UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BRITTANY KNIGHT et al.;

Petitioner,

v. Case No.: 4:17cv464 RH/CAS

SHERIFF FOR LEON COUNTY, FLORIDA;

Respondent.

/

KNIGHT'S RESPONSE TO SHERIFF'S MOTION FOR SUMMARY JUDGMENT

Petitioner Brittany Knight responds to the Motion for Summary Judgment (ECF 96) of Respondent Sheriff for Leon County, Florida ("Sheriff") and the Memorandum of Law (ECF 97) of two Florida State officers appearing as amici in their official capacities ("Florida") as follows. They misconstrue Knight's claim and mistake the law. The Sheriff is not entitled to summary judgment based on the undisputed facts as a matter of law.

I. STATEMENT OF DISPUTED MATERIAL FACTS

Knight adopts her statement of material facts in Motion for Summary Judgment (ECF 94) and specifically disputes several factual assertions or suggestions by the Sheriff and Florida:

First, the history of monetary bail is not as rosy as Florida suggests. Florida's Memo (ECF 97) at 2-4. The commercial bail industry is an American invention, not a transplant from England. Unlike America, "the English judicial system has always found the concept of commercial sureties repugnant." *State v. Brown*, 338 P.3d 1276, 1285 (N.M. 2014) (citing F.E. Devine, *Commercial Bail Bonding* 5 (1991)). As personal recognizance releases ("ROR") have become rarer, *id*., at 1287, and as a result the commercial bail industry may be "thriving," Florida's Memo., at 4, so are Florida's jail populations.

Second, the Sheriff suggests "several processes" "avoid the necessity" of pretrial detention. Sheriff's Mot. for Summ. J. (ECF 96), at 21. He identifies three. (1) Laudably, the Sheriff and Tallahassee Police do not arrest everyone charged with a criminal offense. *Id*., at 21; *see also Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (holding that an arrest for a minor, nonviolent offense does not offend the Fourth Amendment). (2) Additionally, Leon County releases many people (with financial means to do so) who purchase their release for the prices listed on the Bond Schedule (ECF 93-24). Sheriff's Mot. for Summ. J., at 22-23. For some unknown number (the Sheriff does not say), an accused with a local address is released ROR before first appearance when arrested on the lowest misdemeanor. *Id*. Leon County's Supervised Pretrial Release program ("SPTR") releases some accused to SPTR without a monetary condition. *Id*., at 26-27. The

Sheriff does not say how many, but this is known: 24 or 25 persons a year. Broxton Dep. (ECF 93-3), 152:3-20. (3) And after first appearance, Leon County alerts judges of accused held on low bail or only on a VOP. Sheriff's Mot. for Summ. J., at 29-30. But again, the Sheriff does not say how many people are released as a result of this process. *Id*.

Although these devices reduce detention, they do not help a large number of people. Over 165 accused persons at any given point are detained in the Leon County jail ("Jail") because they were not given a notice to appear in lieu of arrest, they were not released ROR or to pretrial services before first appearance, and they were not released by the trial judge after first appearance when notified by Leon County. *See* Knight's Mot. for Summ. J. (ECF 94), § II(A), pp. 3-4. The Sheriff's identified methods help divert the lucky and well-heeled from jail, but they do not avoid the annual detention of thousands of others on unaffordable bail. Baggs's Decl. (ECF 82), ¶ 26 (2,148 in 2017).

Third, the Sheriff underplays the number of poor people at first appearance. Sheriff's Mot. for Summ. J. (ECF 96), at 22. Florida law directs the clerk to determine who is indigent and in need of counsel appointed at public expense. § 57.082(2), Fla. Stat. The Sheriff proffered evidence that the clerk determined 47% (2,375/5,322) of the people who appeared at first appearance were deemed

indigent whereas 1% (71/5,322) were determined not to be indigent. Sheriff's Mot. for Summ. J., at 22. Yet, this says little about what occurs at first appearance for two reasons. First, the law does not mandate clerks make this determination "on the same day as the first appearance." *Id*. It is unknown what percentage of those who appeared at first appearance were determined to be indigent in the following days. Second, when the clerk does not determine indigence prior to first appearance, the state court will provisionally make a determination at first appearance. Thomas Dep. (ECF 93-8), 153:17-23; *see also* Fla.R.Crim.P. 3.130(c)(1) (mandating that the judge should determine indigence prior to but no later than first appearance and "immediately appoint counsel" for the indigent). Thus, it is likely that more than 47% of those who could not purchase their freedom at the rates set by the Bond Schedule in advance of first appearance and thus attend first appearance are indigent. *See* Baggs's Decl. (ECF 82), ¶ 26 (summarizing 74% (1,584/2,148) of accused are appointed a public defender).

Fourth, the Sheriff suggests that SPTR staff inquire of the accused's ability to pay a monetary bail. Sheriff's Mot. for Summ. J., at 26. The recently revised April 2018 Bond Schedule (ECF 93-24) certainly directs SPTR to make the inquiry of ability to pay from defendants who cooperate and choose to provide information after being warned they "have the right to consult an attorney before providing any information." *Id*. Yet, the Sheriff assumes this happens. *Id*. No evidence

supports that SPTR staff actually inquire. *See* Aikens Dep. (ECF 93-1), 46:8–47:8 ("That information was not filled out."). No evidence indicates that the state court now makes a determination of ability to pay.

Fifth, the Sheriff seeks to largely disqualify supervised pretrial release as an available less-restrictive alternative to detention resulting from unaffordable bail. Sheriff's Mot. for Summ. J. (ECF 96), at 8. He cites to a Florida law (§ 907.041(3)(b), Fla. Stat.) prohibiting release to supervised pretrial release program on "nonmonetary conditions" unless program staff investigate and verify the accused's circumstance. *Id*. He laments that the accused's failure to cooperate often prevents SPTR from verifying the information. *Id*., at 28. Thus, in the Sheriff's view, the state court must impose monetary conditions in addition to pretrial supervision. However, he misstates the legal mandate. The law does not require a specific monetary amount. The state court could impose a nominal sum of $1. Furthermore, the law does not restrict the form of the monetary bail. The state court could permit the accused to satisfy the monetary condition with an unsecured appearance bond. Fla.R.Crim.P. 3.130(b)(1)(B). Finally, the Sheriff offers no evidence how the state court complies with the legal mandates. Because the government admits more people (1,227) to supervised release (ECF 95-23 at 2) than SPTR interviewed and assessed (1,184) (ECF 95-23 at 6), it is unclear

whether the state court imposed supervised release without monetary conditions when no interview occurred.

