APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 17-1118
(D.C. No. 1:16-CV-01281-MEH) (D. Colo.)

[Filed March 9, 2018]

KENNETH JEROME DAWSON,
Plaintiff - Appellant,

v.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, COLORADO; JEFFERSON COUNTY, COLORADO, DEPARTMENT OF HUMAN SERVICES; JEFFERSON COUNTY, COLORADO, DIVISION OF JUSTICE SERVICES; JEFFERSON COUNTY, COLORADO, SHERIFF'S OFFICE; JEFF SHRADER,
Defendants - Appellees,

and

HEATHER BECKER; KURT PIERPOINT; LESLIE HOLMES; MATTHEW WRIGHT; RYAN KINSELLA; RYAN L. ROPERS; SARAH MCHUGH; STEPHANIE LAHUE,
Defendants.

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **BRISCOE**, and **BACHARACH**, Circuit Judges.

Kenneth Jerome Dawson appeals the dismissal of his action brought pursuant to 42 U.S.C. § 1983 in which he asserts a violation of his Fourteenth Amendment substantive due process rights. Dawson challenges the official policies of the Jefferson County Jail. Due to the timing of Dawson's detention, the timing of his posting of bond, and the court-ordered release condition that Dawson be fitted with a GPS monitor, the policies Dawson challenges resulted in a three-night and a three-day delay in his pretrial release after he posted bond. Dawson sued the Board of County Commissioners of Jefferson County; Jefferson County Department of Human Services; Jefferson County Division of Justice Services; the individual employees of the County, Department, Division, and/or the Pretrial Services Program in their individual and official capacities; Jeff Shrader in his official capacity as Sheriff of Jefferson County; and the Jefferson County Sheriff's Office.

Dawson's appeal concerns only the dismissal of his § 1983 claims asserted against defendants-appellees[1]

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Defendants-appellees are: (i) the Board of County Commissioners of Jefferson County, (ii) Jefferson County Department of Human Services, (iii) Jefferson County Division of Justice Services, (iv) the Jefferson County Sheriff's Office, and (v) Jeff Shrader in his official

for their policies which delayed his release from custody. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and AFFIRM.

I

A. Facts

The following undisputed facts are taken from Dawson's amended complaint and the exhibits attached thereto. On Thursday, May 29, 2014, around 5:30 p.m., police officers in Lakewood, Colorado, arrested Dawson at his home for allegedly violating a state court restraining order that prohibited him from contacting his wife. App., at 13–14, ¶¶ 10–11. The Lakewood Police brought Dawson to the Jefferson County Jail where he was placed in the custody of the Sheriff's Office. Id. at 14, ¶ 12.

The next morning, on Friday, May 30, 2014, the Jefferson County District Court set Dawson's bond at $1,500. Id. ¶ 13. As another condition of Dawson's release, the court also ordered GPS monitoring. Id. On Friday, at 10:33 a.m., the Jefferson County Pretrial Services Department transmitted to the Sheriff's Office a "hold" of Dawson regarding electronic monitoring. Id. ¶ 14. The "hold" stated, "[t]his defendant is to remain in custody until such time that a Pretrial Services Representative has forwarded written notice to release this hold." Id. (quoting Ex. A).

Two written policies of the Jefferson County Division of Justice Services authorized the "hold" of Dawson: (i) Policy No. 3.1.43, "Pretrial Holds & Releases" (the

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capacity as Sheriff of Jefferson County (hereinafter, "defendants-appellees").

"Holding Policy"); and (ii) Policy No. 3.1.68, "Electronic Monitoring" (the "Monitoring Policy"). Id. ¶ 15 (citing Exs. B, C). Dawson alleges the Holding and Monitoring Policies "authorize and require Pretrial Services staff to: (a) place a hold on a defendant to prevent the Sheriff's Office from releasing the defendant pending the fitment of [a] court-ordered GPS monitoring device; (b) arrange for the fitment of the GPS device upon the defendant; and (c) then release the hold upon the defendant, thereby enabling the Sheriff's Office to release the defendant, subject to any other holds or court-ordered conditions of release." Id. ¶ 16.

On Friday evening, Dawson posted a cash bond of $1,500. Id. at 15, ¶ 17. At 7:40 p.m., the Sheriff's Office sent an email to Pretrial Services stating, Dawson "has bonded and is being held on your hold." Id. ¶ 18 (quoting Ex. D). Dawson claims the email from the Sheriff's Office "informed the Pretrial Services staff that the only unsatisfied condition remaining for [Dawson's] release was to fit him with the GPS monitor." Id.

The Monitoring Policy contains a "Release Schedule," which states as follows:

> a) Defendants [who] post bond before 1 PM Monday-Friday[ ] will be outfitted with the monitoring equipment by our vendor at 4 PM that same day[;]
>
> b) Defendants [who] post bond after 1 PM Monday-Thursday[ ] will be outfitted the following day at 4 PM[;]
>
> c) Defendants who post bond after 1 PM on Friday and before 1 PM on Monday will be outfitted on Monday at 4 PM[.]

Id. at 25–26, ¶ 3. The Monitoring Policy also states:

> All referral paperwork must be provided to the vendor no later than **2 PM** in order to have the defendant outfitted with the equipment by 4 PM that same day. The vendor will arrive at the jail at 4 PM to place the electronic monitoring unit on the defendant and provide them with a charger and instructions upon their release from custody.

Id. at 26, ¶ 5 (emphasis in original). Based on the Monitoring Policy, because Dawson posted bond after 1:00 p.m. on Friday, he had to remain in jail until Monday at 4:00 p.m. before he could be "outfitted." Id. at 15, ¶ 19. Thus, from Friday evening, on May 30, 2014, until Monday afternoon, on June 2, 2014, Dawson was not fitted with a GPS device which would have satisfied all court-ordered conditions for his release from custody.[2] Id.

B. Case History

On May 27, 2016, Dawson filed this complaint in the United States District Court for the District of Colorado against multiple Jefferson County entities and several individual defendants in their individual and official capacities. Id. at 4. After Dawson amended his complaint, id. at 21, all defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6),

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[2] Dawson was not fitted with a GPS monitor or released until Wednesday, June 4, 2014—five days and five nights after he posted bond. Dawson does not challenge in this appeal the two-day delay in his release from Monday to Wednesday, which was allegedly due to jail employees' negligence. Dawson only challenges the constitutionality of his three-day delay in release over the weekend, which was due to the Holding and Monitoring policies.

id. at 37–56. As regards Dawson's policy-based claims, the district court dismissed with prejudice Dawson's amended complaint against all defendants-appellees who are free-standing entities or individuals sued in their official capacities. The district court did not dismiss Dawson's negligence claims filed against individual defendants in their individual capacities only.[3] Dawson voluntarily dismissed those claims without prejudice and then filed this appeal. Following our issuance of a show cause order questioning the finality of the district court's order, Dawson filed a motion with the district court seeking a Federal Rule of Civil Procedure 54(b) certification of finality. The district court granted Dawson's motion[4] and entered its judgment on May 10, 2017. Id. at 9.

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[3] The individual defendants are not parties to this appeal.

[4] The district court's Rule 54(b) certification satisfies the requirements of Stockman's Water Co. v. Vaca Partners, L.P., 425 F.3d 1263 (10th Cir. 2005). "First, the district court . . . determine[d] that its judgment is final." Id. at 1265; see App., at 185 ("[B]ecause the Court's January 3, 2017 order dismissed [Dawson's] entity liability claims with prejudice, the order is final as to those claims."). "Second, the district court . . . determine[d] that no just reason for delay of entry of its judgment exists." Stockman's, 425 F.3d at 1265; see App., at 185–86 ("[T]he remaining claims involve distinct parties and a separate period of detention, and thus, likely involve different state interests.") (allowing Dawson to immediately appeal the court's dismissal of his entity claims "may be the most efficient manner to resolve this litigation," as "denying a Rule 54(b) certification might preclude [Dawson] from appealing the entity liability claims[ ] because 'the Individual Claims arguably do not justify the cost and effort of this litigation'" (quoting Dawson's motion for Rule 54(b) certification)).

II

We are tasked with determining whether Dawson's claims against defendants-appellees—challenging the policies resulting in a three-day delay in his pretrial release from custody after he posted bond—were properly dismissed under Rule 12(b)(6). We conclude the district court did not err in dismissing those claims.

A. Standard of Review

"We review the district court's grant of a Rule 12(b)(6) motion to dismiss de novo." Mocek v. City of Albuquerque, 813 F.3d 912, 921 (10th Cir. 2015). "To survive a motion to dismiss, a complaint must 'state a claim to relief that is plausible on its face.'" Id. (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "[A] plaintiff cannot rely on 'labels and conclusions, and a formulaic recitation of the elements of a cause of action.'" Id. (quoting Twombly, 550 U.S. at 555). "We accordingly 'disregard conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable.'" Id. (quoting Khalik v. United Air Lines, 671 F.3d 1188, 1191 (10th Cir. 2012)).

B. Section 1983 Liability

The Supreme Court in Monell v. Department of Social Services of New York concluded that a plaintiff may sue "municipalities and other local government units" under § 1983. 436 U.S. 658, 690 (1978). Thus, as we have in similar cases, we analyze Dawson's claims, which challenge policies enacted by Jefferson County and enforced by its employees, under the same rubric applied in policy-based § 1983 actions brought against municipalities. See Dodds v. Richardson, 614 F.3d

1185, 1201–02 (10th Cir. 2010). The "Court has described the correct standard for subjecting a municipality to liability under § 1983: 'a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983.'" Darr v. Town of Telluride, Colo., 495 F.3d 1243, 1256 (10th Cir. 2007) (quoting Monell, 436 U.S. at 694).

There are three requirements for municipal liability under 42 U.S.C. § 1983: (1) the existence of an official policy or custom; (2) a direct causal link between the policy or custom and the constitutional injury; and (3) that the defendant established the policy with deliberate indifference to an almost inevitable constitutional injury.[5] Schneider v. City of Grand Junction Police Dep't, 717 F.3d 760, 767–69 (10th Cir. 2013).

1. Official Policy

Dawson alleges the first requirement for municipal liability—the existence of official policies. According to

[5] Without citing case law, Dawson contends that he need not allege deliberate indifference because deliberate indifference "applies to a specific subset of cases wherein the plaintiff alleges a policy of inaction," such as "when a plaintiff seeks to hold a municipal defendant liable for failure to train." See Aplt. Reply, at 23–24. But the Supreme Court has noted that deliberate indifference is the proper standard "when actual deliberation is practical," such as "in the custodial situation of a prison," which fits squarely to the facts before us. See Cty. of Sacramento v. Lewis, 523 U.S. 833, 851 (1998). We, therefore, apply the deliberate indifference standard in this case.

Dawson's amended complaint, "[t]he Hold was authorized by two written Policies adopted by the County and the Division: Policy No. 3.1.43, titled 'Pretrial Holds & Releases' . . . and Policy No. 3.1.68, titled 'Electronic Monitoring.'" See App., at 14, ¶ 15.

2. Causal Link between Official Policy and Alleged Constitutional Injury

Dawson also pleads the second requirement for municipal liability—a direct causal link between the policies and his alleged unconstitutional over detention. Dawson's amended complaint states, "[i]n accordance with this official Policy, none of the Defendants made any effort to fit Plaintiff with a GPS device or otherwise to facilitate his release from Friday evening, May 30, 2014, until Monday afternoon, June 2, 2014." Id. at 15, ¶ 20.

3. Deliberate Indifference to an Almost Inevitable Constitutional Injury

However, we agree with the district court that Dawson fails to satisfy the third prong, and therefore cannot state a claim against defendants-appellees. To allege the third requirement for municipal liability—deliberate indifference—Dawson must plead facts that plausibly suggest "the municipality ha[d] actual or constructive notice that its [policies were] substantially certain to result in a constitutional violation, and it consciously or deliberately [chose] to disregard the risk of harm." Schneider, 717 F.3d at 771 (quoting Barney v. Pulsipher, 143 F.3d 1299, 1307 (10th Cir. 1998)). The district court concluded the policies are constitutional; thus, "because [Dawson] has not sufficiently alleged that the Holding and

Monitoring Policies' weekend detention requirement caused a violation of his substantive due process right to be free from unreasonably prolonged pretrial detention, [Dawson] has not met the requirements for municipal entity liability." App., at 151.

C. Substantive Due Process

Dawson argues that a substantive due process analysis consists of three strands. Aplt. Opening Br., at 9. These strands, Dawson contends, comprise: (i) "infringement of a fundamental right where the infringement is not narrowly tailored to serve a compelling governmental interest;" (ii) "infringement of a non-fundamental right where the infringement is not reasonably related to a legitimate governmental interest;" and (iii) "infringement of any constitutionally protected right in a manner that 'shocks the conscience.'" Id. at 9–10. Dawson claims that if a non-fundamental right is implicated and an official policy exists, "the 'reasonably related' standard applies," and the "shocks the conscience" standard does not apply. Aplt. Reply, at 11–12. Dawson argues the Supreme Court has applied the "shocks the conscience" standard in certain cases because official policies did not exist in those cases. Thus, because official policies exist in this case, Dawson contends that only strands (i) and (ii) are potentially applicable. Aplt. Opening Br., at 5.

Dawson reaches the proper conclusion but for the wrong reason. The Supreme Court has carefully delineated fundamental rights and applies strict scrutiny to those rights. Obergefell v. Hodges, 135 S. Ct. 2584, 2597 (2015) ("The fundamental liberties protected by th[e] [Due Process] Clause include most of the rights enumerated in the Bill of Rights . . . . [and]

certain personal choices central to individual dignity and autonomy."). In stark contrast, the Court applies rational basis review to non-fundamental rights, precisely because they are non-fundamental—not because a defendant acted pursuant to an official policy. Thus, the Supreme Court begins the substantive due process inquiry by first defining the "type" of right at stake. Washington v. Glucksberg, 521 U.S. 702, 703 (1997). Once that baseline is established, the Court applies the level of review that corresponds to the right identified.

In Seegmiller v. LaVerkin City, we described this analysis: "First, we must 'careful[ly] descri[be] . . . the asserted fundamental liberty interest.'" 528 F.3d 762, 769 (10th Cir. 2008) (quoting Glucksberg, 521 U.S. at 721). "Second, we must decide whether the asserted liberty interest, once described, is 'objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed,'" which would render the liberty interest a fundamental right. Id. (quoting Glucksberg, 521 U.S. at 721). The plaintiff has the "burden of proving the liberty interest" at issue is fundamental and therefore "must be protected through a heightened scrutiny analysis." Id. at 770. And, "[a]bsent a fundamental right, the state may regulate an interest pursuant to a validly enacted state law or regulation rationally related to a legitimate state interest."[6] Id. at 771.

