

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

Civil Action No. _____

MICHAEL BAILEY,

Plaintiff,

v.

TELLER COUNTY, COLORADO;

PUEBLO COUNTY, COLORADO;

SHERIFF MICHAEL EMNSINGER, former sheriff of Teller County Sheriff's Office, in his individual capacity;

CLIFFORD LIGHTCAP, former Pueblo County Sheriff's Office employee, in his individual capacity;

SHAWNNA CLEMENTI, Pueblo County Sheriff's Office employee, in her individual capacity;

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Michael Bailey, by and through his counsel, and Rebecca T. Wallace and Mark Silverstein of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, and Darold W. Killmer and Michael Fairhurst of KILLMER, LANE & NEWMAN, LLP, in cooperation with the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO, respectfully allege for their Complaint and Jury Demand as follows:

INTRODUCTION

1. "Almost every element of a 'first appearance' . . . serves to enforce or give meaning to important individual rights," including the right to have bail set or reviewed, the right to be informed of pending charges, the right to counsel, and the right against self-incrimination. *Coleman v. Frantz*, 754 F.2d 719, 724 (7th Cir. 1985). To safeguard these rights, the

Constitution requires that individuals arrested on a warrant be promptly brought before a judge for a first appearance, which includes setting of bond. In this case, Defendants manifestly failed to fulfill this constitutional obligation to Plaintiff Michael Bailey, who waited in jail on a misdemeanor warrant for 52 days before being brought to a judge for first appearance and bond setting.

2. On September 8, 2015, Michael Bailey was incarcerated in the Teller County Jail on a misdemeanor warrant issued by the Pueblo County Court for which no bond had been set. He would remain there for 45 days without being brought before a judge.

3. A Colorado rule of criminal procedure required the Teller County Sheriff's Office to bring Mr. Bailey before the nearest available county court without unnecessary delay for a first appearance, which includes setting of bond. Despite that rule, the Teller County Sheriff's Office took no such action. Instead, pursuant to its official custom, policy and/or practice, the Teller County Sheriff's Office wholly abdicated its responsibility to bring individuals held in the Teller County Jail on warrants from other counties promptly before a judge for first appearance. As a direct result of that custom, policy and/or practice, Mr. Bailey sat in the Teller County Jail for 45 days without bond or an opportunity to appear before a judge.

4. The Pueblo County Sheriff's Office, for its part, knew Mr. Bailey was being held in the Teller County Jail on the Pueblo County warrant, knew that no bond had been set, and knew that the Teller County Sheriff's Office, by policy, would not take Mr. Bailey before a judge for first appearance and bond setting. Thus, the Pueblo County Sheriff's Office knew that Mr. Bailey would not be brought before a judge and have bond set unless and until the Pueblo County Sheriff's Office transported him to the Pueblo County Court. Yet, the Pueblo County

Sheriff's Office waited 45 days before it transported Mr. Bailey to the Pueblo County Jail and then waited an additional seven days before bringing him to court.

5. When the Pueblo County Sheriff's Office finally brought Mr. Bailey before the Pueblo County Court, 52 days after his arrest on the Pueblo County warrant, the court released Mr. Bailey on his personal recognizance. The prosecutor later dismissed the entire case against Mr. Bailey.

6. As a result of his 52-day wrongful detention, Mr. Bailey suffered serious financial and emotional losses. Because of the length of his detention, Mr. Bailey lost a new job that he was scheduled to start and missed out on months of pay. He also suffered and continues to suffer emotional distress and fear from his lawless incarceration that appeared to be without purpose or end.

JURISDICTION AND VENUE

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

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

PARTIES

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

10. Defendant Teller County, Colorado, is a political subdivision of the State of Colorado.

11. Defendant Pueblo County, Colorado, is a political subdivision of the State of Colorado.

12. At all times relevant to this Complaint, Defendant Michael Emnsinger was the Sheriff of Teller County. At all times relevant to this Complaint, he was acting under the color of state law. Defendant Emnsinger is sued in his individual capacity.

13. At all times relevant to this Complaint, Defendant Clifford Lightcap was a sergeant with the Pueblo County Sheriff's Office, where he supervised the transportation department. At all times relevant to this Complaint, he was acting under the color of state law. Defendant Lightcap is sued in his individual capacity.