Sixth, the Sheriff unfairly faults the accused for not objecting at first appearance to an unaffordable bail that results in pretrial detention. Sheriff's Mot. for Summ. J., at 15. However, the government does not inform her that unaffordability is constitutionally critical. Jail officials broadcast the *Leon County First Appearance* Introductory Video (ECF 86) for inmates before first appearance. Cuzzort Dep. (ECF 93-5) (Feb. 22, 2018), at 81:11–82:5. The video discusses the purpose of first appearance hearings, the right to counsel, and how to comply with specific conditions of pretrial release. Zamora Decl. (ECF 83), at 5, ¶ 12. It does not inform the accused that her ability to pay the imposed monetary bail is a consideration in the bail determination. *Id*., ¶ 13. Instead, the video cautions inmates against saying anything incriminating. *Id*., ¶ 14.

Seventh, while the Sheriff does not contest class numerosity, the Sheriff strangely focuses on the 67 declarants whose declarations Knight filed in ECF 47-1 for the sole purpose of proving numerosity. Sheriff's Mot. for Summ. J., at 30-33, 39-42. Since Knight filed this lawsuit in October 2017, hundreds of putative class members (not just 67) have been detained awaiting trial while eligible for pretrial release upon satisfaction of monetary bail. *See, e.g.,* Baggs's Decl. (ECF 82), ¶ 26;

Inmates with Open Charges (ECF 93-14, ECF 102-1, ECF 93-16, and ECF 93-17) (numbering in handwriting over 165 Jail inmates with a listed monetary bail amount for each charge on specific days within each of four identified months (Dec. 2017 – Mar. 2018)); *see also* Sheriff's Adission (ECF 93-12), No. 23 (admitting 100 persons are "detained awaiting trial" and "eligible for pretrial release upon satisfaction of monetary bail" at one time). Although the Sheriff's *Inmates with Open Charges* report indicates the pretrial inmates whose only obstacle to release is monetary bail, the Sheriff correctly observed that the report does not indicate whether each accused remains detained because she cannot afford the monetary bail or for another reason. *See* Sheriff's Admission, No. 24 (stating Sheriff cannot identify and count "those pretrial detainees who can afford monetary bail."). Of course, it is a reasonable conclusion that an accused would rarely if ever choose to remain detained, if she could buy her freedom. Thomas Decl. (ECF 5-1), ¶ 2(e). But the Sheriff's report does not definitively say. Consequently, Knight sought to establish class numerosity by producing sworn testimony from putative class members that they cannot afford the monetary bail. ECF 47. While the number of declarants who cannot afford bail supports numerosity, the Sheriff never explains why the particular circumstances of these 67 persons are representative of the bail scheme in Leon County. Seemingly, the

Sheriff could have selected any subgroup of the thousands of putative class members.

Even if the 67 declarants are representative, the Sheriff draws several inaccurate conclusions. The Sheriff touts the efficacy of motions to modify bail—noting 10 of the 21 declarants "successful[ly]" moved for a monetary bail reduction. Sheriff's Mot. for Summ. J., at 26. However, the Sheriff fails to define "success," indicate whether the declarants were released, or explain how quickly they were released, if ever.

The Sheriff never says whether a "successful" reduction in bail motion resulted in release. In fact, in most of the Sheriff's proclaimed "successful" cases, the bond reduction did not result in release. Stating 10 out of 21 declarants were "successful" is misleading. While Sheriff is *technically* correct that 10 of the 21 who moved for a bail reduction had their bail reduced, the motions were not *effectively* granted in a way that provided relief. Of the 10 individuals who Sheriff deems to have successfully moved for a monetary bail reduction, only *two* were able to eventually bond out. The majority of the "successful" declarants remained in custody even after the motions were granted because their bonds remained unaffordable. This is because minimal reduction of monetary bail does not often result in release. Thomas Dep., 160:1-6.

For example, the Sheriff deemed "successful" Philip Belancsik's motion. After Mr. Belancsik filed his second motion, the court modified his bond from $250,000 to $236,000. (ECF 78-40 at 13-14). Mr. Belancsik remains in custody pretrial. Additionally, the Sheriff deemed "successful" Andrew Schluck's motion because Mr. Schluck went from having no bond to having a $150,000 total bond. (ECF 79-11 at 3). Mr. Schluck has yet to bond out on his case and remains in custody pretrial. Likewise, Sheriff deemed "successful" Tony Cobb's motion because Mr. Cobb went from having no bond to having $150,000 bond. (ECF 78-45 at 4). After Mr. Cobb's first motion to modify bond, Mr. Cobb was mistakenly released from custody by the Sheriff. Mr. Cobb turned himself back in once the mistake was known. He could not afford bond after he turned himself in, and he filed a second motion for bond reduction. His motion was denied and he remains in custody. The Sheriff similarly would deem "successful" Knight's bail reduction from $500,000 to $250,000. Sheriff's Mot. for Summ. J. (ECF 96) at 13. Even after their bonds were reduced, many remained jailed for weeks. For example, Tyrone Brown sat in jail for an additional 23 days after his "successful" motion before he was able to bond out.

The Sheriff attempts to cast doubt on the veracity of an accused's claim of inability to pay. He notes that 4 of 67 (ECF 47-1) posted bond and were released after stating they could not afford the monetary bail. Sheriff's Mot. for Summ. J.,

at 31. The four declarants the Sheriff is referring to are Tyrone Brown, London Parmer, Christopher Russell, and Vicki Strickland. However, the Sheriff failed to say how soon their financial circumstances changed and when they were released. On information and belief, even those whose financial resources changed and who were later able to purchase their freedom remained detained for nearly an additional month. For example, in Tyrone Brown's case, it was 42 days after he signed the declaration and 61 days after he was arrested. Christopher Russell was in custody for 62 days after his arrest and 12 days after he signed the declaration. Finally, Vicki Strickland was in custody for 253 days before bonding out, and 51 days after signing the declaration.