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[6] However, Seegmiller also deviates from the proper framework in one regard. Seegmiller states the "shocks the conscience" and the rational relation substantive due process inquiries are one and the same: "The Supreme Court has described two strands of the substantive due process doctrine. One strand protects an

1. Description of the Asserted Interest

We begin by "carefully describ[ing] the right [at stake] and its scope." Id. at 769; see also Dias v. City and Cty. of Denver, 567 F.3d 1169, 1181 (10th Cir. 2009). Dawson alleges an infringement on his right to be free from pretrial detention after he fulfilled the court ordered release conditions within his control; that is, he paid the required bond.

2. Is the Asserted Interest Fundamental or Non-Fundamental?

We next ask whether the interest Dawson asserts "is 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.'" Dias, 567 F.3d at 1181 (quoting

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individual's fundamental liberty interests, while the other protects against the exercise of governmental power that shocks the conscience." 528 F.3d at 767.

Yet, the Supreme Court has noted that the "shocks the conscience" standard pertains to the requisite state of mind for Section 1983 liability and applies in limited situations (not relevant here)—such as when defendants act during emergencies. See Lewis, 523 U.S. at 836 ("The issue in this case is whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate indifference or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. We answer no, and hold that in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation."); see also id. at 839 (discussing also how "a much higher standard of fault than deliberate indifference has to be shown for officer liability in a prison riot").

Glucksberg, 521 U.S. at 720–21). We are guided by Bell v. Wolfish, 441 U.S. 520 (1979); United States v. Salerno, 481 U.S. 739 (1987); Gaylor v. Does, 105 F.3d 572 (10th Cir. 1997); and Dodds, 614 F.3d 1185, and conclude that Dawson's interest to be free from pretrial detention, having fulfilled the court ordered release conditions within his control and awaiting the fulfillment of court ordered release conditions outside of his control, is a non-fundamental right.

The Supreme Court in Wolfish addressed conditions of confinement—an issue distinct from the one before us. However, Wolfish provides guidance for our constitutional inquiry. In Wolfish, the Second Circuit concluded, "the Due Process Clause requires that pretrial detainees 'be subjected to only those restrictions and provisions which . . . are justified by compelling necessities of jail administration,'" because "an individual is to be treated as innocent until proven guilty." 441 U.S. at 531 (some quotations omitted) (quoting Wolfish v. Levi, 573 F.2d 118, 124 (2d Cir. 1978)). Thus, the Second Circuit held, "deprivations of the rights of detainees cannot be justified by the cries of fiscal necessity . . . [or] administrative convenience." Id. (quotations omitted). The Supreme Court disagreed. Id. at 532.

The Court's directive pertaining to the constitutional analysis of confinement conditions applies with equal force here:

> In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think the proper inquiry is whether those conditions

> amount to punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. . . . [T]he Government concededly may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution.

Id. at 536–37 (footnote omitted). The Court continued:

> A court must decide whether the disability [imposed by the government] is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on "whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]." Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless —a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.

Id. at 538 (quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963)) (footnotes and citations omitted).

The Court also stated that the government's legitimate interests are not limited to assuring a detainee's presence at trial. Id. at 540. "The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained"—that is, "legitimate operational concerns." Id. The Court instructed:

> [T]he problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.

Id. at 547.

Eight years later, the Supreme Court in Salerno examined the right to be free from pretrial detention based on a challenge to the Bail Reform Act of 1984. The Court analyzed the Act under rational basis review and concluded "[t]he government's interest in preventing crime by arrestees is both legitimate and compelling." 481 U.S. at 749. The Court stated, "the mere fact that a person is detained does not inexorably lead to the conclusion that the government has imposed punishment." Id. at 746. The Court reiterated its previous holdings "that the Government's regulatory interest in community safety can, in appropriate

circumstances, outweigh an individual's liberty interest," id. at 748, "prior to or even without criminal trial and conviction," id. at 749. Importantly, in so reiterating, the Court refused to "categorically state that pretrial detention 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" Id. at 751 (quoting Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)).

Wolfish and Salerno laid the foundation for this court's rulings which followed. In Gaylor, the plaintiff remained incarcerated for five days without a hearing before a magistrate judge and without information about his bail status (despite the fact that a magistrate had set plaintiff's bail the day following his arrest). 105 F.3d at 574. In analyzing plaintiff's asserted interest to be free from pretrial detention, "we consider[ed] whether the policy in question 'punished' [plaintiff] by infringing his liberty interest unreasonably and in a way unrelated to a legitimate goal, such as insuring his appearance for trial or protecting others from him." Id. at 576–77. Defendants failed to assert a legitimate goal "for a policy of informing a detainee of his bond status only 'if he asks for same,'" id., and we concluded that because "no legitimate goal [wa]s suggested[,] . . . . [t]he restriction or condition was not 'reasonably related to a legitimate goal' . . . and it appear[ed] 'arbitrary or purposeless' under" Wolfish, id. at 578. The policy was therefore "punishment." Id.

Finally, in Dodds, the plaintiff-arrestee alleged that a former county sheriff "violated [plaintiff's] Fourteenth Amendment due process rights by depriving him of his protected liberty interest in posting bail" where a county policy prevented plaintiff

from posting bail after working hours and from posting bail until he had appeared before a judge and had been arraigned. 614 F.3d at 1189–90. We analyzed the arrestee's interest in pre-conviction liberty under rational basis review:

> To avoid depriving an arrestee of due process, the government may only interfere with [his] protected liberty interest, for instance by refusing to accept lawfully set bail from the arrestee and detaining him until some later time, if its actions reasonably relate 'to a legitimate goal.' Otherwise, the detention of such an arrestee would constitute punishment prior to trial, in violation of due process.

Id. at 1192–93 (citation omitted); see also Meechaicum v. Fountain, 696 F.2d 790, 792 (10th Cir. 1983) ("[B]ail may not be denied 'without the application of a reasonably clear legal standard and the statement of a rational basis for the denial.'" (citation omitted)). Similar to Gaylor, we concluded in Dodds that plaintiff plausibly pled a violation of his constitutional rights because defendant had not "proffer[ed] any reason, let alone a 'legitimate goal,' for refusing to allow [p]laintiff to post bail and detaining [p]laintiff for three days." Id. at 1193.

With this legal backdrop, we conclude that Dawson's asserted right to be free from pretrial detention having paid court-ordered bond, but awaiting the fulfillment of another court ordered release condition, is not a fundamental right. Rather, Dawson asserts a non-fundamental liberty interest. Thus, so long as the policies which caused his continued detention are not "imposed for the purpose of

punishment," Wolfish, 441 U.S. at 538, but instead reasonably relate to a legitimate governmental objective, id., the policies are constitutional and Dawson's claims fail.

3. Rational Basis Review

Having determined that Dawson's stated interest is a non-fundamental right, we ask whether its infringement is reasonably related to a legitimate governmental interest.

In contrast with Gaylor and Dodds, defendants-appellees have listed numerous interests which they contend are legitimate governmental interests: (i) conserving money and effort, Aplt. Opening Br., at 20; (ii) coordinating electronic monitoring services and/or mental health competency evaluations, Aple. Br., at 32; (iii) monitoring defendants for victim and/or public safety, id.; (iv) obtaining administrative convenience and efficiency, App., at 148; (v) honoring court orders and following state laws, Aple. Br., at 32; (vi) assuring a defendant's appearance for trial, (vii) efficiently coordinating between different governmental entities, and (viii) obtaining prison security, Aplt. Reply, at 18–19 (citing Aple. Br., at 30–33).

Dawson concedes these are legitimate governmental purposes and interests, and that GPS monitoring policies generally serve these purposes and interests. Aplt. Reply, at 18–19. But Dawson argues none of defendants-appellees interests are "reasonably served by the specific aspect of the Policies that requires a detainee who posts his bond after 1:00 p.m. on a Friday to wait in jail for three days for a GPS fitment

procedure that—according to the Policies—routinely takes only a few hours." Id. at 19 (emphasis omitted). But, contrary to Dawson's views, we recognize that the policies do further the legitimate governmental interest of obtaining administrative convenience by eliminating the need for county staff to coordinate with an outside vendor over the weekend to achieve the fitment. The goal of obtaining administrative convenience goes hand-in-hand with the additional legitimate governmental objective of effectively coordinating between different governmental offices.

More than twenty steps are needed to provide an arrestee with a GPS monitor.

> These steps include coordination between the Pretrial Services Unit of Justice Services and the Sheriff's Office; notification to victims and witnesses of a detainee's release prior to release, which itself may include contact with the District Attorney's Office and/or victim/witness services; setting of GPS exclusion zones for each location from the detainee is restrained based on information from victims or without victim assistance if Pretrial Services Unit is unable to make contact with alleged victim(s); notification to the detainee of the details of the program and the exclusion zones to which he or she is subject; verification of the detainee's contact information, which the detainee must supply for independent verification by Pretrial Services; completion of GPS vendor-related paperwork; documentation of all steps taken under the Policies.

Aple. Br., at 32–33.

It is true that Monday through Thursday two to three hours are sufficient to complete these enumerated steps. Thus, the record and the policies themselves indicate the GPS fitting process, while multi-step, is not extremely time consuming, and that defendants-appellees do not need an entire weekend to fit arrestees with GPS devices. However, under rational basis review, it is more convenient for the Jail to refrain from engaging in a multi-step GPS fitting process and from coordinating with an outside GPS vendor—regardless of how little time the process demands—over the weekend when relevant staff are not available. Thus, the policies rationally relate to at least one legitimate governmental goal. Because the policies are rationally related to defendants-appellees' legitimate interest of obtaining administrative convenience, the policies are not arbitrary or purposeless, nor do they amount to punishment. Thus, as Dawson has no support for his due process claim, he also cannot meet the requirements for § 1983 liability.

III

We therefore AFFIRM the district court.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

TYMKOVICH, C.J., concurring.

I join Judge Briscoe's opinion. I write separately only to discuss Tenth Circuit jurisprudence for evaluating substantive due process claims.

I. Substantive Due Process

The Fourteenth Amendment commands that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Courts have interpreted this to mean states cannot deprive a person of life, liberty, or property without providing fair procedures. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Yet the Supreme Court has held this interpretation does not adequately address the full spectrum of interactions arising between citizens and their government. Accordingly, the due process guaranteed by the Fourteenth Amendment covers "more than fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997). There is a "substantive" aspect too, through which the Clause "protect[s] against arbitrary and oppressive government action." *Seegmiller v. LaVerkin City*, 528 F.3d 762, 767 (10th Cir. 2008) (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998)).

There are two ways a state's action might be arbitrary enough to violate substantive due process. First, when a state law infringes a *right* without sufficient justification. Second, when state officials deprive a person of life, liberty, or property in a way *so arbitrary that it "shocks the conscience." See United States v. Salerno*, 481 U.S. 739, 746 (1987) ("[S]ubstantive due process prevents the government from engaging in conduct that shocks the conscience *or*

interferes with rights implicit in the concept of ordered liberty." (internal quotation marks and citations omitted; emphasis added)).

The Supreme Court has developed two strands of jurisprudence to address these two challenges to state action. Under the 'rights' line of substantive due process cases, a state must have a constitutionally sufficient reason before its legislation can interfere with rights to life, liberty, or property. How good a reason a state needs depends on how important the right is. When the right asserted is not "fundamental," a state need only have a legitimate interest reasonably related to the legislation that interferes with those rights. *Glucksberg*, 521 U.S. at 722. But if the right is "fundamental," the state's interference must be "narrowly tailored" to serve a compelling interest. *Id.* at 721.

The second strand of substantive due process law addresses arbitrary conduct by a state official or entity. Because every kind of tort imaginable could become a due process violation if perpetrated by a state actor, "only the most egregious official conduct" can give rise to this kind of substantive due process violation. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). The Supreme Court has therefore held that a government official's conduct depriving a person of life, liberty, or property violates substantive due process only if it "shocks the conscience." *Id.*

II. Challenging Government Action

The parties in this case disagree about how courts apply the 'rights' approach and the 'shocks the conscience' approach. They are not the only ones. The

Supreme Court itself has vacillated to and fro. And the circuits have adopted varying approaches.[1] Our Circuit has settled on the following solution: if the case involves a *legislative act*, only the 'rights' strand applies. *Dias v. City & County of Denver*, 567 F.3d 1169, 1182 (10th Cir. 2009). On the other hand, when the case involves *executive action* by a government official or entity, we apply the 'shocks the conscience' test. *Browder v. City of Albuquerque*, 787 F.3d 1076, 1079 & n.1 (10th Cir. 2015) (negligence context).

Although the distinction between the two tests was not always clear, the Supreme Court attempted to draw a bright line in *County of Sacramento v. Lewis*, 523 U.S. at 846–49. The "criteria to identify what is fatally arbitrary differ depending on whether it is legislation or a specific act of a governmental officer that is at issue," the Court explained. *Id.* at 846. When a claim involves the specific act of a government officer, courts must first determine whether the officer's conduct was egregious enough to shock the conscience. *Id.* at 847 n.8. *See* Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J.

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[1] *Compare Hancock v. Cty. of Rensselaer*, 882 F.3d 58 (2d Cir. 2018) (explaining the court applies the 'rights' approach to legislation and the 'shocks the conscience' test to executive action), *Handy-Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 547 (6th Cir. 2012) (explaining the two strands of substantive due process and noting that for executive action to violate substantive due process, it must shock the conscience), *with Slusarchuk v. Hoff*, 346 F.3d 1178, 1181–82 (8th Cir. 2003) (explaining that plaintiff challenging executive action must satisfy *both* the 'rights' test and the 'shocks the conscience' test to prevail), *Hawkins v. Freeman*, 195 F.3d 732, 738 (4th Cir. 1999) (same), *and Waldman v. Conway*, 871 F.3d 1283, 1292 (11th Cir. 2017) (suggesting both tests could apply as alternatives in any given case).

1672, 1788 (2012) (explaining *Lewis*'s holding "that substantive due process claims against the executive—usually law enforcement officers—are governed by a 'shocks the conscience' test"). Conduct "shocks the conscience" when it demonstrates such "a degree of outrageousness and a magnitude of potential or actual harm" that it "'shocks the conscience of federal judges.'" *Uhlrig v. Harder*, 64 F.3d 567, 573–74 (10th Cir. 1995) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992)).

But *Lewis* left some questions unanswered. The Court did not make clear whether the 'rights' approach could still be applied in a case involving executive conduct that shocked the conscience. Then, in *Chavez v. Martinez*, 538 U.S. 760 (2003), a three-justice plurality applied both the 'shocks the conscience' approach *and* the 'rights' approach in a case involving a coerced confession. *Id.* at 774–76. It thus appeared at least a few members of the Supreme Court thought both tests could be used to evaluate executive action.

