

IN THE DISTRICT COURT OF COLORADO
IN AND FOR THE COUNTY OF MESA
STATE OF COLORADO,

PEOPLE OF THE STATE OF COLORADO)
)
 Plaintiff,) **MOTION TO VACATE for Excessive Bail,**
) **Unauthorized Bail, Denial of Bail,**
) **Bail. Violation of Article 2 Sec, 20**
) **of the COLORADO STATE**
) **CONSTITUTION, VIOLATION OF**
 vs.) **8th Amendment of the United States**
) **Constitution, VIOLATION OF 4th**
) **Amendment States Constitution of the**
 Tina M. Peters) **United States**
)
) **PETITION TO VACATE**
 Accused/ Defendant,)
)
)
)

I. INTRODUCTION.

1.1 COMES NOW, Accused/Defendant appearing Specially not Generally hereto, seeking specific relief in the form of dismissal with prejudice of all charges in the above captioned criminal case. This Court will find that well established and constitutionally guaranteed forms of bail were denied in this Court's imposition of cash only bail, thus constituting excessive bail, pains and penalties. Any and all emphasis employed herein may be construed to have been added.

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II. EXCESSIVE & UNAUTHORIZED BAIL.

2.1 As the docket in this case reflects, trial court imposed a cash only self bail upon its finding of probable cause without a Valid Affidavit on file at a nonpublic hearing set for **Oct. 25, 2023**. Accused was arrested on **Oct. 25, 2023**, on a warrant, the officers arrested, and assaulted the accused he demanded to see the warrant when the officers arrested the Accused he was handcuffed put in custody then taken to and held in the ARCHULETA COUNTY Jail from approx: _Oct 25th until Nov 4th he bailed at no point was a warrant ever produced. Mr. Foley as arrested by law enforcement at the Judges order, even though the judge was notified of the Constitutional violation's by _____ on the record, and without any proof of service of any court order to appear or summons served, and without any jurisdiction to do so. Cash only bail paid and on deposit is in amount of \$10,000. bail violates the Colorado Constitution, **Article II, § Sec. 19**, and **20**, to wit:

Article II, § 20 Bail, when Authorized. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

2.2 Court rule does nothing to set forth authority to limit bail to any particular type of surety such as cash only. If this provision of the Colorado constitution is read to mean that "sureties" includes cash, it cannot be said to provide that one in custody can be required to post only cash self bail, since the term "sureties" is plural and embraces more than just cash only (singular) in its scope.

Surety bond. See BOND. 1

Surety. *One who at the request of another, and for the purpose of securing him a benefit, become responsible for the performance of the latter, of some act in favor of a third person, or hypothecates property as security therefore. One who undertakes to pay money or to do any other act in event that his principle fails therein. A person who is primarily liable for payment or of debt or performance of obligations of another. **Branch Banking & Trust Co. v. Creasy, 301 N.C. 44, 269 S.E.2d 117, 122.** One bound with his principal for the payment of a sum of money or for the performance of some duty or promise and who is entitled to be indemnified by someone who ought to have paid or performed if payment or performance be enforced against him. Term includes a guarantor. **U.C.C. § 1-201(40).** See also *Suretyship; Suretyship, contract of.* 2*

¹ See *Black's, 6th Edition, "Surety bond."*

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Bond. Appearance bond. Type of bail bond required to insure presence of defendant in

criminal case. See BAIL (Bail bond). ³

Bail.ailable offense. One for which the prisoner may be admitted to bail.ailable action. One in which the defendant is entitled to be discharged from arrest only upon giving bond to answer. ⁴

2.3 The above definitions do not limit the scope of the subject term (“surety”) to only “cash” and indeed embrace sureties of many if not every nature, one of which is a bail bond.

2.4 Arguendo, if a bond is not a surety, when such is accepted as bail, would not the reviewing court be in violation of **Article II, § 19, 20**, which authorizes only “sureties” as bail? To hold that the term “sureties” means only cash, places these authorities on their respective heads.