Although the Sheriff claims that several of the declarants were "being held on no bond" when they signed the declaration, Sheriff's Mot. for Summ. J., at 32, his own records dispute this. *Inmates with Open Charges in January 2018* (ECF 102-1). Sheriff claims six declarants were being held on no bond at the time they signed their declarations: Lawrence Andrews, Philip Belancsik, Tony Cobb, Phillip Collins, Octavious Smith, and Riley Waters. Sheriff's Mot. for Summ. J., at 32. The Sherriff is incorrect as to all but perhaps Smith. Lawrence Andrews signed his declaration on January 18, 2018 (ECF 47-1 at 4)—five days before he was held on no bond. At the time he signed it, he was sitting in jail on a $35,000 bond for his two pending charges. *Inmates with Open Charges in January 2018*

(ECF 102-1), at 8. Philip Belancsik signed his declaration on January 19, 2018. ECF 47-1 at 10. At the time he signed his declaration, the State had previously filed a No Information ("NINF") in three of his charges and he had bond on all remaining counts. ECF 102-1 at 19. Tony Cobb signed his affidavit on January 25, 2018. ECF 47-1 at 34. At that time, he had a $150,000 total bond on all of his pending charges. ECF 102-1 at 49. Similarly, Phillip Collins had a $200,000 bond on all of his pending charges (ECF 102-1 at 51) when he signed his declaration (ECF 47-1 at 34). *Id*., at 51. And finally, Riley Waters also had bond on all pending charges totaling $31,000 (ECF 102-1 at 307) at the time he signed his declaration (ECF 47-1 at 134).

Ultimately the criminal history and current charged offenses for these 67 declarants are irrelevant. Yet, the Sheriff's attention bespeaks of his misunderstanding of Knight's claim. Knight does not claim that the monetary bail imposed against each putative class member is excessive—that the bail is not properly calibrated to individual risks to public safety and of flight. She does not claim that strong community ties and minimal criminal history support *lower* monetary bail. Instead, she claims that because monetary bail is unaffordable, the class members are detained. Knight does not argue that the government *never* has a need to detain an accused—whether through an outright order of detention or a de facto one resulting from an unaffordable bail. Sheriff's Mot. for Summ. J.

(ECF 96) at 39-42, n.30. Instead, Knight argues that in each case, the prosecutor has not established and the state court has not determined this need. Pet. (ECF 1), ¶¶ 44, B(2). She demands due process. The resulting pretrial detention must be determined necessary with no less-restrictive alternatives by clear and convincing proof at an adequate hearing. Affordable bail is not a get-out-of-jail-free card as the Sheriff mischaracterizes, Sheriff's Mot. for Summ. J., at 46, but a mandate that the state court fairly determine whether jail is really necessary.

II. Argument

The Sheriff mistakes Knight's claims and misapprehends the applicable law. He is not entitled to summary judgment as a matter of law on the undisputed facts.

A. Pretrial liberty interest is fundamental

The substantive component of the Due Process Clause of the Fourteenth Amendment protects fundamental rights against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The U.S. Supreme Court has repeatedly explained that freedom from physical restraint—the right at issue here—"has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention,

or other forms of physical restraint—lies at the heart of the liberty that [due process] protects."); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 530 (2004) (The "commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection.") (quoting *Jones v. United States,* 463 U.S. 354, 361 (1983)); *United States v. Montalvo-Murillo*, 495 U.S. 711, 716 (1990) (pretrial liberty is "vital"). Its analysis in *United States v. Salerno*, 481 U.S. 739, 750 (1987), demonstrates it views pretrial liberty as fundamental. It noted its "fundamental nature." *Id.,* at 750. It examined whether its deprivation violated substantive due process only after recognizing the such a claim would only be cognizable if pretrial liberty were fundamental. *Id*., at 751 (citing *Snyder v. Com. of Mass*., 291 U.S. 97, 105 (1934)). Consequently, the mere analysis in *Salerno* of whether the pretrial detention violated substantive due process necessarily implied that a person has a fundamental right to pretrial liberty.

The Sheriff and Florida argue that pretrial liberty is not fundamental because it is not *absolute* in the sense that they can *never* be deprived. Sheriff's Mot. for Summ. J. (ECF 96), at 35-36; Florida's Memo (ECF 97) at 13. Yet, inviolability is not the litmus. And Knight has never claimed pretrial liberty is absolute.

Few fundamental rights are perhaps absolute and can never be deprived. *See., e.g., Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (punishment prior to

adjudication of guilt). Instead, the government may deprive a person of a "life, liberty, [and] property" under appropriate circumstances notwithstanding that they are "fundamental." *See., e.g., Gregg v. Georgia*, 428 U.S. 153, 169 (1976) ("the punishment of death does not invariably violate the Constitution"); *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) ("liberty interest is not absolute"); *First English Evangelical Lutheran Church of Glendale v. Los Angeles County, Cal.*, 482 U.S. 304, 314 (1987) (explaining that property may be deprived to serve a public interest and with just compensation). Likewise, that pretrial liberty may also be deprived on appropriate conditions does not negate its fundamental stature. Indeed, if "fundamental" meant that a right could *never* be deprived, then the strict scrutiny test for their constitutional deprivation of a fundamental right would be reduced to a commandment: thou shall not deprive *no matter what*. The strict scrutiny test for fundamental rights allows exceptions.

Knight does not claim pretrial detention can never be deprived. She does not claim that monetary bail can "*never* [be] set higher than what a defendant claims to be able to afford." Sheriff's Mot. for Summ. J., at 48 (emphasis added). She does not categorically claim that "*any* bail set for a criminal defendant prior to trial *must* be affordable." *Id*., at 3 (emphasis added). Instead, consistent with heightened scrutiny, she claims the government may not impose an unaffordable monetary bail that results in pretrial detention "absent a need"—unless "no less-

restrictive alternative" "would reasonably achieve the government's legitimate interests." Pet. (ECF 1), at ¶¶ 44, B(2).