In *Seegmiller v. LaVerkin City*, 528 F.3d 762, 767 (10th Cir. 2008), a post-*Chavez* case, we took this approach. Relying on *Chavez*, we reasoned that "[a]lthough some precedential support exists for the executive versus legislative distinction," the Supreme Court had not followed "an overly rigid demarcation between the two lines of cases." *Id.* at 767. We also relied on an earlier Tenth Circuit case explaining that "[w]hile the shocks the conscience standard applies to tortious conduct challenged under the Fourteenth Amendment," it does not "eliminate more categorical protection for fundamental rights as defined by the tradition and experience of the nation." *Id.* at 769

(quoting *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1203 (10th Cir. 2003)). Our court thus concluded the tests were "not mutually exclusive" and "[b]oth approaches" could "be applied in any given case." *Id.*

A subsequent case, *Dias v. City and County of Denver*, 567 F.3d 1169 (10th Cir. 2009), clarified that *Seegmiller*'s 'both tests work' rationale *only* applied to cases challenging government official conduct, not legislation. The court explained: "[w]e held in *Seegmiller* that application of a 'shocks the conscience' standard in cases involving *executive* action is not to the exclusion of the foregoing ['rights'] framework." *Id.* at 1182 (emphasis in original). But the court "clarif[ied] . . . that when legislative action is at issue," only the 'rights' approach "is applicable." *Id.*

Finally, in *Browder v. City of Albuquerque*, 787 F.3d 1076 (10th Cir. 2015), we explained that *Seegmiller*'s 'both tests work' interpretation of *Chavez* was dicta. *Id.* at 1079 n.1. While we acknowledged that "some question lingers about all this," we reasoned that "*Chavez* did not expressly overrule *Lewis*'s holding that the 'arbitrary or conscience shocking' test is the appropriate one for executive action." *Id.* Consequently, when a case involves government official conduct, the 'shocks the conscience' test is the *only* test we apply.[2]

This makes sense. Though the 'shocks the conscience' test helps limit the number and types of

[2] This is consistent with the approach of several other circuits. *See, e.g.*, *Hancock v. Cty. of Rensselaer*, 882 F.3d 58 (2d Cir. 2018); *Reyes v. N. Texas Tollway Auth., (NTTA)*, 861 F.3d 558, 562 (5th Cir. 2017); *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017); *Handy-Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 547 (6th Cir. 2012); *DePoutot v. Raffaelly*, 424 F.3d 112, 118 (1st Cir. 2005).

torts by government actors from becoming substantive due process claims, it is too vague to be useful for evaluating the propriety of legislation. Conversely, the 'rights' approach provides a helpful framework for evaluating statutes, but it cannot well distinguish between innocent and egregious government official conduct. Were we to apply the 'rights' approach to every case of negligence resulting in death, we would come close to converting a broad spectrum of merely negligent government conduct into substantive due process violations.

In sum, then, though our circuit has sometimes repeated *Seegmiller*'s 'both tests work' dicta,[3] we do not follow it. Instead, we follow a simple binary approach. If a claim challenges executive action, we apply only the 'shocks the conscience' test; if a claim challenges a legislative act, we apply only the 'rights' approach.

III. The Claims Here

Having explained how the two strands of substantive due process doctrine work and when our

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[3] *See, e.g.*, *Leatherwood v. Allbaugh*, 861 F.3d 1034, 1046 n.11 (10th Cir. 2017) (explaining both tests could be used in case about revocation of a defendant's suspended sentence); *Koessel v. Sublette Cty. Sheriff's Dep't*, 717 F.3d 736, 749–50 (10th Cir. 2013) (explaining both tests could be used to evaluate a claim of wrongful termination); *Pettigrew v. Zavaras*, 574 F. App'x 801, 815 (10th Cir. 2014) (unpublished) (applying both tests to parole board's denial of relief); *see also Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1203 (10th Cir. 2003) (explaining an intrusive physical examination could be both a tort that shocks the conscience and a violation of a fundamental right, but concluding the Fourth Amendment provided a more specific source for the right).

court applies them, I turn to their application in this case.

The facts are simple. As Judge Briscoe recounts, police arrested Kenneth Jerome Dawson for violating a restraining order and kept him in custody at the Jefferson County Jail. Because of County policy, the Jail did not fit Dawson with a GPS tracker over the weekend, and he remained in jail. Dawson argues application of this policy to his circumstances violated his substantive due process right to freedom from bodily restraint.

To state a claim for municipal liability against the County, Dawson must allege the existence of (1) an official policy or custom; (2) a direct causal link between the policy or custom and the constitutional injury alleged; and (3) deliberate indifference on the part of the municipality. *Schneider v. City of Grand Junction Police Dep't*, 717 F.3d 760, 769 (10th Cir.2013). "[A] formal regulation or policy statement" qualifies as an official policy or custom. *Bryson v. City of Okla. City*, 627 F.3d 784, 788 (10th Cir. 2010). And no one disagrees there is a direct link between the policy and Dawson's injury. Thus, since "fault and causation [are] obvious" when a decision "duly promulgated" by the city is unconstitutional, *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 406 (1997), the entire question in this case boils down to whether Jefferson County's enacted policy violated Dawson's substantive due process rights.

Since the Board of County Commissioners adopted the challenged policy by resolution, the policy is legislative. We therefore apply the 'rights' approach under *Dias*. *See* 567 F.3d at 1182.

Under the 'rights' approach, if a government action "burdens a fundamental right, the infringement must be narrowly tailored to serve a compelling government interest," but if it "burdens some lesser right, the infringement is merely required to bear a rational relation to a legitimate government interest." *Id.* at 1181 (citing *Glucksberg*, 521 U.S. at 721, 728). Dawson argues the County's policies violated his right to freedom from bodily restraint by causing him to stay in jail over the weekend. He claims that Supreme Court cases establish this right is a fundamental one, and that the administrative convenience the County obtains from its policy is not a sufficiently compelling interest.

Dawson attempts to do here what the Supreme Court cautioned courts to watch out for—he attempts to convert his injury into a violation of a 'fundamental right' by articulating the right at too high a level of generality. It was precisely to prevent this strategy that *Glucksberg* instructs us to look for a "'careful description' of the asserted fundamental liberty interest." 521 U.S. at 721 (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)). The right Dawson claims the County violated is not a right to freedom from bodily restraint, writ large, but a right to speedy release from pretrial detention when the only remaining unfulfilled condition for release is within the jail's control.

The Supreme Court has evaluated pretrial confinement schemes under substantive due process doctrine in several cases. *See, e.g.*, *United States v. Salerno*, 481 U.S. 739 (1987); *Schall v. Martin*, 467 U.S. 253 (1984). In those cases, instead of applying strict scrutiny, the Court applied the substantive due process test from *Bell v. Wolfish*, 441 U.S. 520 (1979),

which only asks whether the government had a rational basis for its policy or instead meant its policy as punishment, *id.* at 535, 538–39. *See Salerno*, 481 U.S. at 746–47; *Schall*, 467 U.S. at 269. By choosing not to apply strict scrutiny, the Court implied that pretrial confinement not intended as punishment does not infringe a fundamental right.

Indeed, the Court's language in *Bell* strongly indicates strict scrutiny analysis would be wrong in the pretrial detention context. "In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law," the Court said, "we think that *the proper inquiry* is whether those conditions amount to punishment of the detainee." *Id.* at 535 (emphasis added).

It must be acknowledged, though, the Supreme Court's analysis in *Salerno* was certainly not as clear as it could be.[4] We are therefore not surprised the Ninth Circuit came to the opposite conclusion recently—holding there is a fundamental right to freedom from pretrial detention. *See Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014). Dawson points to that case for support.

I think our analysis is the correct one, however, both for the reasons already stated and for two additional reasons. First, this case more helpfully

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[4] *Compare United States v. Deters*, 143 F.3d 577, 583 (10th Cir. 1998) (concluding *Salerno* did not clearly find a fundamental right), *with Hoang v. Comfort*, 282 F.3d 1247, 1257 (10th Cir. 2002), *judgment vacated sub nom. Weber v. Phu Chan Hoang*, 538 U.S. 1010 (2003) (concluding in dicta *Salerno* delineated a fundamental right).

places the *Bell*, *Schall*, and *Salerno* line of cases squarely within the overarching substantive due process 'rights' approach the Supreme Court announced in *Glucksberg*. *See* 521 U.S. at 721, 728. The Ninth Circuit's conclusion, by contrast, creates an additional, sui generis due process framework. *See Lopez-Valenzuela*, 770 F.3d at 780 ("We first consider whether the . . . laws satisfy general substantive due process principles . . . [w]e then consider in the alternative whether the . . . laws violate due process, under *Bell*, *Schall* and *Salerno*, by imposing punishment before trial."). Second, our decision keeps federal courts from supervising all pretrial detention policies. Were we to find a right as broad as the Ninth Circuit suggests, all jail procedures relating to bail could become subject to strict scrutiny.

In sum, the right Dawson alleges is best characterized as a non-fundamental right to be free from pretrial punishment. We thus need only apply rational basis scrutiny as directed by *Bell*. And as the majority explains, the County's policy meets that standard. *Cf. Baker v. McCollan*, 443 U.S. 137, 145 (1979) ("we are quite certain that a detention of three days over a New Year's weekend does not and could not amount to deprivation [of due process]").

A weekend in jail is no small burden. The County can likely do better. But its policy does not violate the Constitution.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-01281-MEH

[Filed January 3, 2017]

KENNETH JEROME DAWSON,
Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, COLORADO, JEFFERSON COUNTY, COLORADO, DEPARTMENT OF HUMAN SERVICES, JEFFERSON COUNTY, COLORADO, DIVISION OF JUSTICE SERVICES, JEFFERSON COUNTY, COLORADO, SHERIFF'S OFFICE, JEFF SHRADER, HEATHER BECKER, KURT PIERPONT, LESLIE HOLMES, MATTHEW WRIGHT, RYAN KINSELLA, RYAN L. ROPERS, SARAH MCHUGH, and STEPHANIE LAHUE,
Defendants.

ORDER

Michael E. Hegarty, United States Magistrate Judge.

Before the Court is Defendants' Motion to Dismiss Plaintiff's Amended Complaint [filed August 23, 2016; ECF No. 23]. The motion is fully briefed, and the Court finds that oral argument will not assist in the adjudication of the motion. Defendants' Motion requires the Court to determine whether Plaintiff's Amended Civil Rights Complaint ("Amended Complaint") states a claim for relief against any Defendants. The Court finds Plaintiff has not plausibly alleged a municipal entity liability claim against any Defendants. However, because Plaintiff has properly asserted claims against Heather Becker, Leslie Holmes, Matthew Wright, Ryan Kinsella, Ryan Ropers, Sarah McHugh, Kurt Pierpont, and Stephanie LaHue in their individual capacities ("Pretrial Employees"), Defendants' Motion to Dismiss is granted in part and denied in part.[1]

BACKGROUND

On May 27, 2016, Plaintiff initiated this lawsuit pursuant to 42 U.S.C. § 1983 against the Jefferson County, Colorado Board of County Commissioners (the "Board"), Department of Human Services ("DHS"), Division of Justice Services ("Justice Services"), the Pretrial Employees in their individual and official capacities (collectively with the Board, DHS, and Justice Services, the "County Defendants"), and Jeff

[1] The parties consented to the Court's jurisdiction pursuant to D.C. Colo. LCivR 40.1 on August 22, 2016. *See* ECF No. 21.

Shrader in his official capacity as Jefferson County Sheriff and the Jefferson County Sheriff's Office (collectively the "JCSO"). Plaintiff filed the operative Amended Complaint on August 9, 2016. Am. Compl., ECF No. 16. All Defendants have responded to the Amended Complaint with this Motion.

I. Facts

The following are factual allegations (as opposed to legal conclusions, bare assertions, or merely conclusory allegations) made by Plaintiff against Defendants in the Amended Complaint, which are taken as true for analysis under Fed. R. Civ. P. 12(b)(6). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff claims that on or about May 29, 2014, he was taken into custody by City of Lakewood, Colorado Police, based on an alleged violation of a state court restraining order prohibiting him from contacting his wife. Am. Compl. ¶¶ 10–11. The Lakewood Police transported Plaintiff to the Jefferson County Jail and remitted him to JCSO custody. *Id.* at ¶ 12.

On the morning of Friday, May 30, 2014, the district court set Plaintiff's bond at $1,500.00 and authorized his release subject to the condition that he be fitted with a GPS device for electronic monitoring of his whereabouts. *Id.* at ¶ 13. At 10:30 a.m. on Friday, May 30, 2014, Jefferson County Pretrial Services transmitted to the JCSO a "Pretrial Services Hold" document regarding Plaintiff's GPS monitoring requirement, which stated: "This defendant is to remain in custody until such time that a Pretrial Services Representative has forwarded written notice to release this hold." *Id.* at ¶ 13; Am. Compl. Ex. A,

ECF No. 16-1. The hold was authorized by two written policies adopted by the Board and Justice Services: Policy No. 3.1.43, titled "Pretrial Holds & Releases" (the "Holding Policy"), Am. Compl. Ex. B, at 1–2, ECF No. 16-2, and Policy No. 3.1.68, titled "Electronic Monitoring" (the "Monitoring Policy"). Am. Compl. Ex. C, at 1–5, ECF No. 16-3; Am. Compl. at ¶ 15. Generally, the two policies authorize Pretrial Services staff and inmate service providers, such as the JCSO, to (1) place a hold on a defendant to prevent the inmate service provider from releasing the defendant pending the fitting of a court-ordered GPS monitoring device; (2) arrange for the fitting of the GPS device on the defendant; and (3) release the hold, thereby enabling the inmate service provider to release the defendant. Am. Compl. at ¶ 16.

The Monitoring Policy contains a "Release Schedule," which states in relevant part: "Defendants that post bond before 1 PM Monday–Friday, will be outfitted with the monitoring equipment by our vendor at 4 PM that same day"; "Defendants that post bond after 1 PM Monday–Thursday, will be outfitted the following day at 4 PM"; "Defendants who post bond after 1 PM on Friday and before 1 PM on Monday will be outfitted [with a GPS monitor] on Monday at 4 PM"; "All referral paperwork must be provided to the vendor no later than **2 PM** in order to have the defendant outfitted with the equipment by 4 PM that same day. The vendor will arrive at the jail at 4 PM to place the electronic monitoring unit on the defendant…." Am. Compl. Ex. C, at 1–2.

Additionally, the Monitoring Policy includes a "Procedure," which states in relevant part: "When the

defendant posts bond, Inmate Services staff (ISU) are responsible to notify Pretrial GPS Case Managers and Supervisor(s) that the only 'charge' holding the defendant in custody is the 'Pretrial Hold.' NOTE: The 'Pretrial Hold' is the authorization to keep defendant in custody until arrangements are made for the installation of the electronic monitoring unit." *Id.* at 1.

On the evening of Friday, May 30, 2014, Plaintiff posted a cash bond of $1,500.00, leaving the receipt of a GPS monitoring device as his only remaining bond condition. Am. Compl. ¶¶ 13, 17. At 7:40 p.m., the JCSO sent an email to the "Pretrial Services General Mail" account, which informed the Pretrial Services staff that Plaintiff "has bonded and is being held on your hold." *Id.* at ¶ 18, Am. Compl. Ex. D, ECF No. 16-4. In accordance with the Holding and Monitoring Policies, neither Pretrial Services nor the JCSO took any further action to fit Plaintiff with a GPS monitoring unit or otherwise facilitate his release during the weekend. Am. Compl. ¶ 20.

