109815FJ, E114609FH,

E118619FE, and E123225FD. Once again, Mr. Lopez was not provided a charging document for these four new alleged Municipal Contempt offenses for missing the single October court date. Mr. Lopez now faced twenty-one years in the county jail, more than he could face on most felony charges and almost all of it for missing court dates while he was unhoued.

Mr. Lopez was arrested around November 5, 2022, and detained in the Pueblo County Jail. On November 7, 2022, when Mr. Lopez was due to appear in municipal court, the Pueblo Municipal Court's computer system was down so Mr. Lopez was released on a personal recognizance bond. His next court date was set for November 16, 2022. On November 7, 2022, at the time of his release, Mr. Lopez received his first piece of paperwork with any reference to the counts of contempt he then faced: an appearance bond issued by the Pueblo County Jail. The document contained a handwritten notation that said "contempt." The bond did not tell him how many counts he was facing, the date, location, or nature of the alleged contempt, or reference any ordinance or statute.

Still unhoued after his release from jail, Mr. Lopez missed his November 16, 2022 court date. Two days later, the court clerk wrote in the electronic notes "Def FTA'd mandatory pretrial, warrant requested," and four more Class 1 municipal offenses were created – E109815FK, E114609FG, E119619FF, and E12355FE. Mr. Lopez was not provided a charging document for these four new alleged contempt offenses stemming from the November 16 missed court date. Mr. Lopez now faced almost twenty-five years in the county jail.

Mr. Lopez was arrested again on May 9, 2023. This time, the Municipal Court held a hearing and set bail that Mr. Lopez was unable to pay, as he was still living in extreme poverty. On May 17, 2023, Mr. Lopez pled guilty in three trespass cases, one unsafe structure case, and twenty-three cases of contempt that had never been charged. He was facing twenty-five years in the county jail, with only three possible years of that time stemming from crimes that the City had charged. The City Attorney offered Mr. Lopez a plea deal of twelve months of probation on every improper contempt charge, each with a \$100 fine, ten hours of mandatory community service, and 15 days of jail suspended pending his completion of probation. Altogether, he agreed 12 months' probation, an unaffordable \$3,350 in fines plus court costs, 335 mandatory community service hours, and 335 days of suspended jail. All the suspended jail time – which would be imposed if Mr. Lopez, unhoued, unemployed, and with no access to transportation, did not finish probation – came from the Municipal Contempt charges. None of the contempt cases had been charged by the City Attorney and no charging document had ever been filed with the court.

Facing Nearly a Decade in County Jail, Mr. Lopez Accepted An Illegal 575 Day Jail Sentence

On August 1, 2023, Mr. Lopez met with Pueblo Municipal Court Probation. He had no phone, no place to live, and no employment. The City granted a payment plan, which required Mr. Lopez to pay the City \$7,080 – presumably his pled-to fines and court costs – within the following three months, by November 1, 2023. There is some confusion in the record as to when in August 2023 Mr. Lopez was expected to come to court for his review date. On August 23,

2023, Mr. Lopez appeared, and his cases were set for a probation revocation hearing. Another hearing was set for September 29, 2023.

On September 29, 2023, Mr. Lopez called the court clerk and said he would be late to the hearing. The court clerk marked him as failing to appear and notated in the electronic comments: “Def FTA warrant to issue, \$250 cash only bond per case.” Once again, four more Class 1 municipal charges for contempt appeared in Mr. Lopez’s record – E109815FL, E114609FJ, E118619FG, and E123255FF. Mr. Lopez was not provided a charging document for these four new alleged contempt offenses for missing the September 29 court date. Mr. Lopez faced not only his suspended jail sentence of 335 days, but also four more years in county jail, because he had missed a single additional court date.

Pueblo Police contacted Mr. Lopez in October of 2023 and issued another court date, November 21, 2023. Mr. Lopez’s life continued to be unstable; he was charged with trespassing on November 7, 2023 (E138682), with trespassing and living in an unsafe structure on November 9, 2023 (E139739), and trespassing on November 20, 2023 (E138953). On November 21, 2023, Mr. Lopez did not appear for his court date. He called the court that morning asking to reschedule but was told he could not. Although the court comments include “Def FTA WR BW issue per court policy,” no contempt cases appear to have been created by this notation.

On December 5, 2023, Mr. Lopez appeared in court and all of his cases were set for hearing on December 20, 2023. According to the court file, on December 18, 2023, Mr. Lopez called the court and asked for his court date. On December 20, 2023, Mr. Lopez did not come to court. On December 21, 2023, a court clerk wrote in the electronic comments: “BW issued per Judge.” This time, four new Municipal Contempt charges were created by the notation – E109815FM, E114609FK, E119619FH, and E123255FG. Mr. Lopez was not provided a charging document for these four new alleged offenses for missing the single December court date. Mr. Lopez now faced his suspended jail sentence of 335 days, almost four years on charges filed by the City, and eight additional years in jail for two missed court dates.

Mr. Lopez was arrested less than a month later, on January 16, 2024. Less than a week after that, while incarcerated, Mr. Lopez took a plea deal that included 31 counts of Municipal Contempt. The plea agreement, as approved and imposed, sentenced Mr. Lopez to 575 days of jail. Of that, 335 days were imposed based on his failure to complete probation, and 240 days were imposed on the contempt cases that had originated from two missed court dates – September 29, 2023 and December 20, 2023. The plea agreement imposed 90 days, running concurrently, on the three trespass charges. Almost all of Mr. Lopez’s sentence stems from prosecutions initiated by the clerk or the court comments without any charging documents sufficient to invoke the jurisdiction of the sentencing court.

Mr. Lopez has served more than seven months in the Pueblo County Jail, over three times the duration of his 90-day sentence stemming from the properly charged trespass cases. Mr. Lopez’s father died in March of 2024; his court-appointed defense counsel, who was no longer paid to represent him, appeared to ask if Mr. Lopez might be furloughed to attend his father’s

funeral. Defense counsel offered his own staff to transport Mr. Lopez to the funeral and back to the jail. The Municipal Court denied furlough. Mr. Lopez remains in the Pueblo County Jail.

LAW AND ARGUMENT

I. Mr. Lopez 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,” *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, Mr. Lopez 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. Mr. Lopez 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. Lopez’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. Lopez’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 Mr. Lopez’s contempt prosecutions were initiated by charging document.

Mr. Lopez was prosecuted for 31 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. 6; amend. 14; 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 Mr. Lopez, 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 Mr. Lopez’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 Mr. Lopez 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. Lopez’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 of Mr. Lopez’s bench warrants listing a “Contempt” charge identify 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, like the one dated November 16, 2022, do not contain dates or approximate locations of the violation or any citation to the ordinance alleged to have been violated.

The “pretrial packet,” which undersigned counsel has been informed are 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 Mr. Lopez, who was on probation at the time some of his contempt cases arose.

No complaint was ever issued to Mr. Lopez 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. Lopez 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 31 cases of contempt of court that now hold Mr. Lopez 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 575-day sentence that Mr. Lopez 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. Lopez respectfully requests this Court issue a Writ of Habeas Corpus directing Sheriff Lucero to make return on the Writ and cause Mr. Lopez to be brought before this Court forthwith for the Court to determine the legality of Sheriff Lucero's continued incarceration of Mr. Lopez.

Date: October 2, 2024

Respectfully submitted,

/s/ Emma Mclean-Riggs

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