The Sheriff and Florida misread the Fifth Circuit's denial of "a fundamental substantive due process right to be free from *any* form of wealth-based detention." *ODonnell v. Harris County,* 892 F.3d 147, 163 (5th Cir. 2018) (emphasis added). Far from denying a fundamental right to pretrial liberty, the Fifth Circuit merely refused to recognize it as an *absolute* right that could never be denied in "any form" or in any way. Indeed, the Fifth Circuit made this statement to predicate its review of the breath of the district court's preliminary injunction. That review informs its meaning. The district court had ordered the prompt release of defendants who remained detained on unaffordable secured monetary bail. *ODonnell v. Harris County, Texas*, No. H16cv1414, 2017 WL 1735453, at *1 (S.D. Tex. Apr. 28, 2017) (preliminary injunction, ¶ 2). The Fifth Circuit ruled that the district court's injunction was overbroad because "it amount[ed] to the outright elimination of secured bail." *ODonnell*, 892 F.3d at 163. It rejected a *categorical* right to an affordable bail and "to be free from *any* form of wealth-based detention." *Id*. (emphasis added). Instead, it recognized, like *Rainwater*, that unaffordable secured bail resulting in detention could pass constitutional muster when nothing else would suffice. *Id*., at 162-63 (citing *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc)). It invited the district court to

modify the injunction and order the state court to promptly determine whether unaffordable secured monetary bail is necessary, that is, "whether another amount of bail or other condition provides sufficient sureties." *Id*., at 165.

Pretrial liberty is a fundamental right that, like other fundamental rights, may be deprived in appropriate circumstances.

B. Deprivation of pretrial liberty is subject to strict scrutiny

Deprivation of the fundamental right to pretrial liberty violates the substantive due process "unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993) (citing *Salerno*, 481 U.S. at 746); *see also Frazier v. Jordan*, 457 F.2d 726, 728 (5th Cir. 1972) (applying strict scrutiny to detention of those unable to pay fines). Similarly, discrimination by detaining those who cannot afford a monetary bail—because this "affect[s] [a] fundamental right[]"—"[is] given the most exacting scrutiny." *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *see also Glenn v. Brumby*, 663 F.3d 1312, 1316 n.4 (11th Cir. 2011).

The U.S. Supreme Court applied strict scrutiny to pretrial detention in *United States v. Salerno*, 481 U.S. 739 (1987).[1] It explained that the public safety interest justifying pretrial detention was "compelling"—a touchstone of strict scrutiny. *Id*., at 750, 752. It then found that "[t]he Bail Reform Act of 1984 … narrowly focused" on this compelling interest. *Id*., at 750. "The Act operates only on individuals who have been arrested for a specific category of extremely serious offenses"—"individuals [who] are far more likely to be responsible for dangerous acts in the community after arrest"—for whom "no conditions of release can reasonably assure the safety of the community or any person." *Id*. It upheld pretrial detention against a substantive due process challenge because the government's interests were compelling and the detention was narrowly tailored.

Similarly, the U.S. Supreme Court applied strict scrutiny to the detention of those unable to afford to pay a monetary condition. In *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983), the Court prohibited a state from revoking probation and imprisoning a person who cannot afford to pay a fine and restitution absent narrow tailoring—unless the court first considers and finds no less-restrictive "alternate

[1] *See also Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 779 (9th Cir. 2014) (observing that "*Salerno* applied heightened scrutiny"); *Buffin v. City & County of San Francisco*, No. 15cv4959, 2018 WL 424362, at *5-6 (N.D. Cal. Jan. 16, 2018) (reviewing *Salerno* and *Lopez-Valenzuela* to conclude strict scrutiny applied in an unaffordable bail case).

measures" exist to adequately meet the government's legitimate interests. In addition to *Bearden's* plain text, two other reasons demonstrate that the Court applied strict scrutiny. First, in order for "[d]ue process and equal protection principles [to] converge in the Court's analysis," *id.*, at 665, the substantive due process claim had to be viable. Yet, only deprivations of a fundamental right can give life to the due process claim and in those cases strict scrutiny applies. *Reno*, 507 U.S. at 302. Thus, the Court viewed equal protection as converging with a due process claim that inherently demanded strict scrutiny. Second, although *Bearden's* focus on "alternate measures" echoes intermediate scrutiny's narrow tailoring requirement, that is only because of detention's binary nature. A person is either physically detained or not. It makes little sense to talk of "least restrictive" detention. Likewise, once released from physical detention, a person's fundamental liberty interest may no longer be at stake. Thus, strict scrutiny would not pierce the jail wall to mandate a *least* restrictive alterative outside. Instead, for substantive due process purposes, the spectrum of all less-restrictive alternatives to pretrial detention are categorically equivalent on the other side of the jail wall. Consequently, *Bearden* necessarily applied strict scrutiny.

Our Circuit similarly required the government to justify pretrial detention through an unaffordable bail as narrowly tailored—no other bail form or amount would reasonably assure its interests. In *Pugh v. Rainwater*, 572 F.2d 1053, 1057

(5th Cir. 1978) (en banc), the court observed "[t]he incarceration of those who cannot [pay the bail amount], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements." Accordingly, if the government's interest in "appearance at trial could reasonably be assured by … alternate [conditions] of release, pretrial confinement for inability to post money bail" is unconstitutional. *Id.* at 1058. Without explicitly mentioning strict scrutiny , the en banc echoed the prior, vacated panel that interpreted *Williams* and *Tate* to require strict scrutiny in a challenge to a pretrial system of detaining indigent defendants because they could not pay secured money bail. *Pugh v. Rainwater*, 557 F.2d 1189, 1197 (5th Cir. 1977).

The Constitution only permits the imposition of unaffordable bail resulting in detention when the government satisfies strict scrutiny.