Although the Monitoring Policy required Plaintiff to receive a GPS device on Monday, June 2, 2014, neither the Pretrial Employees nor the JCSO took any action to accomplish this task until Tuesday, June 3, 2014, at 4:12 p.m., when Lawrence Briggs, a JCSO employee, sent an email addressed to the Pretrial Employees stating: "ABOVE SUBJ BONDED ON ALL CHARGES ON 053014, HE STILL HAD A PTR HOLD ON DOCKET 14CR1328." *Id.* at ¶¶ 23, 24; Am. Compl. Ex. E, ECF No. 16-5. At approximately 9:10 p.m. that same day, Plaintiff completed and submitted an "Inmate/Detainee Request Form" ("kite"), protesting the delay in his release as a violation of his

constitutional rights. Am. Compl. ¶ 28; Am. Compl. Ex. F, ECF No. 16-6. Plaintiff alleges that Sheriff Deputy D.K. Scott refused to sign or accept the kite. Am. Compl. ¶ 28.

On Wednesday, June 4, 2014, at 8:25 a.m., an individual named Diana Taube sent an email with the subject heading "dawson, kenneth P1083740" to all the Pretrial Employees' individual email accounts, except Kurt Pierpont, Stephanie LaHue, and Ryan Ropers. *Id.* at ¶ 29, Am. Compl. Ex. G, ECF No. 16-7. The email stated: "The above subject bonded on case #14CR1328 on Friday May 30th. The pretrial hold is all that is holding him here." Am. Compl. Ex. G. At 12:46 p.m., Pretrial Employee Sarah McHugh sent a "Pretrial Services Release Notice" to the JCSO, identifying Plaintiff by name and case number, and stating: "PLEASE RELEASE THIS DEFENDANT TO INTERVENTION AT 4PM TODAY TO BE PLACED ON A GPS MONITOR." Am. Compl. ¶ 33; Am. Compl. Ex. H, ECF No. 16-8. After Pretrial Services fitted Plaintiff with a GPS monitor later that afternoon, the JSCO released him from custody. Am. Compl. ¶ 34.

Plaintiff alleges that during his detention he repeatedly complained to the JCSO staff, who sympathized with him and expressed that his constitutional rights were being violated, yet took no action to facilitate his release. *Id.* at ¶ 27.

II. Procedural History

Based on these factual allegations, Plaintiff brought this civil rights case. Plaintiff asserts the municipal and official capacity Defendants violated his Fourteenth Amendment due process right to be free

from unreasonably protracted pre-trial detention by creating, promulgating, and implementing the Holding and Monitoring Policies and the JCSO's informal policy of neglect. Am. Compl. ¶ 39. Plaintiff further contends the Pretrial Employees' conscious indifference to Plaintiff's protracted detention either contributed to Plaintiff's alleged constitutional violation or constituted a separate basis for the same violation. *Id.* at ¶ 22. Defendants responded to the Amended Complaint by filing the present Motion, which seeks to dismiss the claims brought against them for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Defs.' Mot. to Dismiss, ECF No. 23. Defendants argue that (1) Plaintiff makes only impermissible collective allegations against all Defendants; (2) the JCSO is not a proper party to this action because it is not responsible for administering, staffing, or creating policies for the GPS monitoring program; (3) Plaintiff fails to allege a Fourteenth Amendment overdetention claim; and (4) even if the Court finds Defendants caused a constitutional violation, the claims against the Pretrial Employees must be dismissed, because they are entitled to qualified immunity. *Id.* Additionally, Defendants assert in their Reply that the Court should strike Plaintiff's response, as it exceeds the page limit.

LEGAL STANDARDS

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff pleaded facts which allow "the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged." *Id.* *Twombly* requires a two-prong analysis. First, a court must identify "the allegations in the complaint that are not entitled to the assumption of truth," that is, those allegations which are legal conclusions, bare assertions, or merely conclusory. *Id.* at 678–80. Second, the Court must consider the factual allegations "to determine if they plausibly suggest an entitlement to relief." *Id.* at 681. If the allegations state a plausible claim for relief, such claim survives the motion to dismiss. *Id.* at 680.

Plausibility refers "to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'" *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012) (quoting *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008)). "The nature and specificity of the allegations required to state a plausible claim will vary based on context." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011). Thus, while the Rule 12(b)(6) standard does not require that a plaintiff establish a prima facie case in a complaint, the elements of each alleged cause of action may help to determine whether the plaintiff has set forth a plausible claim. *Khalik*, 671 F.3d at 1191.

However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. The complaint must provide "more than labels and conclusions" or merely "a formulaic recitation of the elements of a cause of action," so that "courts 'are not

bound to accept as true a legal conclusion couched as a factual allegation.'" *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," the complaint has made an allegation, "but it has not shown that the pleader is entitled to relief." *Id*. (quotation marks and citation omitted).

ANALYSIS

The issues remaining after full briefing of the present motion are (1) whether the Court should strike Plaintiff's response for failure to comply with my Practice Standards; (2) whether Plaintiff has sufficiently alleged a claim for entity liability under 42 U.S.C. § 1983; and (3) whether the Pretrial Employees are entitled to qualified immunity. The Court will analyze each issue and claim in turn.

I. Plaintiff's Noncompliance with Practice Standard III(D)

Defendants argue the Court should strike Plaintiff's response brief, because it violates my Practice Standards by exceeding the page limit. Defs.' Reply 2 n.1, ECF No. 32. The Court does not find it appropriate to strike Plaintiff's response.

In cases where I am the presiding judge pursuant to 28 U.S.C. § 636(c) and D.C. Colo. LCivR 40.1 (providing for consent to the trial jurisdiction of a U.S. Magistrate Judge), my Practice Standards govern, subject to the

federal and local rules. *See* Practice Standard I(D). Here, the parties have consented to my jurisdiction pursuant to 28 U.S.C. § 636(c) and D.C. Colo. LCivR 40.1. *See* Consent Form, ECF No. 21. Thus, my Practice Standards govern.

Practice Standard III(D) limits response briefs to twenty pages, provides that the page limit will be expanded only "on motion demonstrating good cause," and states that "I may strike any…brief…that otherwise fails to comply with these standards or other applicable court rules." *See* Practice Standard III(D). Additionally, Local Rule 7(1)(d) states in relevant part, "A motion shall not be included in a response or reply to the original motion. A motion shall be filed as a separate document." *See* D.C. Colo. LCivR 7.1(d).

In this case, Plaintiff's response to Defendants' Motion to Dismiss totaled over twenty-eight pages, in excess of the twenty-page limit under Practice Standard III(D). *See* Pl.'s Resp. to Defs.' Mot. to Dismiss, ECF No. 28. However, because Defendants raised the issue in a footnote in their Reply, Defs.' Reply 2 n.1, ECF No. 32, rather than by filing a motion to strike as required by Local Rule 7.1(d), Defendants have not properly raised the issue, and I will not otherwise exercise my discretion to strike Plaintiff's brief, as the issues in this case are adequately complex, and the Defendants sufficiently numerous, to justify a moderate expansion of the page limitation.

II. Municipal Entity Liability

In response to Plaintiff's Fourteenth Amendment claim against the County Defendants and the JCSO, Defendants argue Plaintiff has not sufficiently alleged

the three requirements for municipal entity liability under 42 U.S.C. § 1983. As a preliminary matter, county officials, such as a sheriff, may be sued in their official capacities under Section 1983. *See, e.g.*, *Cortese v. Black*, 838 F. Supp. 485, 496 (D. Colo. 1993). An action against a sheriff in his or her official capacity is, in reality, an action against the sheriff's department that employs him or her. *Pietrowski v. Town of Dibble*, 134 F.3d 1006, 1009 (10th Cir. 1998). To state a claim under Section 1983 against a municipal entity, a plaintiff must plausibly allege (1) the existence of an official policy or custom, (2) a direct causal link between the policy or custom and the constitutional injury, and (3) that the defendant established the policy with deliberate indifference to an almost inevitable constitutional injury. *Schneider v. City of Grand Junction Police Dep't*, 717 F.3d 760, 767–69 (10th Cir. 2013).

To establish an official policy or custom, a plaintiff may point to (1) a formal regulation or policy, (2) an informal custom that is so widespread it amounts to a custom or usage with the force of law, (3) a decision of an employee with final policymaking authority, (4) final policymakers' ratification of their subordinates' decisions, or (5) a failure to adequately train or supervise employees. *Bryson v. City of Okla. City*, 627 F.3d 784, 788 (10th Cir. 2010).

If a complaint sufficiently alleges a policy or custom of the municipal entity or of a party to which the municipal entity delegated authority, the plaintiff must then allege that the policy "was the 'direct cause' or 'moving force' behind the constitutional violations." *Smedley v. Corrs. Corp. of Am.*, 175 F. App'x 943, 946

(10th Cir. 2005) (quoting *Bd. of Cty. Comm'rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 404 (1997)). The conclusion that an action taken or directed by the municipality or its authorized decision-maker itself violates federal law will also determine that the municipal action was the moving force behind the plaintiff's injury. *Dodds v. Richardson*, 614 F.3d 1185, 1200 (10th Cir. 2010); *Brown*, 520 U.S. at 404–05; *Barney v. Pulsipher*, 143 F.3d 1299, 1307 (10th Cir. 1998) ("The Supreme Court observed in *Brown* that when an official municipal policy itself violates federal law, issues of culpability and causation are straightforward; simply proving the existence of the unlawful policy puts an end to the question.").

Finally, the plaintiff must allege that the municipal entity was deliberately indifferent to the likelihood that the policy would result in a constitutional violation. *Schneider*, 717 F.3d at 771. To properly plead deliberate indifference, the plaintiff must allege facts sufficient to plausibly suggest that "the municipality ha[d] actual or constructive notice that its [policy] [was] substantially certain to result in a constitutional violation, and it consciously or deliberately [chose] to disregard the risk of harm." *Id.*

To establish the first element of his Section 1983 claim, the existence of an official policy or custom, Plaintiff alleges that two official policies of Defendants and an informal policy or custom of the JCSO caused his allegedly unconstitutional detention: (1) the coaction of the Holding and Monitoring Policies' categorical three-day detention, as created and promulgated by the Board and Justice Services and implemented by the JCSO and Pretrial Services, Am.

Compl. ¶¶ 15–16, 20; and (2) the JCSO's informal policy to neglect pretrial detainees. *Id.* at ¶ 23. As alleged, neither the Holding and Monitoring Policies nor the JCSO's alleged informal policy are unconstitutional policies or customs.

A. The Holding and Monitoring Policies

As an initial matter, although the parties do not dispute that the Holding and Monitoring Policies are official policies, Defendants argue they are not policies of the JCSO, because the JCSO does not create or administer them. Defs.' Mot. 7–9. Plaintiff contends the policies can be attributed to the JCSO, because the JCSO assisted in their enforcement by sending an email to Pretrial Services staff notifying them that Plaintiff had paid his bond and by holding Plaintiff until Pretrial Services issued a GPS device. Am. Compl. ¶¶ 18, 36. The Court agrees with Plaintiff. Enforcement and implementation of an official policy is sufficient to create Section 1983 entity liability. *See Monell v. Dep't of Social Servs. of N.Y.*, 436 U.S. 658, 690 (1978); *Dodds*, 614 F.3d at 1203–04 (holding that a sheriff's department's enforcement of a district court clerk's policy could violate Section 1983); *Trujillo v. City and County of Denver*, No. 14-cv-02798-REB-MEH, 2016 WL 5791208, at *14 (D. Colo. Sept. 7, 2016) (stating that prior case law "did not foreclose the possibility that one public entity could be liable for another public entity's policy"). Taking Plaintiff's allegations as true, the Holding and Monitoring policies are attributable to the JCSO, because the JCSO was directly involved in the implementation and enforcement of the policies. Indeed, if the JCSO did not

enforce the policies, the JCSO would have released Plaintiff on Friday evening after he posted bond.

Because the policies are attributable to the JCSO, the Court must analyze whether the policies caused a constitutional violation. Plaintiff alleges the Monitoring Policy's Release Schedule, which requires an allegedly arbitrary three-day detention (from Friday after 1 p.m. to Monday at 4 p.m.) when bond is paid after 1 p.m. Friday, violates his Fourteenth Amendment substantive due process right. Am. Compl. ¶¶ 15–16, 20–21. Defendants contend the policies are constitutional, because the three-day detention is a reasonable time to conduct GPS fitting. Defs.' Mot. 12–13. The Court agrees with Defendants, and holds that the Holding and Monitoring Policies did not cause a violation of Plaintiff's Fourteenth Amendment right to be free from unreasonably protracted pretrial detention.

Substantive due process violations occur when government action either "infringes upon a fundamental right" or "shocks the conscience." *See Seegmiller v. LaVerkin City*, 528 F.3d 762, 767–68 (10th Cir. 2008); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Chavez v. Martinez*, 538 U.S. 760, 787 (2003). Under the "fundamental rights" strand, courts must first determine whether a liberty interest is fundamental. *Seegmiller*, 528 F.3d at 769 (alterations omitted). To be fundamental, an interest must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Id*. If the plaintiff's liberty interest is fundamental, the government action infringing on that

interest must be "narrowly tailored to serve a compelling state interest." *Id*. at 767 (internal quotation marks omitted). In contrast, burdens on non-fundamental liberty interests must be "rationally related to a legitimate interest." *Id*. at 769 (citing *Reno v. Flores*, 507 U.S. 292, 305 (1993)).

Under the second strand, the plaintiff must sufficiently allege that the government's action "shocks the conscience." *Seegmiller*, 528 F.3d at 767. Conduct "shocks the conscience" if it is "deliberate government action that is 'arbitrary' and 'unrestrained by the established principles of private right and distributive justice.'" *Id.* at 767 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)). This strand of substantive due process aims to prevent government officials from "abusing their power, or employing it as an instrument of oppression." *Id.* at 767 (quoting *Lewis*, 523 U.S. at 846). However, "not all governmental conduct is covered," but "only the most egregious official conduct can be said to be arbitrary in the constitutional sense." *Id.* The Court will address these two distinct strands in turn.

First, Plaintiff contends his right "to be free from unreasonably protracted pretrial detention" is a fundamental liberty interest, subject to strict scrutiny. Am. Compl. ¶¶ 20, 44. Plaintiff relies on *Barnes v. District of Columbia*, a case which involved a government policy that categorically prohibited jail releases after 10 p.m., even for detainees with release orders. 793 F. Supp. 2d 260, 274 (D.D.C. 2011); Pl.'s Resp. 16. The *Barnes* court granted the plaintiffs' motion for summary judgment on this issue and held that the government's overnight detention policy for

jail inmates with release orders "interfered with the[ir] fundamental liberty interests" to "b[e] free from incarceration absent a criminal conviction." *Barnes*, 793 F. Supp. 2d at 274, 278 (citing *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992)).