14. At all times relevant to this Complaint, Defendant Shawna Clementi was employed as a Senior Communications Officer of the Pueblo County Sheriff's Office. At all times relevant to this Complaint, she was acting under the color of state law. Defendant Clementi is sued in her individual capacity.

FACTUAL ALLEGATIONS

Mr. Bailey's 45 day incarceration in Teller County Jail without a first appearance

15. On September 8, 2015, Michael Bailey was arrested by the Teller County Sheriff's Office and booked into the Teller County Jail on an outstanding warrant for his arrest related to a 2011 misdemeanor domestic violence charge out of Pueblo County.

16. As is standard for arrest warrants in domestic violence cases, the warrant indicated "no bond" and also stated "bond to be set by advising judge."

17. When Mr. Bailey was booked into the Teller County Jail on this warrant, the booking paperwork indicated: "no bond until advised."

18. Mr. Bailey remained incarcerated for 45 days at the Teller County Jail solely on the Pueblo County warrant, without appearing before a judge or having bond set.

19. During that time, Mr. Bailey complained almost daily to various Teller County Jail guards regarding his extended incarceration without bond or an opportunity to see a judge. Upon information and belief, throughout the course of his detention, Mr. Bailey had at some point complained to each and every jail guard he encountered.

20. During Mr. Bailey's incarceration, no employee of the Teller County Sheriff's Office made any meaningful efforts to bring Mr. Bailey before a judge for a first appearance and bond setting.

21. Had they done so, Mr. Bailey would have secured his release either on personal recognizance or by paying a surety for any monetary amount that was set.

22. At the time Mr. Bailey was booked into the Teller County Jail on the Pueblo County warrant, guards advised Mr. Bailey that he would remain incarcerated at the Teller County Jail until the Pueblo County Sheriff's Office came to transport him to the Pueblo County Jail.

23. The Teller County Defendants, which are Teller County and former Sheriff Michael Emmsinger, knew or should have known that all arrestees, including Mr. Bailey, had a right to a prompt first appearance under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

24. The Teller County Defendants knew or should have known that Mr. Bailey had a right to have bail set under Art. II, § 19 of the Colorado Constitution.

25. The Teller County Defendants knew or should have known that, to effectuate these constitutional rights, Rule 5(c)(1) of the Colorado Rules of Criminal Procedure requires the Teller County Sheriff's Office to bring arrestees, such as Mr. Bailey, "without unnecessary delay

before the nearest available county court” for a first appearance, which includes the setting of bond.

26. Nonetheless, following the official custom, policy and/or practice of the Teller County Sheriff’s Office, the Teller County Defendants failed to bring Mr. Bailey before the “nearest available county court,” or any court, for the prompt first appearance that would have included setting bond.

27. Instead, pursuant to the official custom, policy and/or practice of the Teller County Sheriff’s Office, the Teller County Defendants delegated all responsibility to bring Mr. Bailey before a judge for a prompt first appearance and bail setting to the Pueblo County Sheriff’s Office.

Inaction by Pueblo County Defendants

28. Upon information and belief, on September 8, 2015, the day Mr. Bailey was booked into the Teller County Jail on the Pueblo County warrant, an employee of the Teller County Sheriff’s Office called the Pueblo County Sheriff’s Office, confirmed that the warrant was valid, and placed the Pueblo County Sheriff’s Office on actual notice that Mr. Bailey was being held in the Teller County Jail on the Pueblo County warrant and awaiting pick up by the Pueblo County Sheriff’s Office.

29. The next day, on September 9, 2015, a Teller County Sheriff’s Office employee sent an electronic message that was received by the Pueblo County Sheriff’s Office. The message stated that Mr. Bailey “is at Teller County Jail on your charges. Please make arraignments [sic] for transport.”

30. Upon information and belief, sometime shortly after Mr. Bailey was booked on the Pueblo County warrant, an employee of the Teller County Sheriff’s Office contacted

Defendant Shawna Clementi of the Pueblo County Sheriff's Office by telephone and informed her that Mr. Bailey was being held in the Teller County Jail solely on Pueblo County charges and was awaiting pick-up by the Pueblo County Sheriff's Office.