C. Only flight risk may justify monetary bail

"Florida law states that the purpose of bail is to ensure the defendant's appearance and protect the community's safety." *Campbell v. Johnson*, 586 F.3d 835, 843 (11th Cir. 2009) (citing § 903.046(1), Fla. Stat.). However, that does not mean *each* form of bail serves *each* purpose as the Sheriff argues. Sheriff's Mot. for Summ. J. (ECF 96), at 8, 33-34. In Florida, "bail" takes many forms. § 903.011, Fla. Stat. (defining bail to "include any and all forms of pretrial

release."). Some conditions of pretrial release may further both interests; some conditions further only one interest. For example, requiring the defendant to wear a GPS tracking device could both prevent him from fleeing and alert the police when he returns to a victim's home. On the other hand, a travel restriction may assure a trial appearance, but makes the community no safer; or prohibiting victim contact may mitigate the risk of future violence, but does not help get the defendant to his court dates. That a pretrial release condition can only achieve one bail purpose diminishes neither its utility nor objective. However, a bail form that may advance only a singular purpose may only be justified on the basis of that sole purpose. Monetary bail has a singular purpose.

Monetary bail may incentivize an accused to return for trial to prevent an adverse money judgment. "Money bail, however, has no logical connection to protection of the public, as bail is not forfeited upon commission of additional crimes." *In re Humphrey*, 228 Cal. Rptr. 3d 513, 528 (Ct. App. 2018), *cert. granted*, 2018 WL 2375685 (Cal. May 23, 2018); *Reem v. Hennessy*, 17cv6628, 2017 WL 6539760, at *3 (N.D. Cal. Dec. 21, 2017) ("[monetary] bail the person posts does nothing to incentivize him not to commit crimes"). Indeed, in Florida, posted monetary bail is returned when a person is arrested for a new crime on pretrial release. § 903.31, Fla. Stat. (specifying conditions to cancel a bond); § 903.28, Fla. Stat. (prescribing that a forfeited bond shall be remitted and

judgment satisfied upon the apprehension of the defendant). Although Florida has an interest in community safety, monetary bail does nothing to advance it.

Accordingly, the government's justification for an unaffordable bail that results in detention must be measured only against its interest in the accused appearing at subsequent criminal hearings. Often, less-restrictive alternatives exist to reasonably assure that sole need.

D. Government cannot satisfy even intermediate scrutiny

Neither the Sheriff nor Florida analyze Knight's claim under strict scrutiny. Presumably, they predict the imposition of unaffordable bail resulting in pretrial detention would not survive such scrutiny as Knight argues. As a back-up, Florida argues if "heightened security"[2] applies, Knight's claim may only be analyzed under its less exacting form—"intermediate scrutiny." Florida's Memo. (ECF 97), at 19. It argues that detention through an unaffordable bail is narrowly tailored because it "promotes a substantial government interest that would be achieved less effectively absent the regulation." *Id*. (quoting *Ward v. Rock Against Racism*, 491

[2] "Heightened scrutiny is comprised of intermediate scrutiny and strict scrutiny." *Glenn v. Brumby*, 663 F.3d 1312, 1316 n.4 (11th Cir. 2011).

U.S. 781, 791 (1989). Yet, intermediate scrutiny is inapplicable, its test is not so simple, and ultimately the government cannot satisfy it here.

Bearden and *Salerno* flatly foreclose intermediate scrutiny for detention of the poor. The constitutionality of detaining a person who cannot afford to satisfy a monetary condition turns on whether no "alternate measures" exist to achieve the government's interests, not whether detention simply effectively aids those interests. *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). Similarly, the U.S. Supreme Court upheld pretrial detention only when "no conditions of release can reasonably assure the safety of the community or any person." *Salerno*, 481 U.S. at 750. Had *Ward's* intermediate scrutiny test applied, *Bearden* and *Salerno* might have permitted detention as one way to achieve the government's interest notwithstanding less-restrictive alternatives. Detention certainly exacts punishment, eliminates public safety risks, and assures appearance at trial. However, the Court's analysis turned not singularly on whether detention would work, but whether something short of detention could too.

However, even if only intermediate scrutiny applies—and Knight continues to assert strict scrutiny applies[3]—detaining those who cannot afford a monetary

[3] *ODonnell* applied intermediate scrutiny after the plaintiffs conceded it was "the most conservative application" of the precedents. *ODonnell v. Harris County, Texas*, 251 F. Supp. 3d

bail violates the U.S. Constitution's equal protection guarantees. Florida provides the "substantial benefit," *Bearden*, 461 U.S. at 665, of pretrial release when an accused satisfies reasonable monetary conditions.[4] Fla. Const., Art. I, § 14. Assuming the government's pretrial detention of those who cannot afford the monetary bail does not burden a fundamental right subject to strict scrutiny, *see Clark v. Jeter*, 486 U.S. 456, 461 (1988), then intermediate scrutiny would apply. "[T]he Supreme Court has found that heightened scrutiny is required when criminal laws detain poor defendants *because of* their indigence." *ODonnell v. Harris County*, 892 F.3d 147, 161 (5th Cir. 2018) (citing *Tate v. Short*, 401 U.S. 395, 397-99 (1971); *Williams v. Illinois*, 399 U.S. 235, 241-42 (1970); and *Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973)).

Narrow-tailoring under intermediate scrutiny fails when the government disregards "obvious less-burdensome alternatives." *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1301 (11th Cir. 2017). Only where the

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1052, 1138 (S.D. Tex. 2017). Reviewing the district court's opinion, the Fifth Circuit found intermediate scrutiny appropriate, but never was presented with question of whether strict scrutiny should apply. *ODonnell v. Harris County*, 892 F.3d 147, 161-62 (5th Cir. 2018).

[4] The U.S. Supreme Court has demanded equal protection of the provision of even *conditional* benefits. In *Williams*, *Tate*, and *Bearden*, the state permitted liberty on the *condition* the person pays a fine. Yet each time, the Court found state deprived them of liberty that was available only an impossible condition. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973) ("because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.).

government shows that "less restrictive measures were inadequate," can it satisfy intermediate scrutiny. *McCullen v. Coakley*, 134 S. Ct. 2518, 2540 (2014). The government bears the burden of demonstrating that detention through the imposition of an unaffordable bail is appropriately tailored to the interests it seeks to achieve. *FF Cosmetics FL*, 866 F.3d at 1299 (speech case); *ODonnell v. Harris County, Texas*, 251 F. Supp. 3d 1052, 1140 (S.D. Tex. 2017) (ruling government bears burden to establish narrow tailoring). Plainly, the government cannot show this.