However, the Tenth Circuit—whose precedent is binding on the Court—has not held that pretrial overdetentions interfere with a fundamental liberty interest. In *Dodds*, the court stated:

> [A]n arrestee obtains a liberty interest in being freed of detention once his bail is set because the setting of bail accepts the security of the bond for the arrestee's appearance at trial and 'hence the state's justification for detaining him fades.' To avoid depriving an arrestee of due process, the government may only interfere with this protected liberty interest, for instance by refusing to accept lawfully set bail from the arrestee and detaining him until some later time, if its actions *reasonably relate 'to a legitimate goal*.'

614 F.3d at 1192 (emphasis added) (citations omitted) (quoting *Gaylor v. Does*, 105 F.3d 572, 576 (10th Cir. 1997)) (holding that the defendant's refusal to accept plaintiff's bond violated the constitution, because it was not reasonably related to a legitimate goal). Because the "reasonably related to a legitimate goal" standard applies only to non-fundamental rights, *see Seegmiller*, 528 F.3d at 769, the Tenth Circuit has not held that pretrial overdetentions interfere with a fundamental liberty interest. Therefore, in accordance with *Dodds*, the Court will analyze whether the Holding and

Monitoring Policies' mandatory three-day detention is reasonably related to a legitimate interest.

Plaintiff alleges in his Amended Complaint that there is no valid reason for the Holding and Monitoring Policies' weekend detention requirement. Am Compl. ¶ 24. Although the Court is required to accept Plaintiff's factual allegations as true, Plaintiff's assertions of the government's interest in taking a specific action are not factual allegations entitled to the assumption of truth. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that the plaintiff's allegation that the defendant had "no legitimate penological interest" was not entitled to the assumption of truth); *Powers v. Harris*, 379 F.3d 1208, 1217 (10th Cir. 2004) ("[W]e are not bound by the parties' arguments as to what legitimate state interests the statute seeks to further."); *Teigen v. Renfrow*, 511 F.3d 1072, 1084 (10th Cir. 2007) (stating that in analyzing a motion to dismiss claims subject to rational basis scrutiny, courts "must independently consider whether there is any conceivable rational basis for the classification, regardless of whether the reason ultimately relied on is provided by the parties or the court. This determination is a legal question which need not be based on any evidence or empirical data"). Therefore, the Court will analyze Defendants' purported justifications for the policies.

Defendants assert the Monitoring Policy's Release Schedule is justified on the basis of administrative convenience and efficiency. Defs.' Mot. to Dismiss 12; Defs.' Reply 11–13. The Court finds that administrative efficiency and convenience are legitimate government interests, as municipalities with limited resources

should strive to operate efficiently. *See Washington v. Harper*, 494 US 210, 246 (1990) ("The State clearly has a legitimate interest in prison security and administrative convenience . . . ."). Additionally, the Court finds that the Release Schedule's weekend detention is rationally related to this interest, and is not purposed to arbitrarily punish detainees. The Monitoring Policy requires that a Pretrial Services case manager or supervisor complete over twenty steps to coordinate a detainee's receipt of a GPS monitor, which involves the participation of an outside vendor, the victim(s), the detainee, the jail, etc. Am. Compl. Ex. C, at 1–5. Requiring Defendants to complete these steps and employ their outside vendor throughout the weekend could seriously undermine the government's efficient use of its resources. Therefore, unlike *Dodds*, where the defendant asserted no justification for its policy that prevented the plaintiff from posting bond, the Monitoring Policy's Release Schedule serves the government's interest in the efficient use of its resources. The Court thus finds Plaintiff has not sufficiently alleged the policies caused him to suffer a substantive due process violation under the first strand in *Seegmiller*.

Under the second strand, the Court must determine whether the government's action "shocks the conscience." *Seegmiller*, 528 F.3d at 767. To shock the conscience, government action must be deliberate, arbitrary, and unrestrained. *Id.* Additionally, "the 'shocks the conscience' standard is not applicable to cases in which plaintiffs advance a substantive due process challenge to a legislative enactment," but "is an inquiry reserved for cases challenging executive action." *Dias v. City & County of Denver*, 567 F.3d

1169, 1182–83 (10th Cir. 2009) (quoting *Lewis*, 523 U.S. at 846–47 n.8).[2] Because the promulgation and enforcement of a Justice Services' policy is inherently executive action, the Court will analyze whether the Holding and Monitoring Policies "shock the conscience." *See Doe v. Heil*, 533 F. App'x 831, 845–46 (10th Cir. 2013) (stating that a state prison's policy, which imposed generally applicable conditions on the admission of inmates into a program, was executive action).

Plaintiff contends that the categorical three-day detention is arbitrary and "shocks the conscience," because the Release Schedule requires GPS fitting and release within twenty-seven hours during the week, but requires pretrial detainees to stay in jail for the entire weekend if they post bond after 1:00 p.m. on Fridays. Pl.'s Resp. 18–25. The Court does not find that the Holding and Monitoring Policies shock the judicial conscience.

There is no controlling case law for permissible overdetention times where a bonded detainee's release is pending only the fitting of a GPS monitoring device. In the overdetention context generally, courts have refused to draw a bright line as to when overdetention violates due process. However, when plaintiffs have satisfied all bond conditions and possess a release order, courts have found delays ranging from two to forty-eight hours unconstitutional. *See Young v. City of*

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[2] Although *Seegmiller* held that courts may apply both strands when analyzing the constitutionality of executive action, 528 F.3d at 769, the *Dias* court subsequently clarified that the "shocks the conscience" strand is not applicable in cases challenging legislative action. 567 F.3d at 1182.

Little Rock, 249 F.3d 730, 736 (8th Cir. 2001) (affirming a Section 1983 jury verdict that a two and a half hour delay in the plaintiff's release was a due process violation); *Barnes*, 793 F. Supp. 2d at 260 (stating that an unjustified forty-eight hour or more delay in processing a detainee's release is likely unconstitutional). However, when a plaintiff does not possess a release order, courts have permitted much longer overdetentions. *See Alexander v. City of Muscle Shoals, Ala.*, 766 F. Supp. 2d 1214, 1232 (N.D. Ala. 2011) (holding that a nine-day detention without a probable cause determination did not shock the conscience); *Afeworki v. Thompson*, No. C06-628MJP, 2007 WL 2572293, at *2 (W.D. Wash. Sept. 5, 2007) (holding that a seventeen-day detention while the plaintiff awaited a probable cause hearing did not violate the plaintiff's substantive due process rights); *Panfil v. City of Chicago*, 45 F. App'x 528, 534 (7th Cir. 2002) (holding that, although negligent, a four-day detention based on the plaintiff's mistaken identity did not violate his due process rights). The administrative tasks necessary to fit an individual with a GPS device are admittedly less than conducting a probable cause hearing, but certainly more than processing a release for a detainee who possesses a release order. Therefore, the weekend detention is within the range of times other courts have found constitutional, and is not so egregious as to shock this Court's conscience.

Moreover, whether a detainee is required to stay in custody over the weekend is at least partially due to the actions of the detainee. The court set Plaintiff's bond requirements on Friday morning. Am. Compl. ¶ 13. Had Plaintiff paid his bond before 1 p.m., the Monitoring Policy's Release Schedule would have

required Pretrial Services to give him a GPS monitor by 4 p.m. and authorize his release that day. Am. Compl. Ex. C, at 1–2. However, because Plaintiff did not post bond until Friday evening, his own delay at least partially contributed to his weekend detention. *Id.*; Am. Compl. ¶¶ 13, 17. This further supports the Court's finding that the weekend detention policy is not so egregious as to amount to "an instrument of oppression." *Lewis*, 523 U.S. at 846 (internal quotation marks omitted) (quoting *Collins v. Harker Heights*, 503 U.S. 115, 126 (1992)).

In sum, because Plaintiff has not sufficiently alleged that the Holding and Monitoring Policies' weekend detention requirement caused a violation of his substantive due process right to be free from unreasonably prolonged pretrial detention, Plaintiff has not met the requirements for municipal entity liability. *See, e.g.*, *Schneider*, 717 F.3d at 769 (requiring that a plaintiff asserting a municipal entity claim under Section 1983 plausibly allege that an official policy or custom directly caused a constitutional injury).

B. The JCSO's Informal Policy of Neglect

Plaintiff next contends the JCSO had an informal policy of neglecting detainees, which caused his five-day overdetention. Plaintiff attempts to prove the existence of this informal policy with two allegations. First, Plaintiff asserts that during his detention he "repeatedly complained" to the JCSO staff, who "sympathized" with him and told him that his "constitutional rights were being violated," yet took no action to facilitate his release. Am. Compl. ¶ 27. Second, Plaintiff alleges that on Tuesday, June 3, 2014,

at 9:10 p.m. he submitted a kite, protesting the delay in his release as a violation of his Fourteenth Amendment right, Am. Compl. Ex. F, at 1, yet Sheriff Deputy D.K. Scott refused to sign or accept the kite. Am. Compl. ¶ 28.

A plaintiff can establish an official policy or custom by, *inter alia*, alleging an informal custom so widespread that it amounts to custom or usage with the force of law. *Bryson*, 627 F.3d at 788. To establish an informal policy, proof of a single incident of unconstitutional activity is insufficient unless the incident can be attributed to a municipal policymaker. *Butler v. City of Norman*, 992 F.2d 1053, 1055 (10th Cir. 1993); *City of Oklahoma City v. Tuttle*, 471 US. 808, 824–25 (1985) ("[A] single incident is not enough to establish liability…unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker.").

Here, Plaintiff contends that Deputy Scott's refusal to sign or accept Plaintiff's kite and the deputies lack of effort to secure Plaintiff's release demonstrates the existence of a *de jure* or *de facto* policy of tolerating unconstitutional delays in releases of pre-trial detainees. Am. Compl. ¶¶ 27–28; Pl.'s Resp. 12–13. The Court finds Plaintiff has not sufficiently alleged that an informal unconstitutional policy existed. The Complaint does not make clear when Plaintiff complained to the deputies. However, as for any complaints made during the weekend, the deputies did not act on them because the Holding and Monitoring Policies required Plaintiff to be detained until Monday. Additionally, the combination of any complaints made

after the weekend and Deputy Scott's refusal to sign Plaintiff's kite does not amount to the type of widespread conduct that creates an informal policy, especially because Plaintiff has not alleged facts showing that Deputy Scott was a municipal policymaker, or that the acting Sheriff ordered or ratified any of the alleged actions.

Moreover, Plaintiff's own allegations contradict his claim that the JCSO had an informal policy of neglect. Plaintiff's Amended Complaint alleges that on Friday, May 30, 2014, at 7:40 p.m., JCSO employee Kimberly Moschetti sent an email to the "Pretrial Services General Mail" account, stating: "The above inmate has bonded and is being held on your hold," Am. Compl. Ex. D, referring to the outstanding GPS requirement. Am. Compl. ¶ 18; Am. Compl. Ex. A; Am. Compl. Ex. C, at 1. Then, on Tuesday June 3, 2014, at 4:12 p.m., a JCSO employee sent an email to the Pretrial Employees informing them that Plaintiff had posted bond and was being held only because of the GPS requirement. Am. Compl. ¶ 24; Am. Compl. Ex. E. Finally, on Wednesday, June 4, 2014 at 8:25 a.m., another JCSO employee sent an email with the subject heading "dawson, kenneth P1083740" to all the Pretrial Employee Defendants, except Kurt Pierpont, Stephanie LaHue and Ryan Ropers, stating: "The above subject bonded on case #14CR1328 on Friday May 30th. [*sic*] The pretrial hold is all that is holding him here." Am. Compl. ¶ 29; Am. Compl. Ex. G. Thus, on three occasions during Plaintiff's detention the JCSO attempted to notify Pretrial Services that their hold was the only condition preventing Plaintiff's release. The JCSO's repeated efforts to facilitate Plaintiff's release demonstrates that

the JCSO did not have a widespread policy of neglecting detainees.[8]

In sum, because Plaintiff has not plausibly pleaded that any of the Defendants promulgated or implemented an unconstitutional official policy or custom, his Section 1983 entity liability claim fails.

II. Individual Liability

In addition to Plaintiff's official capacity claims, Plaintiff brings claims against the Pretrial Employees in their individual capacities. Am. Compl. ¶ 7. In response to these claims, Defendants argue that (1) none of the Pretrial Employee's alleged acts or omissions amount to a constitutional violation; and (2) even if the Court finds that any of the alleged acts or omissions is unconstitutional, the Pretrial Employees are protected by qualified immunity. Defs.' Mot. 10– 17.

Qualified immunity protects a public official whose violation of a plaintiff's civil rights was not clearly established at the time of the official's actions. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). It is an entitlement not to stand trial or face the other burdens of litigation. *Ahmad v. Furlong,* 435 F.3d 1196, 1198 (10th Cir. 2006). The privilege is an immunity from suit rather than a mere defense to liability. *Id.* "A qualified immunity defense is only available to parties

[8] In holding that the JCSO's employees' actions were insufficient to demonstrate the existence of an informal policy of neglect, the Court does not consider whether Plaintiff could have asserted individual claims against the JCSO employees who allegedly failed to respond to his complaints. Plaintiff's claims against the JCSO are official capacity claims only. *See* Am. Compl. ¶ 6.

sued in their individual capacity." *Beedle v. Wilson*, 422 F.3d 1059, 1069 (10th Cir. 2005). "When faced with a qualified immunity defense, the plaintiff must establish '(1) that the defendant's actions violated a federal constitutional or statutory right; and (2) that the right violated was clearly established at the time of the defendant's actions.'" *Beedle*, 422 F.3d at 1069 (quoting *Greene v. Barrett*, 174 F.3d 1136, 1142 (10th Cir. 1999)); *see also Wilson v. Layne,* 526 U.S. 603, 603 (1999); *Simkins*, 406 F.3d at 1241.

Courts are now "at liberty to embark upon the two-part qualified immunity analysis in any order [they] choose . . . ." *Dodds v. Richardson*, 614 F.3d 1195, 1192 (10th Cir. 2010) (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)). Nevertheless, the Court will first address whether the Pretrial Employees' actions constituted a violation of Plaintiff's constitutional rights. The Court will then analyze whether any violation of Plaintiff's rights was clearly established at the time of Plaintiff's detention.

A. Constitutional Violation

As an initial matter, Defendants contend Plaintiff's claims must fail, because they are "inappropriate collective allegations that fail to provide the Sheriff and County Defendants with notice . . . ." Defs.' Mot. 4–7. The Court disagrees. Defendants are correct that using the collective term "defendants" when the Complaint names multiple different groups of defendants is not sufficient to give the individuals notice of the claims against them. *Robbins v. Oklahoma*, 519 F.3d 1242, 1250–51 (10th Cir. 2008). Although some of Plaintiff's allegations use the collective term "Defendants," all allegations of affirmative acts taken by a party

specifically identify the actor as the "Sheriff's Office," "Pretrial Services" staff or Defendants, or by their first and last name. *See* Am. Compl. ¶ 18 ("This email informed the Pretrial Services staff . . . ."); *id.* at ¶ 26 ("Despite Mr. Briggs' June 3 email to the Pretrial Services Defendants, none of these Defendants took any steps on that date to have Plaintiff fitted with a GPS monitor."); *id.* at ¶ 30 ("Ms. Taube sent to the June 3 email to some of the Pretrial Services Defendants because she knew that each of these Defendants had the ability and responsibility to have Plaintiff fitted with the GPS monitor . . . ."); *id.* at ¶ 40 ("each of the Pretrial Services Defendants knowingly and willfully inflicted the Delay by Neglect upon Plaintiff.").

