



FREE MINDS AND FREE MARKETS

## **Rogel Aguilera-Mederos Rejected a Plea Deal. So He Got 110 Years in Prison.**

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Rogel Aguilera-Mederos' recent sentencing sparked significant backlash. The Colorado man received 110 years behind bars after his truck brakes failed, causing a traffic accident that killed four people in April 2019. The first person to object to the sentence was the judge who imposed it, lamenting the state's mandatory sentencing laws as he handed it down. Another government official is now speaking up: First Judicial District Attorney Alexis King, who sought the punishment in the first place, and who tells *Reason* she never felt such a punitive response was necessary to protect public safety.

"My administration contemplated a significantly different outcome in this case and initiated plea negotiations but Mr. Aguilera-Mederos declined to consider anything other than a traffic ticket," she told me last week.

King's statement may not shock the conscience at first glance: Plea deals are a fixture of the U.S. criminal legal system. But her remarks hit at something deeper. By her own admission, Aguilera-Mederos was sentenced to die in prison not because the state felt that was the fair and just punishment, but because he insisted on exercising his constitutional right to trial.

Called the "trial penalty," prosecutors are known to pile on superfluous charges and threaten astronomical prison time unless the defendant agrees to plead guilty and save them the trouble of a trial. Should the defendant insist on his innocence, and should a jury disagree, he will likely receive a *much* more severe sentence for the same actions. The only difference is that he invoked his Sixth Amendment right.

King's office declined to comment on the precise parameters of the deal she would've offered. But as I wrote last week, whatever it was wouldn't have come remotely close to 110 years.

"Prosecutors vastly prefer for cases, almost always, to resolve through plea bargains. They're faster, and they're much more certain for the government," says Clark Neily, senior vice president for legal studies at the Cato Institute. "Jury trials by contrast are expensive, time

consuming, and uncertain....What [prosecutors] will do oftentimes is to get very creative in bringing all of the charges that they can think of, basically to increase the defendant's exposure."

That exposure then becomes a powerful bargaining chip against those facing time behind bars. Aguilera-Mederos took the gamble. He was charged with 42 counts and convicted on 27, resulting in the mandatory century-plus sentence.

Both the defense and the government acknowledged that Aguilera-Mederos' truck brakes gave out and that the accident wasn't driven by malice. So you can perhaps imagine why he thought a jury might sympathize. He was correct: After the sentencing, one person on the panel said he "cried [his] eyes out," unaware that convicting him on the charges the government brought would carry such a ghastly term. (Juries are not informed what punishments are attached to crimes.)

But Aguilera-Mederos' decision was also gutsy and unorthodox. Only 3 percent of cases go to trial, and his fate sheds some light on why so many people opt to take a deal. If you don't, you could pay with your life.

The once-scandalous practice is now par for the course across the country. In Maricopa County, Arizona, defendants receive a warning on prospective plea deals: "THE OFFER IS WITHDRAWN IF THE WITNESS PRELIMINARY HEARING IS SET OR WAIVED....\*NOTE: COUNTY ATTORNEY POLICY DICTATES THAT IF THE DEFENDANT REJECTS THIS OFFER, ANY SUBSEQUENT OFFER TENDERED WILL BE SUBSTANTIALLY HARSHER." In other words, not only is the trial penalty the stated policy, but defendants are also penalized solely for wanting to attend a hearing or see the evidence against them. The American Civil Liberties Union is currently suing Maricopa County Attorney Allister Adel, alleging the practice is illegal.

Last week, King quietly began the process to have Aguilera-Mederos' sentence—the one she asked for—reduced. She will be speaking with the families of the victims for their input on a more appropriate sentence, according to *The Denver Post*. But that hits at a similar issue, notes Olayemi Olurin, a staff attorney at the Legal Aid Society. "It reflects the fact that it's not about what you actually think is just," she says, whether you're punishing someone more harshly because they exercised a constitutional right or because of an emotional response from the victims' families. "We're not actually analyzing whether or not this is what's best for society, if this is what's necessary to deal with this issue. We have to have an honest conversation sometimes about the fact that harm happens. You can't necessarily right that wrong....Tragedies can happen, and it doesn't mean a person needs to spend 110 years in jail."

Aguilera-Mederos may not have to serve out that full sentence. But not every defendant is fortunate enough to captivate society with his unjust punishment. And future defendants in King's jurisdiction have received a strong message.

"It's sort of a modern-day version of a crucifixion," adds Neily. "The sentence here is not just about this defendant. The sentence here is about discouraging other defendants from exercising *their* right to a trial."