31. On October 5, 2015, after Mr. Bailey had been incarcerated in the Teller County Jail for almost a month on the Pueblo County warrant, an employee of the Teller County Sheriff's Office sent a second electronic message that was received by the Pueblo County Sheriff's Office. The message stated that Mr. Bailey was being held in the Teller County Jail solely on charges for Pueblo County and directed: "Please make arrangements for transport."

32. On or about that same day, an employee of the Teller County Sheriff's Office contacted the Pueblo County Sheriff's Office by telephone and relayed this same information.

33. At all times relevant to this Complaint, the Pueblo County Defendants knew that, pursuant to the official custom, policy and/or practice of the Teller County Sheriff's Office, Mr. Bailey would not be brought before a judge on the Pueblo County warrant unless and until the Pueblo County Sheriff's Office picked him up and transported him to the Pueblo County Court.

34. Still, it was not until October 23, 2015 – after Mr. Bailey had spent 45 days in custody in Teller County Jail solely on the Pueblo warrant – that the Pueblo County Sheriff's Office finally transported Mr. Bailey from the Teller County Jail to the Pueblo County Jail.

35. For six days, from October 23, 2015 through October 29, 2015, Mr. Bailey was incarcerated at the Pueblo County Jail, but the Pueblo County Defendants still did not bring him before a judge.

36. Finally, on October 30, 2015, after Mr. Bailey had been incarcerated for 52 days solely on the Pueblo County warrant, the Pueblo County Sheriff's Office brought him before a judge for a first appearance and bond setting.

37. At the hearing, the Pueblo County Court expressed deep confusion over why Mr. Bailey had been in jail for so long without a first appearance, saying: “He should have been advised, it’s an old enough case . . . How is this a first appearance?”

38. At the hearing, the court granted Mr. Bailey release on a personal recognizance bond.

39. After his release, Mr. Bailey appeared as requested at all future court appearances.

40. On March 28, 2016, the prosecutor dismissed in its entirety the Pueblo County charge against Mr. Bailey.

Mr. Bailey’s Complaints

41. Throughout Mr. Bailey’s incarceration, he complained repeatedly about and questioned his extended, unlawful incarceration without bond and without an opportunity to see a judge.

42. Mr. Bailey complained almost every day, often more than once a day to various Teller County Jail guards.

43. The answers from the guards were always the same: “We are just waiting on Pueblo County to come pick you up.”

44. Several weeks into Mr. Bailey’s incarceration, a Teller County Jail guard brought Mr. Bailey out of his cell and showed him the electronic message sent from the Teller County Sheriff’s Office to the Pueblo County Sheriff’s Office on September 9, 2015, informing the Pueblo County Sheriff’s Office that Mr. Bailey needed to be picked up. The guard explained there was nothing else he could do to help.

45. Mr. Bailey also complained repeatedly to guards within the Pueblo County Jail regarding the additional seven days he was incarcerated there before being brought before a judge.

Each Defendant is liable for Mr. Bailey's unconstitutional detention.

Teller County

46. The Teller County Sheriff is the Teller County official with final policymaking authority for the Teller County Sheriff's Office and the Teller County Jail. The Teller County Sheriff oversees and is responsible for both the Teller County Sheriff's Office and the Teller County Jail.

47. The Teller County Sheriff's Office has custody and control of all persons confined in Teller County Jail and is the Teller County official responsible for establishing final policy regarding compliance with the constitutional mandate that prisoners be taken promptly before a judge for a first appearance.

48. Teller County had the authority, ability, and duty to cause Mr. Bailey to be brought to court for a first appearance far more promptly than he was.

49. During all times relevant to this Complaint, the Teller County Sheriff's Office had an official custom, policy and/or practice of abdicating its responsibility, as established in constitutional law and in the Colorado Rules of Criminal Procedure, of bringing before a judge for a prompt first appearance prisoners held in the Teller County Jail on another county's warrant.

50. Individuals are commonly held in the Teller County Jail on warrants issued by other counties, including individuals, like Mr. Bailey, who have not yet been arraigned or had bond set.

51. The Teller County Sheriff is the Teller County official responsible for establishing final policy to ensure Teller County's compliance with the requirement established in the Constitution and the Colorado Rules of Criminal Procedure that inmates in his custody be brought promptly before a judge for first appearance.