Although the Complaint refers collectively to the "Pretrial Staff" or "Pretrial Defendants," the Court does not find these allegations to be insufficiently specific. In *Robbins*, the Tenth Circuit held that the collective term "defendants" was insufficiently specific, because "the alleged tortious acts committed by" the different defendants were likely "entirely different in character . . . ." 519 F.3d at 1250. Here, in contrast, the alleged unconstitutional acts taken by each of the Pretrial Employees were not different in character. Instead, Plaintiff alleges the Pretrial Employees all failed to take one specific act—process Plaintiff's release from custody. Because the Pretrial Employees are a specific group of similar employees, the Court finds Plaintiff's allegations against the Pretrial Employees are sufficient to put each of them on notice of the claims against him or her. Plaintiff alleges he sent document requests to the JCSO and Division of Justice Services requesting records that would enable him to confirm

the specific Pretrial Employees who had direct responsibility for processing his release. *Id.* at ¶ 32. Because Defendants did not respond to the request, Plaintiff could not determine with any greater specificity the actions of specific Pretrial Employees. Therefore, the Court will analyze whether Plaintiff has sufficiently pleaded an individual capacity claim against the Pretrial Employees.

To establish personal liability in a Section 1983 action, "it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Plaintiff alleges that (1) the Pretrial Employees' enforcement of the Holding and Monitoring Policies and (2) subsequent failures to act, after noticed by the JCSO, violated his Fourteenth Amendment due process right. Am. Compl. ¶¶ 15, 20, 23. First, because the Holding and Monitoring Policies did not violate Plaintiff's constitutional rights, *see supra* Section II.A., the Pretrial Employees' enforcement of the policies did not violate Plaintiff's rights. The Court must next determine whether the subsequent overdetention violated Plaintiff's constitutional rights.

As an initial matter, the parties dispute the relevant overdetention period. Defendants argue the relevant period is Tuesday, June 3 through Wednesday, June 4, because none of the Pretrial Employees had notice that Plaintiff posted bond until Lawrence Briggs sent an email directed to the Pretrial Employees' individual email accounts. Defs.' Mot. 3, 6 n.2. According to Defendants, because the Pretrial Employees do not check the general email account, the May 30, 2014 email did not give them notice of

Plaintiff's detention. *Id.* Although Defendants are correct that notice and knowledge are required for a substantive due process violation, *see, e.g.*, *Daniels v. Williams*, 474 U.S. 327, 328 (1986), Plaintiff sufficiently alleges that the May 30, 2014 email gave the Pretrial Employees knowledge of Plaintiff's overdetention. Plaintiff's Amended Complaint states the "email informed the Pretrial Services staff that the only unsatisfied condition remaining for Plaintiff's release was to fit him with the GPS monitor . . . ." Am. Compl. ¶ 18. Drawing all reasonable inferences in Plaintiff's favor, it is plausible that an email sent to a department's general mail account would be read by the employees of that department. Although Defendants contend that the Pretrial Employees do not check the general mail account and, thus, did not have notice that Plaintiff paid his bail until Tuesday, the Court "should consider no evidence beyond the pleadings on a Rule 12(b)(6) motion to dismiss . . . ." *Alvarado v. KOB-TV, LLC*, 493 F.3d 1210, 1215 (10th Cir. 2007). Moreover, the Amended Complaint alleges that the Pretrial Employees "knowingly and willfully inflicted the [overdetention] upon Plaintiff. Am. Compl. ¶ 40. Therefore, the Court concludes Plaintiff has sufficiently alleged the Pretrial Employees had notice of Plaintiff's detention on May 30, 2014. The relevant overdetention is, thus, the period between when the policy first entitled Plaintiff to release (Monday at 4:00 p.m.) and when Pretrial Services provided Plaintiff a GPS monitor (late Wednesday afternoon).

To withstand a motion to dismiss on Plaintiff's claim that his detention during this period violated his substantive due process rights, Plaintiff must allege the Pretrial Employees' actions were either not

reasonably related to a legitimate goal or shocked the conscience. *See Dodds*, 614 F.3d at 1192, 1205 (stating that to avoid depriving an arrestee of his liberty interest to be free of detention once his bail is set, the government's actions must reasonably relate 'to a legitimate goal); *see also Seegmiller v. LaVerkin City*, 528 F.3d 762, 769 (10th Cir. 2008) (holding that executive action can be analyzed under the fundamental rights or shocks the conscience strands).

The Court finds Plaintiff's allegations sufficient to state a constitutional violation against the Pretrial Employees in their individual capacities. First, Plaintiff has sufficiently alleged that the Monday–Wednesday overdetention was not reasonably related to a legitimate interest. The Pretrial Employees do not assert any interest served by not fitting Plaintiff with a GPS monitor on Monday at 4:00 p.m. Therefore, just as in *Dodds*, 614 F.3d at 1193, where the government failed to assert a legitimate interest for detaining criminal defendants overnight after they posted bond, Defendants have failed to assert any interest served by detaining Plaintiff for forty-eight hours longer than the Holding and Monitoring Policies required. Therefore, Plaintiff has set forth facts that, if proven to be true, state of violation of his constitutional rights.

Moreover, Plaintiff sufficiently alleges that the Pretrial Employees' actions shock the conscience. Plaintiff alleges that although the Pretrial Employees knew Plaintiff was entitled to receive a GPS device and be released Monday at 4:00 p.m., the Pretrial Employees deliberately refused to release him until

Wednesday at 4:00 p.m.[10] Furthermore, Defendants do not assert any justification for their refusal to process Plaintiff's release. Indeed, because Pretrial Services regularly fits detainees with GPS devices on weekday evenings, in accordance with the Holding and Monitoring Policies, there is no apparent reason why Plaintiff could not have been given a GPS device on Monday or Tuesday evening. Although a forty-eight hour detention may not be shocking where the government has a reasonable justification, such as the efficient use of resources or a delay in scheduling a probable cause hearing, unnecessarily and unjustifiably detaining a criminal defendant for forty-eight hours is a sufficient intrusion into an individual's liberty interest to shock this Court's conscience.

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[10] Although Defendants assert Plaintiff has not alleged the Pretrial Employee's actions were intentional, *see* Reply 13, the Court finds Plaintiff has sufficiently alleged that the Pretrial Employees acted deliberately. First, Plaintiff alleges the May 30, 2014 email "informed the Pretrial Services staff that the only unsatisfied condition remaining for Plaintiff's release was to fit him with the GPS monitor . . . ." Am. Compl. ¶ 18. Taking this allegation as true, the Pretrial Employees knew on Friday that they were solely responsible for facilitating Plaintiff's release. Despite this knowledge, none of the Pretrial Employees took any action to have Plaintiff fitted with a GPS device until Wednesday, and thus "knowingly and willfully inflicted the Delay by Neglect upon Plaintiff." *Id.* at ¶ 40. After discovery, Plaintiff may be unable to prove that the May 30 email gave notice to the Pretrial Employees of Plaintiff's detention. If this is the case, and the first evidence of the Pretrial Employees' knowledge of Plaintiff's detention is the June 3 email, Plaintiff's individual claims may not survive summary judgment. However, taking Plaintiff's allegations as true, Plaintiff has sufficiently alleged that the Pretrial Employees knowingly and deliberately disregarded Plaintiff's liberty interest to be free from detention once bond is set.

Moreover, other courts analyzing whether an overdetention shocks the judicial conscience have generally held that unjustified detentions of twenty-four hours or more are unconstitutional. *See Barnes v. District of Columbia*, 793 F. Supp. 2d 260, 277–78 (D.D.C. 2011) (holding that an overnight delay in processing a detainee's release shocked the conscience where the detainee possessed a release order); *see also Berry v. Baca*, 379 F.3d 764, 772 (9th Cir. 2004) (refusing to hold that a forty-eight hour detention was presumptively reasonable).

B. Clearly Established Law

Although Plaintiff has sufficiently alleged a constitutional violation, the Pretrial Employees are not liable unless the right was clearly established at the time of the violation. "A right is clearly established if '[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" *Beedle*, 422 F.3d at 1069 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). "Ordinarily, this means that there must be a Supreme Court or Tenth Circuit decision on point…" *Maresca v. Bernalillo*, 804 F.3d 1301, 1308 (10th Cir. 2015) (internal quotations and citation omitted). "The challenged action need not have been previously declared unlawful, but its unlawfulness must be evident in light of pre-existing law." *Beedle*, 422 F.3d at 1069 (citing *Greene*, 174 F.3d at 1142). "This is generally accomplished when there is controlling authority on point or when the clearly established weight of authority from other courts supports plaintiff's interpretation of the law." *Greene*, 174 F.3d at 1142.

In this case, Defendants argue that even if Plaintiff could establish a Fourteenth Amendment violation, his claims would fail, as the Pretrial Employees' actions did not violate clearly established federal law. The Court disagrees. In *Dodds v. Richardson*, the Tenth Circuit stated:

> That Plaintiff had a liberty interest based upon federal law in being freed from detention once bail had been set and that his continued detention despite that liberty interest must be reasonably related to a legitimate goal to pass constitutional muster have been clearly established in our circuit (and others) since at least 1997 when we published *Gaylor*.

614 F.3d 1185, 1206 (10th Cir. 2010). In *Dodds*, the Court held that the plaintiff had alleged a substantive due process violation where jail staff refused the Plaintiff's bond and detained him overnight without any legitimate goal. *Id.* at 1193. Therefore, prior Tenth Circuit case law would have put a reasonable official on notice that refusing to fit a detainee with a GPS device after the detainee posted bond, and thus preventing the detainee's release without any legitimate goal, violates the detainee's constitutional rights.

CONCLUSION

In sum, the Court finds that Plaintiff has failed to state plausible entity liability claims under 42 U.S.C. § 1983. Accordingly, the Clerk of the Court is directed to dismiss the Board of County Commissioners, the Department of Human Services, the Division of Justice Services, the Sheriff's Office, and Jeff Shrader from this case with prejudice. However, the Court holds

Plaintiff has plausibly alleged claims against Heather Becker, Kurt Pierpoint, Leslie Holmes, Matthew Wright, Ryan Kinsella, Ryan Ropers, Sarah McHugh, and Stephanie LaHue, in their individual capacities only. Therefore, Defendants' Motion to Dismiss Plaintiff's Amended Complaint [filed August 23, 2016; ECF No. 23] is **granted in part and denied in part**.

Entered and dated at Denver, Colorado, this 3rd day of January, 2017.

BY THE COURT:

/s/ Michael E. Hegarty
Michael E. Hegarty
United States Magistrate Judge

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 17-1118

[Filed May 7, 2018]

KENNETH JEROME DAWSON,
Plaintiff - Appellant,

v.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, COLORADO; et al.
Defendants - Appellees,

and

HEATHER BECKER; et al.,
Defendants.

ORDER

Before **TYMKOVICH**, Chief Judge, **BRISCOE** and **BACHARACH**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge

in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
/s/ Elisabeth A. Shumaker
ELISABETH A. SHUMAKER, Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-01281-MEH

[Filed August 9, 2016]

KENNETH JEROME DAWSON
Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, COLORADO; JEFFERSON COUNTY, COLORADO, DEPARTMENT OF HUMAN SERVICES; JEFFERSON COUNTY, COLORADO, DIVISION OF JUSTICE SERVICES; JEFFERSON COUNTY, COLORADO, SHERIFF'S OFFICE; JEFF SHRADER; HEATHER BECKER; KURT PIERPONT; LESLIE HOLMES; MATTHEW WRIGHT; RYAN KINSELLA; RYAN L. ROPERS; SARAH MCHUGH; and STEPHANIE LAHUE,
Defendants.

AMENDED COMPLAINT

Plaintiff, Kenneth Jerome Dawson, through his counsel, Ryley Carlock & Applewhite, states his Amended Complaint against Defendants as follows:

NATURE OF THE ACTION

1. This is a civil rights action under 42 U.S.C. § 1983 to remedy Defendants' unconstitutional deprivation of Plaintiff's liberty without due process of law. Plaintiff was arrested in Jefferson County, Colorado, on state law charges arising out of his alleged violation of a state court restraining order prohibiting him from contacting his wife. Plaintiff was booked into the Jefferson County Jail in Golden, Colorado. The day following his arrest, Plaintiff posted bond and otherwise satisfied all conditions for his pre-trial release, with one exception: Plaintiff needed to be fitted with a GPS monitoring device as a court-ordered condition of his release. The above-named Defendants were responsible for completing this final requirement expeditiously so as not to unduly prolong Plaintiff's pre-trial detention. However, as a result of Defendants' policies, actions, inactions, and indifference toward Plaintiff's rights, he spent a total of six days and six nights in jail until he was finally fitted with a GPS device and released. This delay was unnecessary, unconscionable, and unconstitutional. It was an unlawful form of punishment of a person who had not been convicted of any crime and who was presumed innocent. The civil rights laws of the United States provide Plaintiff with a remedy for this.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, Kenneth Jerome Dawson, is a resident of Lakewood, Colorado.

3. Defendant Board of County Commissioners of Jefferson County, Colorado (the "County"), is a body politic and the entity with the capacity to sue and be

sued on behalf of Jefferson County, Colorado, under C.R.S. § 24-10-106.

4. Defendant Jefferson County, Colorado, Department of Human Services (the "Department") is a department and division of the County with responsibility for the County's Division of Justice Services.

5. Defendant Jefferson County, Colorado, Division of Justice Services (the "Division") is a further sub-department and sub-division of the County and the Department with responsibility for the Pretrial Services Program.

6. Ted B. Mink was the Sheriff of Jefferson County, Colorado, and the head of Defendant Jefferson County, Colorado, Sheriff's Office (the "Sheriff's Office") at the time of Plaintiff's wrongful detention. Federal Rule of Civil Procedure 25(d) provides that when a public officer ceases to hold office during the pendency of an action, his successor is automatically substituted as a party. Defendant Jeff Shrader was sworn in as Jefferson County Sheriff on January 13, 2015, and as such, is the proper Sheriff to defend in this action. Mr. Shrader is named as a Defendant in his official capacity only.

7. On information and belief, Defendants Heather Becker, Kurt Pierpont, Leslie Holmes, Matthew Wright, Ryan Kinsella, Ryan L. Ropers, Sarah McHugh, Stephanie Lahue (collectively the "Pretrial Services Defendants") were employees of the County, the Department, the Division, and/or the Pretrial Services Program at the time of Plaintiff's wrongful detention. At this time, they are named as Defendants

in their official and/or individual capacities, as may be applicable, to be determined with greater specificity at a later date based on discovery in this action.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff asserts a claim under 42 U.S.C. § 1983.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Plaintiff and some or all of the Defendants reside in Colorado and the events giving rise to this case occurred in Colorado.