Unsecured appearance bonds provide an obvious less-restrictive alternative to detaining those unable to afford bail. Fla.R.Crim.P. 3.131(b)(1)(B). Unsecured bail would perform equally as well in Leon County as secured monetary bail to assure an accused appears at subsequent criminal proceedings and stays out of trouble. Jones Decl. (ECF 93-10), ¶¶ 11, 35-40; Jones Dep. (ECF 103-1), 287:21–290:10, 298:3–301:1, 302:21–304:4, 317:20–315:5; *see also* Michael R. Jones, Pretrial Justice Institute, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option* (Oct. 2013) (ECF 103-2), at 11 ("unsecured bonds offer decision-makers the same likelihood of court appearance as do secured bonds").[5] Indeed, the availability of unsecured appearance bonds and other non-monetary

[5] Available from https://university.pretrial.org/viewdocument/unsecured-bonds-the

conditions underpinned the approval of the Florida's bail scheme in *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978). The availability of unsecured appearance bonds was finally included in the criminal Florida rules in 1977 upon the urging of the plaintiffs' attorney and the Circuit's suggestion. *Pugh v. Rainwater*, 557 F.2d 1189, 1194, 1194 n.11 (5th Cir. 1977), *opinion vacated on reh'g en banc,* 572 F.2d 1053 (5th Cir. 1978); *The Florida Bar*, 343 So. 2d 1247, 1250 (Fla. 1977) (defining bail in Fla.R.Crim.P. 3.130(b)(4)(i)(2) (1977) to include for the first time an "unsecured appearance bond"). Unsecured appearance bonds were consciously made available to Floridians to prevent them from being detained because of their indigence.

Yet, the government has never studied the efficacy of secure monetary bail or whether unsecured appearance bonds would reasonably assure its interests. Aikins Dep. (ECF 93-1), at 80:7-18; Broxton Dep. (ECF 93-3), 97:25–98:17; Campbell Dep. (ECF 93-4), 64:22–65:5; Cuzzort Dep. (ECF 93-5), 56:20–58:12; Hankinson Dep. (ECF 93-6), 42:22–44:8. Its expert has no opinion on the topic. Latessa Dep. (ECF 93-7), 69:4-16, 121:4–123:1. Instead, the government views it is an open question whether monetary bail must be set so high to achieve its ends and whether unsecured bail would suffice. Thus, rather than consider this obvious less-restrictive alternative, the government completely disregarded an obvious and intended less-restrictive alternative and instead routinely imposes monetary bail

and effects pretrial detention of the poor. This does not pass intermediate scrutiny. *FF Cosmetics FL*, 866 F.3d at 1301. Intermediate scrutiny does not condone the denial of liberty out of "mere convenience." *See McCullen*, 134 S. Ct. at 2534.

In *ODonnell,* the district court and the Fifth Circuit reached the same conclusion. Judge Rosenthal ruled the government had not shown "rates of court appearance or of law-abiding behavior before trial would be lower absent the use of secured money bail against misdemeanor defendants." *ODonnell*, 251 F. Supp. 3d at 1151. The Texas government did not show that "requiring a secured money bail is at least more effective than a less restrictive alternative at meeting the County's interests, even if it is not the least restrictive means to do so." *Id*. Therefore, it violated substantive guarantees by detaining those unable to afford the monetary bail. *Id*. The Fifth Circuit agreed. *ODonnell*, 892 F.3d at 162 ("we discern no error in the court's conclusion that the County's policy failed to meet the tailoring requirements of intermediate scrutiny").

The routine practice of imposing unaffordable bail resulting in pretrial of the poor "cannot be said to be narrowly tailored if the record shows that obvious less-burdensome alternatives were completely disregarded." *FF Cosmetics FL,* 866 F.3d at 1301. The government cannot satisfy intermediate scrutiny.

E. Knight need not prove intent in facial discrimination

The Sheriff argues Knight's equal protection claim fails for lack of intentional discrimination and similarly situated people. Sheriff's Mot. for Summ. J. (ECF 96), at 37-42. Unequal impact of similarly situated people and an intent to discriminate certainly evidence class discrimination. However, "[a] showing of discriminatory intent is not necessary when the equal protection claim is based on an overtly discriminatory classification." *Wayte v. United States*, 470 U.S. 598, 610, n.10 (1985) (citing *Strauder v. West Virginia,* 100 U.S. 303 (1880)). That is precisely what Knight claims.

The government in Leon County denies liberty to a class of accused "solely by reason of their indigency." *Williams v. Illinois*, 399 U.S. 235, 242 (1970); *see also Tate v. Short*, 401 U.S. 395, 397-98 (1971) ("subjected to imprisonment solely because of his indigency"). They remain detained "simply because, through no fault of [their] own, [they] cannot" satisfy a monetary condition. *Bearden*, 461 U.S. at 672-73. Those who can afford the imposed monetary bail may buy their freedom, while those who are too poor have no choice but to remain detained. "[B]ecause of their impecunity they [are] completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." *San Antonio Indep. Sch. Dist. v.*

Rodriguez, 411 U.S. 1, 20 (1973); *see also ODonnell*, 892 F.3d at 162 (finding those who "are unable to pay secured bail … sustain an absolute deprivation of their most basic liberty interests—freedom from incarceration."). They remain detained "solely because the indigent cannot afford to pay a secured bond." *Id*. In each of these cases, the U.S. Supreme Court had no need to inquire into intent or impact because they were obviously from an overtly discriminatory classification. Facially, the Leon County's monetary bail practice operates only to detain a specific class of those who cannot afford the monetary bail.