52. Instead of creating such policies, the Teller County Sheriff has established and maintained an official custom, policy and/or practice to abdicate that responsibility whenever a Teller County Jail prisoner is held on a warrant from another county. In such cases, the Teller County Sheriff places the sole responsibility of bringing the prisoner promptly before a judge for first appearance entirely on the county for which Teller County is holding the prisoner. As a result of this policy, employees of the Teller County Sheriff's Office ignored their obligations mandated by the Constitution and Rule 5(c)(1) of the Colorado Rules of Criminal Procedure and made no efforts to bring Mr. Bailey before the nearest available county court.

53. The Teller County Sheriff's policy at issue delegates the responsibility of bringing detainees to court for a first appearance and ignores the jail's lack of authority for long-term pretrial confinement absent a prompt first appearance. As a result, the Teller County Sheriff's policy evinces deliberate indifference to Mr. Bailey's due process rights.

54. This custom, policy or practice was the moving force and proximate cause of Mr. Bailey's lengthy, unlawful detention. This custom, policy and/or practice was consciously implemented and approved by the Teller County Sheriff and represents a deliberate choice to follow a course of action made from among various alternatives. One such alternative was for the Teller County Sheriff's Office to bring Mr. Bailey "without unnecessary delay before the nearest available county court," as required by Rule 5(c)(1) of the Colorado Rules of Criminal Procedure.

55. Had the Teller County Sheriff had a policy to follow the mandates of Rule 5(c)(1), Mr. Bailey would have been promptly brought before the nearest available county judge for first appearance, his bond would have been set, and he would have secured timely release. In the alternative, the Teller County Sheriff's Office could have met its constitutional obligation to Mr. Bailey by bringing Mr. Bailey before the Pueblo County Court for first appearance, where bond would have been set and he would have secured a timely release.

56. The Teller County Sheriff's official custom, policy or practice did not mandate or even permit these actions. Instead, it required Mr. Bailey to sit in jail without bond or a court appearance for as long as it took for the Pueblo County Sheriff's Office to transport him.

Pueblo County

57. The Pueblo County Sheriff is the Pueblo County official with final policymaking authority for the Pueblo County Sheriff's Office and the Pueblo County Jail.

58. The Pueblo County Sheriff is the Pueblo County official responsible for establishing final policy regarding compliance with the constitutional mandate that prisoners be taken promptly before a judge for a first appearance.

59. Individuals are commonly held in the Teller County Jail on Pueblo County warrants, including individuals, like Mr. Bailey, who have not yet been arraigned or had bond set.

60. Mr. Bailey languished in jail because the Pueblo County Sheriff failed to establish customs, policies or practices to ensure prompt first appearance for such individuals held in other jails on Pueblo County warrants.

61. While Colorado Rule of Criminal Procedure 5(c)(1) places the duty on the arresting jurisdiction to bring an arrestee before a judge for a prompt first appearance, Pueblo County shares responsibility for Mr. Bailey's illegal detention.

62. Indeed, Pueblo County had the authority, ability, and responsibility to cause Mr. Bailey to be brought to court for a first appearance far more promptly than he was.

63. Pueblo County's responsibility derives primarily from an open and long-standing agreement between the Pueblo County Sheriff's Office and the Teller County Sheriff's Office. Pursuant to this agreement, Pueblo County accepts sole responsibility for bringing before a judge prisoners held in the Teller County Jail on Pueblo County warrants. Likewise, pursuant to that agreement, the Teller County Sheriff's Office does not take prisoners held in the Teller County Jail on a Pueblo County warrant before a judge.

64. Accordingly, the Pueblo County Sheriff knew of and acquiesced in the fact that individuals held on Pueblo County warrants in the Teller County Jail, such as Mr. Bailey, would not be taken before a court for a first appearance unless and until the individual was transported by the Pueblo County Sheriff's Office and brought before the Pueblo County Court.

65. ***Policy Failure 1:*** The electronic messages the Teller County Sheriff's Office sent to the Pueblo County Sheriff's Office regarding Mr. Bailey were transmitted through the Colorado Crime Information Center (CCIC), which is hosted by the Colorado Bureau of Investigation. Electronic messages through CCIC are the proper, standard, and expected means of communication between Colorado sheriffs' departments about inmates held on warrants and awaiting pick up. Yet, upon information and belief, at all times relevant to this Complaint, the Pueblo County Sheriff had no policy requiring that CCIC electronic messages be monitored or acted upon.