GENERAL ALLEGATIONS

10. At approximately 5:30 p.m. on Thursday, May 29, 2014, Lakewood Police arrested Plaintiff at his home in Lakewood, Colorado.

11. The warrant for Plaintiff's arrest was based on state law criminal charges against Plaintiff under title 18 of Colorado Revised Statutes, filed by the Jefferson County District Attorney in the Jefferson County District Court (the "District Court"). The charges arose out of Plaintiff's alleged violation of a state court restraining order prohibiting him from contacting his wife.

12. The Lakewood Police transported Plaintiff to the Jefferson County Jail and remitted him to the custody of the Sheriff's Office.

13. On the morning of Friday, May 30, 2014, the District Court set Plaintiff's bond at $1500 and authorized his release subject to the posting of the bond and the further condition that Plaintiff be fitted with a

GPS device for electronic monitoring of his whereabouts.

14. At 10:33 a.m. on Friday, May 30, 2014, the Pretrial Services Office transmitted to the Sheriff's Office a Pretrial Services Hold document regarding Plaintiff on account of the electronic monitoring requirement (the "Hold"). The Hold stated: "This defendant is to remain in custody until such time that a Pretrial Services Representative has forwarded written notice to release this hold." *See* Exhibit A hereto.

15. The Hold was authorized by two written Policies adopted by the County and the Division: Policy No. 3.1.43, titled "Pretrial Holds & Releases" (the "Hold Policy"); and Policy No. 3.1.68, titled "Electronic Monitoring" (the "Monitoring Policy"). *See* Exhibits B and C hereto, respectively.

16. Generally speaking, the Hold Policy and the Monitoring Policy authorize and require Pretrial Services staff to: (a) place a hold on a defendant to prevent the Sheriff's Office from releasing the defendant pending the fitment of court-ordered GPS monitoring device; (b) arrange for the fitment of the GPS device upon the defendant; and (c) then release the hold upon the defendant, thereby enabling the Sheriff's Office to release the defendant, subject to any other holds or court-ordered conditions of release.

17. On the evening of Friday, May 30, 2014, Plaintiff posted a cash bond of $1500 as required by the District Court.

18. At 7:40 p.m. on Friday, May 30, 2014, the Sheriff's Office sent an email to Pretrial Services staff

regarding Plaintiff stating: "The above inmate has bonded and is being held on your hold." *See* Exhibit D hereto. This email informed the Pretrial Services staff that the only unsatisfied condition remaining for Plaintiff's release was to fit him with the GPS monitor as required by the District Court.

19. The Monitoring Policy contains a "Release Schedule" which states in relevant part: "Defendants who post bond after 1 PM on Friday and before 1 PM on Monday will be outfitted [with the GPS monitor] on Monday at 4 PM." The Monitoring Policy further states: "All referral paperwork must be provided to the vendor no later than **2 PM** in order to have the defendant outfitted with the equipment by 4 PM that same day. The vendor will arrive at the jail at 4 PM to place the electronic monitoring unit on the defendant . . . ." *See* Exhibit C hereto, §§ 3(c), 5 (emphasis in original).

20. In accordance with this official Policy, none of the Defendants made any effort to fit Plaintiff with a GPS device or otherwise to facilitate his release from Friday evening, May 30, 2014, until Monday afternoon, June 2, 2014 (the "Delay by Policy"). This Delay by Policy required Plaintiff to languish in jail for three nights (Friday, Saturday, and Sunday) and three days (Saturday, Sunday, and Monday) after he posted bond and satisfied all other conditions of his release.

21. The Delay by Policy inflicted upon Plaintiff (and untold other victims of the Policy) was completely unnecessary and unconscionable in light of modern technology and standards of efficiency and decency. There is no valid reason why the County could not develop methods and protocols to fit defendants with

GPS monitors within hours of posting bond – or even before posting bond, for that matter. In the 21st century, for County institutions and staff to *intentionally* subject certain criminal defendants – who are presumed innocent until proven guilty – to an *automatic* three nights and three days in jail awaiting the simple fitment of a GPS device reflects nothing short of shocking indifference toward these defendants' constitutional rights of liberty.

22. On information and belief, each of the Defendants had direct or indirect – institutional, managerial, or front line – responsibility for creating, promulgating, and/or implementing the Hold Policy and the Monitoring Policy; each of the Defendants was consciously indifferent to the deprivation of Plaintiff's constitutional rights inherent in imposing upon him the Delay by Policy; and such indifference caused in whole or in part Plaintiff's unconstitutionally excessive detention during the Delay by Policy.

23. On Monday, June 2, 2014, none of the Defendants made any effort to have Plaintiff fitted with a GPS device or otherwise to facilitate his release from custody. As the Delay by Policy ran its course, it was replaced by "Delay by Neglect."

24. On Tuesday, June 3, 2014, the Delay by Neglect continued. Again, none of the Defendants made any effort to have Plaintiff fitted with a GPS device or otherwise to facilitate his release from custody, with one possible exception. At 4:12 p.m. on Tuesday, June 3, 2014, an individual named Lawrence Briggs (whose position is not known but who may work at the jail) sent an email to the Pretrial Services Defendants regarding Plaintiff stating: "ABOVE SUBJ BONDED

ON ALL CHARGES ON 053014, HE STILL HAD A PTR HOLD ON DOCKET 14CR1328." *See* Exhibit E hereto.

25. On information and belief, Mr. Briggs sent the June 3 email to the Pretrial Services Defendants because he knew that each of them had the ability and responsibility to have Plaintiff fitted with the GPS monitor and to release the Hold upon him, which was long overdue pursuant to the Hold Policy and the Monitoring Policy.

26. Despite Mr. Briggs' June 3 email to the Pretrial Services Defendants, none of these Defendants took any steps on that date to have Plaintiff fitted with a GPS monitor.

27. During Plaintiff's unconstitutional detention, he repeatedly complained to Sheriff's Department deputies who were guarding him at the jail. These deputies sympathized with Plaintiff and told him that his constitutional rights were being violated (or words to that effect), but to Plaintiff's knowledge they did not take steps to secure Plaintiff's release.

28. On June 3, 2014, at approximately 9:10 p.m., Plaintiff filled out and submitted an Inmate/Detainee Request Form – commonly known as a "kite" – protesting the delay in his release as a violation of his constitutional rights. Sheriff's Deputy D.K. Scott refused to sign or accept the kite. *See* Exhibit F hereto. On information and belief, this refusal reflects a *de jure* or *de facto* policy or practice of the Sheriff and the Sheriff's Department to tolerate and thereby promote unconstitutional delays in the release of pre-trial detainees. This official policy or practice contributed to

the unconstitutional Delay by Neglect imposed upon Plaintiff.

29. At 8:25 a.m. on June 4, 2014, an individual named Diana Taube (whose position is not known but who appears work at the jail), sent an email to some of the Pretrial Services Defendants regarding Plaintiff stating: "The above subject bonded on case #14CR1328 on Friday May 30th. The pretrial hold is all that is holding him here." *See* Exhibit G hereto.

30. On information and belief, Ms. Taube sent the June 3 email to some of the Pretrial Services Defendants because she knew that each of these Defendants had the ability and responsibility to have Plaintiff fitted with the GPS monitor and to release the Hold upon him, which was long overdue pursuant to the Hold Policy and the Monitoring Policy.

31. On information and belief, each of the Defendants had direct or indirect – institutional, managerial, or front line – responsibility for arranging the timely fitment of a GPS device upon Plaintiff and the prompt release of the Hold upon him; each of the Defendants was consciously indifferent to his or her job duties and to Plaintiff's constitutional rights; and such indifference caused in whole or in part Plaintiff's unconstitutionally excessive detention during the Delay by Neglect.

32. Prior to filing this Complaint, Plaintiff sent requests for documents to the Sheriff's Office and the Division pursuant to the Colorado Open Records Act ("CORA"). Plaintiff's CORA requests sought, among other things, timekeeping records and other records that would enable Plaintiff to confirm the identities of

the persons who had responsibility for processing his release from custody. Neither the Sheriff's Office nor the Division provided such records. Accordingly, at this time Plaintiff can only rely upon the June 3 email by Mr. Briggs and the June 4 email by Ms. Taube to identify the persons who apparently had the responsibility to facilitate Plaintiff's release. After conducting necessary discovery, Plaintiff intends to voluntarily dismiss any Pretrial Services Defendants who in fact did not have such responsibility.

33. At 12:46 p.m. on Wednesday, June 4, 2014, one of the Pretrial Services Defendants, Ms. Sarah McHugh, sent a Pretrial Services Release Notice regarding Plaintiff to the Sheriff's Office stating: "PLEASE RELEASE THIS DEFENDANT TO INTERVENTION AT 4PM TODAY TO BE PLACED ON A GPS MONITOR." *See* Exhibit H hereto.

34. Plaintiff was indeed fitted with a GPS monitor and released from the County's custody on the late afternoon of Wednesday, June 4, 2014.

35. Thus, the period of Delay by Neglect comprised two nights (Monday and Tuesday) and two days (Tuesday and Wednesday), during which Plaintiff languished in jail because of the willful neglect of duty by the Pretrial Services Defendants.

36. Combined, the periods of Delay by Policy and Delay by Neglect comprised five nights (Friday through Tuesday) and five days (Saturday through Wednesday).

37. Plaintiff's constitutional right to be free from unreasonably protracted pre-trial detention was well established in May and June of 2014. *See, e.g., Dodds v. Richardson*, 614 F.3d 1185 (10th Cir. 2010).

38. Given that each of the Defendants had institutional or job responsibility and authority over the processing of defendants in pre-trial detention, each of the Defendants had actual or presumed knowledge of Plaintiff's well-established constitutional right to be free from unreasonably protracted pre-trial detention.

39. Each of the Defendants knowingly and willfully created, promulgated, and/or implemented the Hold Policy and the Monitoring Policy, which had the purpose and effect of inflicting the Delay by Policy upon Plaintiff (and other similarly situated defendants), in violation of his constitutional right of liberty.

40. On information and belief, the Sheriff, the Sheriff's Department, and each of the Pretrial Services Defendants knowingly and willfully inflicted the Delay by Neglect upon Plaintiff – separate and independent of the Delay by Policy – which had the purpose or foreseeable effect of further unreasonably protracting Plaintiff's pre-trial detention in violation of his constitutional right of liberty.

CLAIM FOR RELIEF

41. Each allegation above is incorporated here.

42. 42 U.S.C. § 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

> by the Constitution and laws, shall be liable to the party injured in an action at law[.]

43. The due process clause of the Fourteenth Amendment to the United States Constitution guarantees to Plaintiff the right to be free from unreasonably protracted pre-trial detention.

44. Acting under color of state law, each of the Defendants violated Plaintiff's due process rights by unreasonably protracting his pre-trial detention as described above.

45. As a direct and proximate result of Defendants' violations of 42 U.S.C. § 1983, Plaintiff suffered unwarranted and avoidable humiliation, fear, inconvenience, loss of enjoyment of life, jail food, and other forms of emotional and physical distress and damages.

46. In addition to an award of damages, Plaintiff seeks an award of attorney's fees and costs under 42 U.S.C. § 1988.

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

WHEREFORE, Plaintiff requests the Court to hold a jury trial, enter judgment in Plaintiff's favor and against each Defendant for damages, attorney's fees, and costs, jointly and severally as allowed by law, and grant such other relief as may be just.

Respectfully submitted this 9th day of August, 2016.

RYLEY CARLOCK & APPLEWHITE

By: */s/ F. Brittin Clayton III*
F. Brittin Clayton III
Richard C. Kaufman
1700 Lincoln Street, Ste. 3500
Denver, CO 80203
Phone: 303-863-7500
Email: bclayton@rcalaw.com
rkaufman@rcalaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on August 9, 2016, a copy of the foregoing AMENDED COMPLAINT was served via the Court's ECF system upon:

Rebecca Klymkowsky, Esq.
Rachel Bender, Esq.
Assistant County Attorneys
Jefferson County Attorney's Office

/s/ Ann I. Palius

EXHIBIT A

TO: JEFFERSON COUNTY SHERIFF / INMATE SERVICES UNIT (Fax: 303-271-5468)

PRETRIAL SERVICES HOLD

Authorized by Colorado State Statute 16-4-105(3)(d)

DEFENDANT: Dawson, Kenneth

CASE NUMBER: 14CR1328 DIVISION: E

THE COURT HAS ORDERED THE FOLLOWING BOND CONDITION(S) FOR THIS DEFENDANT WHICH REQUIRES A PRETRIAL HOLD:

☒ Electronic Monitoring ☐ Deemed Necessary

☐ SCRAM or Sleep Time Monitoring Prior to Release

☐ Mental Health Competency Evaluation

☐ ID Refused to Sign PTS Paperwork

☐ Other: _____

This defendant is to remain in custody until such time that a Pretrial Services Representative has forwarded written notice to release this hold. Thank you.

Submitted by:

/s/ Casey B	5.30.14 / 1033
Pretrial Services Representative	Date / Time

Received by:

/s/ MED	053014 / 1222
Inmate Services Staff Signature	Date / Time
cc: Pretrial Services	03/05, 10/12

EXHIBIT B

Title	**Policy No. 3.1.43**
Pretrial Holds & Releases	**Effective Date 01/04**
Policy Custodian Justice Services Division	**Adoption/ Revision Date 1/04; 10/10; 12/13**

Adopting Resolution(s): BCC 89-913

References (Statutes /Resolutions/Policies):

CRS 16-4-105, 16-4-106,
Chief Judge Orders – 97-4, 89-6

Purpose: To coordinate electronic monitoring services and/or mental health competency evaluations ordered/directed by the Court prior to a defendant's release from custody or in the event a defendant refuses to review and sign the Pretrial Services Release Agreement.

Pretrial Services Staff will place a "PT Hold" on the defendant until a competency evaluation has been completed, the defendant's bond has been posted and services coordinated with our vendor(s), and/or until the defendant reviews and signs the Pretrial Services Release Agreement.

Once the defendant is eligible to be released from custody (i.e. competency evaluation has been completed and/or the defendant has reviewed and signed the Pretrial Services Release Agreement) **and** the defendant's bond has been posted in the case, Inmate

Services Staff will notify Pretrial Case Management Staff and Supervisors via email that only the PT Hold is preventing the defendant's release from custody on the case.

Procedure:

1. Placing PT Holds:

    a) Complete a PT Hold form denoting the reason(s) for the PT Hold (i.e. GPS, SCRAM or Sleep Time prior to release, refusal to sign, etc)

    b) Immediately following the Court hearing, submit the PT Hold form to the Inmate Services Unit

        • If placed by Pretrial Officer Staff, a signature from ISU personnel is required

        • If placed by Pretrial Services Case Management Staff, the form will be emailed to TSU

NOTE: If the PT Hold is placed by Pretrial Officer Staff, a copy of the PT Hold form is to be provided to the Pretrial Services Case Management Unit.