The Sheriff argues that the accused persons are detained for reasons unrelated to indigency—their individual risk of flight and to public safety justify a significant monetary bail. Sheriff's Mot. for Summ. J., at 33. He accordingly demands Knight identify comparators who have the same pretrial risks, received the same monetary bail, and yet were treated differently when the rich comparator was able to afford the monetary bail and was released, and the poor class member was detained. However, the government's detention of those who cannot afford the monetary bail "are not merely *disproportionate* in impact. Rather, they are wholly contingent on one's ability to pay, and thus visit different consequences on two categories of persons, they apply to all indigents and do not reach anyone outside that class." *M.L.B. v. S.L.J.*, 519 U.S. 102, 127 (1996) (quotations omitted) (distinguishing *Washington v. Davis*, 426 U.S. 229 (1976), on the ground that

"[s]anctions of the *Williams* [*v. Illinois*] genre … are wholly contingent on one's ability to pay and thus … apply to all indigents and do not reach anyone outside that class"). Different pretrial risks may justify different monetary bail. However, the putative class members are not detained simply because they were imposed any specific monetary bail amount. They are detained because whatever the amount, they cannot pay it. An order imposing monetary bail "is effectively a pretrial preventive detention order only against those who cannot afford to pay. It is not a detention order as to defendants who can pay … ." *ODonnell*, 251 F. Supp. 3d at 1067-68.

Indeed, the government's practice does not *accidentally* deprive putative class members of liberty through the imposition of an unaffordable monetary bail. Instead, the government *intends* for a person to remain jailed until she satisfies the court-ordered conditions of release. When an accused cannot afford the monetary bail, she is unable to satisfy it and remains detained. The government may not disclaim intent to detain by claiming ignorance of the accused's inability to satisfy the monetary bail. The state court has a duty to inquire. *See* Knight's Mot. for Summ. J. (ECF 94), § IV(C), pp. 29-32. Furthermore, Knight limited her requested habeas relief to focus on deliberate detention decisions. Knight only requests that this Court possibly release an accused who asserts that she cannot satisfy the monetary bail and accordingly requests a reduction. Pet. (ECF 1), at

¶ C(2). For those persons, the state court would be in the same position as the trial court in *Bearden*. It knows that the unaffordable monetary bail would result in pretrial detention.

Here, because the policies and customs are overtly discriminatory against poor arrestees, Knight does not need to prove purposeful discrimination in comparison to similarly-situated individuals.

F. Eighth Amendment's framework is inapplicable

The Sheriff and Florida argue that Knight's substantive claim arises under the Eighth Amendment. Sheriff's Mot. for Summ. J. (ECF 96), at 36; Florida's Memo. (ECF 97), at 10. Consequently, they argue that Knight's substantive claims must be analyzed under the Eighth Amendment. Sheriff's Mot. for Summ. J., at 36-37; Florida's Memo., at 8-11. They erect and tear-down a strawman, an argument Knight does not present.

Monetary bail is excessive under the Eighth Amendment when it is "higher than an amount reasonably calculated to fulfill" the government's interests. *Stack v. Boyle*, 342 U.S. 1, 5 (1951). When the government uses monetary bail—the "sum of money subject to forfeiture," *id.*—the amount must be properly calibrated to the government's interest. However, in Count 1, Knight takes no issue with whether the monetary bail amount is excessive.

Instead, she claims the government deprives class members of liberty through the imposition of unaffordable bail without a need. Other less-restrictive alternatives to detention exist. Compl. (ECF 1) at ¶¶ 44-48. Thus, it is perplexing that the Sheriff exhaustively detailed how Knight's and other putative class members' flight risk, concerns for public safety, or both justified the high monetary bail. Sheriff's Mot. for Summ. J., at 13-14, 19-20, 30-33. He misses the point. *Buffin v. City & County of San Francisco*, No. 15cv4959, 2018 WL 424362, at *4 (N.D. Cal. Jan. 16, 2018) (ruling unaffordable bail claims did not arise under the Eighth Amendment). Even assuming that monetary bail is proportionate to the government's interests, Knight claims that because it is unaffordable and results in pretrial detention, the government must consider and reject as insufficient other less-restrictive bail forms. Florida provides for numerous forms of bail. Fla.R.Crim.P. 3.131(b)(1) (listing various bail forms); § 903.011, Fla. Stat. (defining bail to "include any and all forms of pretrial release."). Knight claims that when one form of bail functionally is not a condition of release, but effects detention, other bail forms must be rejected as insufficient to assure the government's interests. That claim arises under the Fourteenth Amendment. *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc).

That an imposition of a monetary bail may have violated the Eighth Amendment does not foreclose another constitutional violation. Clearly, the same

set of facts can support more than one claim. For example, an arrest without probable cause in retaliation for protected speech may independently violate the Fourth Amendment and the First Amendment. *Lozman v. City of Riviera Beach, Fla.*, No. 17-21, 2018 WL 3013809, *9 (U.S. June 18, 2018) ("Lozman need not prove the absence of probable cause to maintain a claim of retaliatory arrest"). The same is true here. Monetary bail can be both excessive *and* unaffordable. Indeed, the U.S. Supreme Court in *Salerno* analyzed the deprivation pretrial liberty right under *both* substantive due process, 481 U.S. at 746-51, and the Eighth Amendment, *id.* at 752-755—without even hinting that only one constitutional theory was colorable. Similarly, in *Rainwater* this Court relied on equal protection and due process precedents along with Eighth Amendment ones. 572 F.2d at 1056-57. The Sheriff and Florida's arguments would seemingly foreclose a Fourteenth Amendment claim where monetary bail set for black defendants is commensurate with the government's bail interests, but the government routinely sets monetary bail for white defendants significantly lower. Clearly, such a claim would assert an equal protection claim unable to be resolved by simply deciding whether the bail was excessive.

The U.S. Supreme Court and our Circuit have recognized Knight's independent cause of action under the Fourteenth Amendment. "Due process and equal protection principles" forbid the government from detaining a person

"simply because, through no fault of [her] own, [s]he cannot" satisfy a monetary condition. *Bearden v. Georgia*, 461 U.S. 660, 665, 672-73 (1983). "'[S]ubstantive due process' prevents the government from" detaining a person pretrial unless "no conditions of release can reasonably assure the safety of the community or any person." *Salerno*, 481 U.S. at 750. "The incarceration of those who cannot [pay the bail amount], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements." *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc). Judge Clark disagreed with the en banc Circuit that the *Rainwater* claim arose under the Fourteenth Amendment. *Rainwater*, 572 F.2d at 1068 (Clark., J., concurring). However, his view did not prevail. *Id*., at 1057.