66. Absent this policy, and given the agreement between the Teller County Sheriff's Office and the Pueblo County Sheriff's Office that the Pueblo County Sheriff's Office is solely responsible for bringing prisoners held in the Teller County Jail on Pueblo County warrants promptly before a judge, it was foreseeable that some individuals such as Mr. Bailey would languish in jail for an unreasonably long time without being seen by a judge or having bond set.

67. Had the Pueblo County Sheriff's Office been monitoring the CCIC terminal, it would have taken prompt action to transport Mr. Bailey to the Pueblo County Court for a first appearance and bond setting.

68. ***Policy Failure 2:*** Upon information and belief, the Pueblo County Sheriff's policies did not require that employees track and report on the length of time prisoners held on Pueblo County warrants in other county jails, such as Mr. Bailey, had been waiting for a first appearance.

69. Without such a tracking and reporting system, it is foreseeable that some individuals, such as Mr. Bailey, will be subject to unconstitutionally long jail waits before first appearance. Without such a tracking and reporting system, it is foreseeable that jail employees will be much less likely to become aware of or be in a position to take action to prevent unconstitutionally lengthy jail waits.

70. The Pueblo County Sheriff's failure to create each of these policies was a motivating force and proximate cause behind Mr. Bailey's illegal 52-day incarceration without a first appearance or bond.

71. Had the Pueblo County Sheriff adopted policies or procedures to ensure individuals held on Pueblo County warrants in other jurisdictions awaiting first appearance were promptly identified and then transported to the Pueblo County Jail, Mr. Bailey would have been

brought before the Pueblo County Court and released on personal recognizance shortly after his initial incarceration on the Pueblo County warrant.

72. Failure to create these policies created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Mr. Bailey in this case and evinced deliberate indifference to Mr. Bailey's due process rights.

Michael Emnsinger

73. Sheriff Emnsinger was the Sheriff of Teller County at all times relevant to the allegations in this Complaint. As Sheriff, he had custody of all prisoners in the Teller County Jail, and he was responsible for establishing all customs, policies and practices applicable in the Teller County Jail.

74. As the final policy maker for the Teller County Sheriff's Office, it was Sheriff Emnsinger's choice to establish the policies described in paragraphs 49-56, above, which caused Mr. Bailey's lengthy, unlawful detention without a first appearance and setting of bond.

75. As a senior law enforcement officer, Sheriff Emnsinger knew or should have known of his constitutional obligation, memorialized in Rule 5(c)(1) of the Colorado Rules of Criminal Procedure, to bring inmates in his custody for a first appearance before the nearest available county court without unnecessary delay. Indeed, any reasonable officer would have known of this clearly established constitutional obligation.

76. Failure to create the policies described in paragraphs 49-56, above, created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Mr. Bailey in this case and evinced deliberate indifference to Mr. Bailey's due process rights.

Clifford Lightcap

77. Defendant Lightcap was a sergeant with the Pueblo County Sheriff's Office who, at all times relevant to this Complaint, supervised the Transport Department. The Transport Department was and is responsible for arranging prompt transport of prisoners held in other jurisdiction on Pueblo County Warrants.

78. Lightcap was personally responsible for supervising the deputies in the Transport Department.

79. Upon information and belief, as the head of the Transport Department, Defendant Lightcap was personally responsible for establishing protocols and providing supervision and training to ensure prompt transport, to the Pueblo County Jail, of prisoners held on Pueblo County warrants in detention facilities outside Pueblo County, and then to a prompt appearance before the Pueblo County Court.

80. Defendant Lightcap's failure to fulfill these responsibilities foreseeably caused the constitutional violations in this case.

81. Under Defendant Lightcap's direction and/or lack of supervision, the terminal that received electronic messages regarding individuals in need of transport, including Mr. Bailey, went unmonitored.

82. CCIC electronic messages relaying information regarding prisoners in need of transport, including those sent by the Teller County Sheriff's Office regarding Mr. Bailey, are received on a terminal located in the Transport Department of the Pueblo County Sheriff's Office.

83. Defendant Lightcap either made the conscious decision not to monitor and not to have his subordinates monitor the CCIC terminal, or he failed to train and supervise his subordinates to monitor the terminal.