2. Releasing PT Holds:

    a) Prior to releasing a PT Hold, Pretrial Services Staff must confirm the defendant is eligible for release from custody (i.e. case has been dismissed or resolved) and, in electronic monitoring cases, that services have been coordinated with the vendor. ***See Electronic Monitoring Policy 3.1.68***

b) Complete a PT Release form denoting the appropriate instruction or reason (i.e. report to the Pretrial Services Office or the case has been dismissed/resolved)

c) Fax or email the PT Release form to Inmate Services Staff

3. If for any reason a defendant's release from custody poses a risk to the community, to staff, or themselves, the Court Services Manager will be informed and a decision will be made whether to impose or release a PT Hold. In all instances, the assigned Deputy District Attorney will be included in this decision.

EXHIBIT C

Title	**Policy No. 3.1.68**
Pretrial Holds & Releases	**Effective Date 5-1-01**
Policy Custodian Justice Services Division	**Adoption/ Revision Date 1/04; 12/10; 12/13**

Adopting Resolution(s): BCC 89-913

References (Statutes /Resolutions/Policies):

CRS 16-4-105, 16-4-106,
Chief Judge Orders – 97-4, 89-6

Purpose: To monitor defendants closely to maximize victim and/or public safety

Electronic Monitoring may include a Global Positional System (GPS) or continuous alcohol/drug monitoring devices such as Secure Continuous Remote Alcohol Monitor (SCRAM) or Sleeptime. These devices arc contracted through a third-party vendor.

Procedure:

1. Pretrial Officer Staff and/or Inmate Services staff (ISU) are responsible to inform Pretrial Case Managers and/or Supervisor(s) of any defendants who, as a Condition of their Bond, are ordered to GPS, SCRAM, and/or Sleep Time prior to their release from custody.

2. During the Advisement Hearing, if the Court orders GPS as a Condition of Bond, a Pretrial

Officer will document that additional condition on the Pretrial Release Agreement form. Following the hearing, and as soon as possible, the Pretrial Officer shall place a "Pretrial Hold" with the Inmate Services Unit of the Detention Facility on any defendant ordered to be monitored with a GPS or be placed on a SCRAM/Sleep Time monitor prior to their release from custody.

3. When the defendant posts bond, Inmate Services staff (ISU) are responsible to notify Pretrial GPS Case Managers and Supervisor(s) that the only "charge" holding the defendant in custody is the "Pretrial Hold". NOTE: The "Pretrial Hold" is the authorization to keep the defendant in custody until arrangements are made for the installation of the electronic monitoring unit.

Release Schedule:

a) Defendants that post bond before 1 PM Monday-Friday, will be outfitted with the monitoring equipment by our vendor at 4 PM that same day

b) Defendants that post bond after 1 PM Monday-Thursday, will be outfitted the following day at 4 PM

c) Defendants who post bond after 1 PM on Friday and before 1 PM on Monday will be outfitted on Monday at 4 PM

NOTES:

- A defendant's release from custody is dependent on the fact that the Pretrial GPS Case Manager has all the necessary information needed for the defendant's release
- If the "hook-up" day falls on a recognized holiday, the "hook-up will take place on the next business day

4. Once notified by ISU, Pretrial GPS Case Managers are to contact the vendor to confirm equipment availability and to give verbal notice of the number of pending "hook-ups" for that day.

For GPS monitors, go to the *Additional Instructions-GPS* section listed below prior to proceeding to step #5.

5. All referral paperwork must be provided to the vendor no later than **2 PM** in order to have the defendant outfitted with the equipment by 4 PM that same day. The vendor will arrive at the jail at 4 PM to place the electronic monitoring unit on the defendant and provide them with a charger and instructions upon their release from custody.

6. The Pretrial GPS Case Manager is to send a "Pretrial Hold Release" form to Inmate Services (ISU) informing them to release the "PT Hold" as well as to inform them of the time of the defendant's "hook up" on the electronic monitoring equipment. A copy of the "Pretrial

Hold Release" form is to printed and placed in the defendant's case file.

7. After being outfitted with the electronic monitoring unit, the defendant will be directed to report to the Pretrial Services Case Management Office located in the Courthouse the next business morning to complete an intake with a Pretrial Case Manager.

8. Upon defendant arrival at the Pretrial Services Case Management Office, the assigned Case Manager will complete an "Intake" with the defendant. Upon completion of the "Intake" the defendant will be directed to report to the vendor to complete any paperwork required to include payment and/or to make payment arrangements.

9. During the Pretrial Intake, all defendants ordered to electronic monitoring (GPS, SCRAM, and/or SleepTime) are to be provided a Financial Statement that is required to be completed by the defendant and returned within one (1) week of the Pretrial Intake. See Policy 3.1.69, Financial Assistance.

10. In all situations, the Pretrial Case Manager shall keep in regular communication with the monitoring agency (vendor) and be able to report the status of any defendant to a Pretrial Supervisor and/or the Court Services Manager.

11. Pretrial Case Managers are to log onto the GPS and SCRAMNet websites Monday-Friday and check the compliance status of their defendants and address any issues and/or non-compliance

immediately with either defendant or vendor for equipment/monitoring issues.

12. Any violations of electronic monitoring by a defendant shall require the Pretrial Case Manager to consider the imposition of intermediate sanctions on the defendant.

Additional Instructions-GPS

1. The Pretrial GPS Case Manager is to locate the defendant's file in the XXX GPS section of the pending file drawer.

2. The Pretrial GPS Case Manager is to contact the alleged victim using the Victim Contact Sheet (Pumpkin Sheet) to gather and verify the victim's information in order to complete the Pretrial Victim Information Sheet. If the Victim Contact Sheet (Pumpkin Sheet) information for the victim(s) is no longer valid, the Pretrial GPS Case Manager shall contact the Victim Witness Unit and/or the DA assigned to the case to get current victim(s) information.

   NOTE: If the Pretrial GPS Case Manager is unable to make contact with the alleged victim(s), the information on the Victim Contact Sheet (Pumpkin Sheet) is to be used to create exclusion zones until the victim can be contacted. The Pretrial GPS Case Manager is also to notify a Pretrial Supervisor.

3. The Pretrial GPS Case Manager will gather information from listed victims/witnesses related to the defendant's case. The Pretrial Victim Information Sheet shall be completed and

placed in a purple file folder within the defendant's file.

a) When contacting the victims/witnesses identify yourself and the reason for your telephone call

b) Inform the victims/witnesses when the defendant is scheduled to be released from custody

c) Complete the Pretrial Victim Information Sheet with the information required

d) Ask the victims/witnesses for the addresses and telephone numbers of each location that is to be protected. NOTE: Limit of four (4) locations unless special circumstances exist.

e) Ask the victims/witnesses if the defendant is aware of the location(s) provided. NOTE: If the defendant is aware of the location, then it will be considered as a normal exclusion zone; if the defendant is not aware of the location, it is to be considered an "information only" zone.

f) Provide the victims/witnesses with the Pretrial on-call telephone number (303-842-7323) and the telephone of the supervising Pretrial GPS Case Manager.

g) Inform the victims/witnesses that they are required to contact Pretrial Services if any of their information changes (i.e. address, employer, contact telephone numbers).

4. The Pretrial GPS Case Manager will contact the defendant in the jail to gather their contact information and complete the Pretrial Defendant Information Sheet. The defendant must provide the name and telephone number of a third-party who can verify the information given prior to their release from custody. The defendant is to be informed of the release process and instructed that they are to report to the Pretrial Services Case Management office at 8 AM the next business day to complete their Pretrial Services Intake. The defendant is also to be informed of the GPS vendor and required compliance with them, including mandatory payments.

   a) When contacting the jail, contact the jail module where the defendant is being housed

   b) Identify yourself and the reason for your call when speaking with deputies assigned to the jail module

   c) Give the deputy your telephone extension number and request that the defendant call you asap. If you do not hear from the defendant within 30 minutes, contact the jail module again.

   d) When contacting the defendant, identify yourself and the reason for your telephone call

   e) Complete the Pretrial Defendant Information Sheet with the information required. **NOTE:** The defendant MUST provide two (2) valid contact telephone numbers that can be

verified by the Pretrial GPS Case Manager prior to the defendant's release from custody.

f) Inform the defendant of their scheduled release time (approximately 4 PM that afternoon) and explain the GPS hook-up process by the vendor

g) Instruct the defendant that they are to comply with all requirements of the GPS monitoring and failure to do so will result in the Court being informed of any/all non-compliance. Specifically instruct the defendant that they are to:

   1) Ensure that the GPS unit is charged at all times

   2) Restrain from tampering with any of the GPS equipment (transmitter, strap, charger, etc.)

   3) Make timely payments to the vendor for the GPS monitoring services provided

   4) Abide by all known restricted/exclusion zone areas (DO NOT inform the defendant of any "information only" zones)

h) Inform the defendant that they are not to have any contact whatsoever with the alleged victims/witnesses in the case

i) Provide the defendant with the telephone number for the Pretrial on-call telephone and inform them that they may call the telephone number only in case of an emergency;

otherwise, they are to contact their assigned Pretrial GPS Case Manager during normal business hours

5. The Pretrial GPS Case Manager will complete the vendor GPS referral form and email the vendor all of the required information (no later than 2 PM) and "'cc" the other Pretrial GPS Case Managers, the on-call Pretrial Case Manager, and the Pretrial Supervisors.

6. The Pretrial GPS Case Manager is to print out two (2) copies of the GPS referral form and place one (1) copy in the defendant's case file and one (1) copy in the Pretrial on-call duty book.

   NOTE: The assigned Pretrial GPS Case Manager is required to update the on-call duty book with any changes (i.e. changes in telephone numbers, defendant and/or victim contact information, exclusion zones, etc.) **on a regular and/or daily basis to ensure the on-call duty book remains current at all times.**

7. The Pretrial GPS Case Manager is to document all of the steps taken and information provided in the Pretrial Services Case Management (PSCM) database. Additionally the referral forms are to be saved (in the PSCM) as a "Document and Attachment".

8. A cell phone that monitors all defendants who are placed on GPS is rotated throughout the Pretrial Case Managers to monitor GPS defendants.

9. Each Pretrial Case Manger will have access through the internet to identify the location of any GPS defendant at any time.

10. During business hours, Pretrial GPS Case Managers will assume the responsibility of the on-call cell phone, and rotate responsibility based on a schedule.

11. Pretrial GPS Case Managers and on-call Case Managers will notify Pretrial Supervisors if any of the following events occur:

    a) The GPS Defendant cuts off the GPS tracking unit (transmitter)

    b) 911 police is dispatched

    c) Other emergencies and/or other unusual circumstances arise

12. Pretrial Services may pay for monitored sobriety testing for defendants who are court-ordered to GPS and monitored sobriety testing (UA's/BA's) as long as the GPS condition remains active.

    NOTE: Defendants are required to remain current in their fees to the vendor for GPS monitoring. If they fail to comply, sanctions are to be imposed which may include, but are not limited to, curfew restrictions, weekend lockdowns, increased office visits, and possible notification to the Court.

13. When GPS is added as a Condition of Bond for defendants that have already been released from custody, the Pretrial GPS Case Managers will conduct the Pretrial Intake first, and then direct

the defendant to the vendor to complete any required paperwork, make a payment and/or payment arrangements, and have the GPS monitor installed.

EXHIBIT D

Kimberly Moschetti

From: Kimberly Moschetti
Sent: Friday, May 30, 2014 19:40
To: Pretrial Services General Mail
Subject: RE: DAWSON, KENNETH JEROME

DAWSON, KENNETH JEROME
P-1083740
DOB 01/20/1968

The above inmate has bonded and is being held on your hold.

Thank You,
Kimberly Moschetti

EXHIBIT E

Sarah McHugh

From: Lawrence Briggs
Sent: Tuesday, June 03, 2014 4:12 PM
To: Heather Becker; Kurt Pierpont; Leslie Holmes; Matthew Wright; Ryan Kinsella; Ryan L. Ropers; Sarah McHugh; Stephanie LaHue
Subject: DAWSON, KENNETH JEROME P1083740

ABOVE SUBJ BONDED ON ALL CHARGES ON 053014, HE STILL HAD A PTR HOLD ON DOCKET 14CR1328.

THANKS LARRY

EXHIBIT F

JEFFERSON COUNTY SHERIFF'S OFFICE
DETENTION SERVICES DIVISION
INMATE/DETAINEE REQUEST FORM

□ File

Indicate below whom you wish to contact, and briefly state the reason:

CHECK ONE BOX ONLY: □ Inmate Services □ Watch Supervisor □ Jail Counselor_____ □ Chaplain □ Public Defender
⊠ Other Shift Commander
(EXPLAIN)

I/D Name (Please Print) Kenneth Dawson
I/D Signature /s/ Kenneth Dawson

Module: 7th Cell 34 JCID P01083740

Booking # 1408585 Date/Time 6-3-14

REASON: Court set bond I posted set cash bond on May 30th 2014. It has now been 4 days that I have not been released. This is a violation of my 14 amendment right along with my right to due process of law. I will lose my employment if not at work tomorrow. Someone will have to be responsible for damages incurred. Please rectify.

Received by (Module Staff) _____ Date/Time _____

DISPOSITION By Staff Member___ Date/Time _____

Acknowledged Inmate/Detainee_____

D. K. Scott 9:30 pm Refused to sign

EXHIBIT G

Diana Taube

From: Diana Taube
Sent: Wednesday, June 04, 2014 08:25
To: Heather Becker; Leslie Holmes; Matthew Wright; Ryan Kinsella; Sarah McHugh
Subject: dawson, kenneth P1083740

The above subject bonded on case #14CR1328 on Friday May 30th.

The pretrial hold is all that is holding him here.

Thanks,

Diana
ISU

EXHIBIT H

TO: JEFFERSON COUNTY SHERIFF / INMATE SERVICES UNIT (Fax: 303-271-5468)

PRETRIAL SERVICES RELEASE NOTICE

Authorized by Colorado State Statute 16-4-105(3)(d)

DEFENDANT: Kenneth Dawson_ CASE#: 14CR1328

DIVISION: E

On behalf of the Court, Pretrial Services hereby requests that the Jefferson County Sheriff's Department, c/o Inmate Services Unit:

□ Release this defendant forthwith and to direct the defendant to report to Pretrial Services at 100 Jefferson County Parkway, Suite 1050, Golden, CO 80419

☒ Other: PLEASE RELEASE THIS DEFENDANT TO INTERVENTION AT 4 PM TODAY TO BE PLACED ON A GPS MONITOR. THANK YOU.

Submitted by:

Sarah McHugh	6/4/14 12:46 PM
Pretrial Services Representative	Date Time

Received by:

_____	_____/____
Inmate Services Staff Signature	Date / Time

cc: Pretrial Services