While the Court may accept cash as bail, nowhere is it that a court may exclude from consideration

other types of sureties allowable under Colorado Constitution **Article II, § 19, 20**. Sureties is plural, Cash Only is singular it’s that simple.

2.5 While statute allows the court to set the amount of bail, it does not allow the court to set the form of bail beyond “sufficient sureties.” While the Constitution for this state makes available to the Plaintiff the posting of bail in the form of any sufficient sureties, trial court’s imposition of a cash only bail wrongfully removed from his grasp that bail which might be secured through the posting of other sureties such as a bond or other consideration; this is the imposition of excessive bail, and the denial of lawful forms of bail, in violation of Colorado Const. **Art. II, §§ 19, and 20**.

Article II, § 19 Excessive bail, fines and punishments. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

2.6 Unless it can be said that cash is the only surety, that the provisions cited, supra, allows for only such an imposition, it must be held that the term “sureties,” as it is found in **Article I, § 20**, is intended to embrace any securities and not just cash only.

2.7 “A judge may not impose a penalty greater than that allowed by statutes for his court.” Absent some statutory authority to limit the form of surety acceptable as bail and allowed under constitutional provisions, Defendant must be held to have been deprived of bail by those sureties other than cash which he might otherwise have been able to procure or exploit.

2.8 Defendant charges that his rights under **Article II, §§ 19 and 20** were violated, when sureties other than cash were denied him as options for the purposes of bail.

² See Black’s, 6th Edition, “Surety.”

³ See Black’s, 6th Edition, “Bond. Appearance bond.”

⁴ See Black's, 6th Edition, "Bail.

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III. VIOLATION OF EIGHTH AMENDMENT

3.1 The **EIGHTH AMENDMENT** of the United States Constitution states that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

*33 U.S. CONST. amend. VIII. The Supreme Court has not squarely held that the **Excessive Bail Clause** of the **Eighth Amendment** applies to states through incorporation via the Fourteenth Amendment though it "has been assumed" to apply to states in certain challenges heard by the Court. **Baker v. McCollan**, 443 U.S. 137, 145 n.3 (1979); see also **Schib v. Kuevel**, 404 U.S. 357, 365 (1971). Several courts have expressly held that the Excessive Bail Clause applies to states, while others consider it an open question. Compare **Sistrunk v. Lyons**, 646 F.2d 64, 71 (3d Cir. 1991)(finding the Excessive Bail Clause integral to ordered liberty and binding on states through the Fourteenth Amendment); **Pikinton v. Circuit Court of Howell Cty.**, 324 F.2d 45, 46 (8th Cir. 1963)(finding the Excessive Bail Clause applies to states through the Fourteenth Amendment); **Meechaicum v. Fountain**, 696 F.2d 790,791 (10th Cir. 1983)(per curiam)(same); with **United States v. Scott**, 450 F.3d 863, 866 n.5 (9th Cir. 2006)(declining to decide whether the Excessive Bail Clause applies to states through incorporation); **Galen v. County of Los Angeles**, 477 F.3d 652, 659 (9th Cir. 2007)(same).*

*34 **Stack v. Boyle**, 342 U.S. 1, 3 (1951)(when the government's only justification for setting bail was preventing flight, imposing a \$50,000 bail on indigent defendants, who appeared unlikely to flee before trial, was unconstitutional).*

IV. VIOLATION OF FOURTH AMENDMENT

4.1 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. RELIEF REQUESTED.

5.1 **WHEREFORE**, Defendant requests that the Court dismiss all charges the bail demanded under its cash only bail order under which the subject arrest was justified and exonerate bail.

5.2 Defendant requires that the plaintiff cite that authority which allows it to restrict bail to a certain form of surety,(such as cash only) and moves that the court now issues an order for dismissal with prejudice of the charges outstanding against the accused if such cite or authority cannot readily be disclosed.

Dated: November _____th, 2025

Respectfully

submitted: _____

AUTHORIZED REPRESENTATIVE

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