Steadfast, the Sheriff and Florida argue that *Graham v. Connor,* 490 U.S. 386, 394 (1989), compels analyzing Knight's surviving claims under the Eighth Amendment. Sheriff's Mot. for Summ. J. (ECF 96), at 36-37; Florida's Memo., at 8-10. "Where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.'" *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (quoting *Graham*, 490 U.S. at 395). Yet, two reasons make *Graham* inapplicable.

First, *Graham* envisions two competing analytical frameworks. *Graham* does not always require a person to cast her "constitutional claims relating to physically abusive government conduct" "under either the Fourth or Eighth Amendments." *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997). Instead, only where a particular Amendment "provides … protection" against the alleged "government behavior" should its test be employed. *Graham*, 490 U.S. at 395. For this reason, *Graham*, at 395, analyzed a claim of excessive force in the context of an arrest under the Fourth Amendment. However, where no "seizure" recognized by the Fourth Amendment occurs, the Fourteenth Amendment may provide the appropriate standard. *See County of Sacramento v. Lewis*, 523 U.S. 833, 843-47 (1998). Here, the Eighth Amendment prohibits only a specific type of unreasonable bail—excessive bail. Accordingly, it provides no competing analytical framework to determine whether the imposed bail is discriminatory, the least restrictive form, or otherwise unreasonable. Without a framework to evaluate Knight's claim that the government may only impose an unaffordable bail when no less-restrictive alternative forms would be sufficient, no competing Eighth Amendment analysis exists. The Fourteenth Amendment provides the only framework and *Graham* is inapplicable.

Similarly, the Fourth Amendment does not protect against Knight's asserted procedural deficiencies as Florida casually suggests in a footnote. *See* Florida's

Memo (ECF 97), at 9, n.2. The Fourth Amendment demands a judicial determination of probable cause promptly after a warrantless arrest. *Gerstein v. Pugh*, 420 U.S. 103, 126 (1975). A person has no free-standing Fourteenth Amendment procedural claim for this "pre-detention probable cause determination or a prompt post-detention probable cause hearing." *Reynolds v. New Orleans City*, 272 Fed. Appx. 331, 338 (5th Cir. 2008). Yet, the Fourth Amendment does not dictate the required procedure *after* the determination of probable cause—after first appearance, the time relevant here. The test in *Mathews v. Eldridge,* 424 U.S. 319 (1976), determines whether the continued deprivation of liberty is fairly imposed. *United States v. Salerno*, 481 U.S. 739, 746, 751-52 (1987). *Graham* does not compel the procedures by which an unaffordable bail that results in detention be determined by the Fourth Amendment because neither *Gerstein* nor any other Fourth Amendment test provides analytical framework. For example, in the Eleventh Circuit in *Quintanilla v. Bryson*, 17-14141, 2018 WL 1640140, at *8 (11th Cir. Apr. 5, 2018), the Court considered an inmate's various claims against solitary confinement. Although the Court specifically found that the substantive due process violation must be analyzed under the Eighth Amendment, it found the procedural due process was "a plausible claim."

Second, *Graham's* purpose is to guard against the "expan[sion] of the concept of substantive due process." *County of Sacramento*, 523 U.S. at 842.

However, here, Knight seeks no such expansion. Instead, the U.S. Supreme Court has clearly held that substantive due process protects against deprivations of liberty. *See Foucha v. Louisiana,* 504 U.S. 71, 80 (1992); *Salerno*, 481 U.S. at 750; *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Knight's substantive challenge to unaffordable bail that needlessly results in detention should be understood and analyzed under substantive due process. *See ODonnell v. Harris County*, 892 F.3d 147, 157 (5th Cir. 2018) (ruling the unaffordable bail claims "do not run afoul of *Graham*); *Buffin v. City & County of San Francisco*, No. 15cv4959, 2018 WL 424362, at *4 (N.D. Cal. Jan. 16, 2018) (same).

G. Government misstates the import of the Bail Reform Act

The Fourteenth Amendment requires the government to provide procedural due process when it deprives the accused's liberty through the imposition of an unaffordable bail. The U.S. Constitution's fundamental right to liberty from "bodily restraint," *Foucha,* 504 U.S. at 80, may only be deprived through an adequate procedure, *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003).

Knight claims that that the state court must determine whether the monetary bail is unaffordable, and if so, whether the government established a need for the resulting pretrial detention with clear and convincing proof at an adequate hearing.

Pet. (ECF 1), ¶¶ 50. The Sheriff and Florida object that the federal Bail Reform Act of 1984 does not apply to state courts and the Court lacks jurisdiction to force the state government to comply with its own state pretrial detention statute and rule. Sheriff's Mot. for Summ. J. (ECF 96), at 5, 42-43; Florida's Memo (ECF 97), at 24-25. They misread Knight's claim and request.

Knight does not seek to impose the federal Bail Reform Act on state courts or make them comply with their own procedures. Instead, Knight proposes the federal and state law and rules as a clear outline for a constitutional hearing. Knight seeks a constitutional procedure, which could be achieved by "comply[ing] with the Bail Reform Act of 1984, 18 U.S.C. § 3142," Pet., ¶¶50, B(3), or one "pursuant to Fla.R.Civ.P. 3.132 and § 907.041(4), Fla. Stat.," Pet., ¶ C(2)(iii). The U.S. Supreme Court in *United States v. Salerno*, 481 U.S. 739 (1987), upheld the federal law as providing sufficient procedural due process. Accordingly, a district court declaring that a hearing resulting in pretrial detention in Florida must "substantially compl[y] with the Bail Reform Act," Compl. (ECF 1) at 18, ¶ B(3), would provide the government a specific and detailed guidance of what is constitutionally expected. Whether the government imposes an unaffordable bail pursuant to those established procedures is irrelevant so long as it provides the substantially similar process.

III. CONCLUSION

Based on the foregoing arguments and authorities, Knight respectfully requests that this Court deny the Sheriff's Motion for Summary Judgment.

N.D. FLA. LOC. R. 7.1(F) CERTIFICATE OF WORD LIMIT

This filing contains a total of 8,663 words—within the Court allotted, enlarged limit of 12,000 words. Order (ECF 99).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the date stamped in the CM/ECF header that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all persons registered for this case, including any opposing counsel that have appeared.

Respectfully Submitted,

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