84. Had Lightcap directed and trained that the CCIC terminal be monitored, employees in the Transport Department would have been aware of Mr. Bailey's incarceration, and – upon information and belief – would have promptly picked him up and brought him before a judge.

85. Absent such direction, and given that CCIC electronic messages are the standard, most often utilized method of communicating between sheriffs' departments regarding inmates in need of transport, it was foreseeable that some individuals such as Mr. Bailey would languish in jail for an unreasonably long time without being seen by a judge and without having bond set.

86. As the head of the Transport Department, Defendant Lightfoot failed to direct, train or supervise his employees to track and report on the length of time prisoners held on Pueblo County warrants in jails outside Pueblo County, such as Mr. Bailey, had been waiting for transport to be arraigned and have bond set.

87. Without such a tracking and reporting system, it was foreseeable that some individuals, such as Mr. Bailey, would be subject to unconstitutionally long jail waits before first appearance. Without such a tracking and reporting system, it was foreseeable that Defendant Lightfoot's subordinates would be much less likely to become aware of or be in a position to take action to prevent unconstitutionally lengthy jail waits.

88. Defendant Lightfoot's failure to provide the direction, supervision and training described herein was a motivating force and proximate cause behind Mr. Bailey's illegal 52-day incarceration without a first appearance or bond.

89. Had Defendant Lightfoot provided this direction, supervision and/or training, Mr. Bailey would have been brought before the Pueblo County Court and released on personal recognizance shortly after his initial incarceration on the Pueblo County warrant.

90. Failure to provide this direction, supervision and/or training created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Mr. Bailey in this case and evinced deliberate indifference to Mr. Bailey's due process rights.

Shawna Clementi

91. At all times relevant to this Complaint, Shawna Clementi was employed as a Senior Communications Officer of the Pueblo County Sheriff's Department. As described herein, Shawna Clementi had actual knowledge, early on in Mr. Bailey's detention in the Teller County Jail, that Mr. Bailey was being held there solely on a Pueblo County warrant, without bond, and was waiting for transport by the Pueblo County Sheriff's Office.

92. Upon information and belief, Defendant Clementi also knew that the Teller County Jail would not bring Mr. Bailey before a judge for first appearance and that, unless the Pueblo County Sheriff's Office transported Mr. Bailey to the Pueblo County Jail to be seen by the Pueblo County Court, Mr. Bailey would not have a first appearance or an opportunity to have bond set.

93. With this knowledge, Defendant Clementi had an obligation to either request the Teller County Jail to bring Mr. Bailey before the nearest available county court or to ensure prompt transport of Mr. Bailey from the Teller County Jail to the Pueblo County Jail.

94. Upon information and belief, Defendant Clementi did not inform her superiors of Mr. Bailey's plight.

95. Upon information and belief, Clementi took no action to effectuate Mr. Bailey's constitutional right to be brought before a court for first appearance and bond setting. For instance, upon information and belief, Defendant Clementi did not ask the Teller County Sheriff's Office to take Mr. Bailey before the nearest available county court; did not request that

the Pueblo County Sheriff's Office promptly transport Mr. Bailey and bring him before the Pueblo County Court; did not file complaints with her supervisor or with the Teller County Sheriff's Department regarding Mr. Bailey's unconstitutional detention; and did not contact the Pueblo County Court, the Teller County Court or any other court to inform the court of the unconstitutional detention and the need to promptly bring Mr. Bailey before the court for first appearance, including bond setting.

96. Defendant Clementi's failure to take action on Mr. Bailey's behalf was a motivating force and proximate cause behind his illegal 52-day incarceration without a first appearance or bond.

97. Upon information and belief, had Defendant Clementi brought Mr. Bailey's plight to the attention of her supervisors, Mr. Bailey would have been brought before the Pueblo County Court and released on personal recognizance shortly after his initial incarceration on the Pueblo County warrant.

98. Given the information Clementi had, her failure to take action on his behalf created an obvious and substantial risk of precisely the kind of the lengthy, unconstitutional incarceration endured by Mr. Bailey in this case and evinced deliberate indifference to Mr. Bailey's due process rights.

Damages

99. Mr. Bailey has suffered and continues to suffer damages as a direct result of Defendants' unconstitutional conduct.

100. As a result of the lengthy incarceration, Mr. Bailey lost his job, which caused him serious financial hardship and emotional distress.

101. While incarcerated, Mr. Bailey suffered fear and hopelessness at the seemingly arbitrary and endless incarceration.

CLAIMS FOR RELIEF

First Claim for Relief

*42 U.S.C. § 1983 - Fourteenth Amendment
Denial of Substantive Due Process
(Against All Defendants)*

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

103. The right to a prompt first appearance is clearly established and protected by the Due Process Clause. *See, e.g., Armstrong v. Squadrito*, 152 F.3d 564 (7th Cir. 1998) (finding plaintiff's 57-day detention without a judicial appearance violated his right to substantive due process); *Hayes v. Faulkner County*, 388 F.3d 669, 673 (8th Cir. 2004) (“[T]he Due Process Clause forbids an extended detention, without a first appearance, following arrest by warrant,” and 38 day incarceration without being taken before a judge violates due process.).

104. The right to a prompt first appearance is an essential safeguard that protects other constitutional rights of pretrial detainees and ensures prompt consideration of bond.

105. Mr. Bailey was not brought before a judge for a prompt first appearance, which would have included setting of bond.

106. Mr. Bailey's lengthy detention without a first appearance constituted arbitrary and oppressive government action, did not further a legitimate government objective, and reflects an exercise of governmental power that shocks the conscience.

107. By failing to take action to bring Mr. Bailey before a judge for a prompt first appearance, as detailed herein, each Defendant was deliberately indifferent to his welfare as a prisoner and the ongoing violation of his constitutional rights.

108. The act or omissions of each Defendant, as described herein, were a legal and proximate cause of the Plaintiff's injuries.

109. The acts or omissions of the Defendants have caused and continue to cause Mr. Bailey damages, including economic and emotional damages.

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

Second Claim for Relief

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

Denial of Procedural Due Process

(Against Defendants Teller County, Pueblo County and Sheriff Emmsinger)

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

112. Mr. Bailey has a protected liberty interest in freedom from extended incarceration without a prompt first appearance.

113. As described herein, Defendants Teller County, Pueblo County and Sheriff Emmsinger each took action or failed to take action to prevent the foreseeable deprivation of Mr. Bailey's liberty interest in freedom from extended incarceration without a prompt first appearance.

114. These failures caused a deprivation of Mr. Bailey's right to freedom from extended incarceration with a prompt first appearance, which violated his constitutional right protected by the procedural arm of the Due Process Clause because

- a. Mr. Bailey's interest in freedom from incarceration without a prompt first appearance is paramount;
- b. Due to Defendant's actions and inactions in this case, the risk of erroneous incarceration – meaning lengthy incarceration without a first appearance – were great;
- c. Additional safeguards would have greatly reduced the risk of such erroneous incarcerations, including: (1) Teller County and Emmsinger requiring that inmates in the Teller County Jail be brought before the nearest available county court as Colorado criminal rules require; (2) Pueblo County creating internal procedures for keeping track of whether inmates held on Pueblo County warrants have received an arraignment; and/or (3) Pueblo County ensuring that the CCIC terminal is monitored for electronic messages regarding inmates in need of pick up; and
- d. The Defendants have no legitimate interest in maintaining their current procedures that resulted in the constitutional violation in this case, and the burdens of adopting the policies and procedures described herein that would have prevented Mr. Bailey's unlawful detention without a court appearance would be minimal and insufficient to defeat the right to a prompt first appearance.

115. By failing to take action to bring Mr. Bailey before a judge for a prompt first appearance, as detailed herein, Defendants Teller County, Pueblo County and Emmsinger were deliberately indifferent to his welfare as a prisoner and the ongoing violation of his constitutional rights.

116. The acts or omissions of these Defendants, as described herein, were a legal and proximate cause of the Plaintiff's injuries.

117. The acts or omissions of these Defendants have caused and continue to cause Mr. Bailey damages, including economic and emotional damages.

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

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

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

PLAINTIFFS REQUEST A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 7th day of September 2017.

KILLMER, LANE & NEWMAN, LLP

s/ Darold W. Killmer

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IN COOPERATION WITH THE AMERICAN CIVIL
LIBERTIES UNION FOUNDATION OF
COLORADO

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