IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, Plaintiff, vs. ALAN JAMES SWINNEY, Defendant.	Case No.: 20CR50067 DEFENDANT'S ARTICLE I, § 43 RELEASE MOTION

INTRODUCTION

Defendant was arrested in September of 2020 after a grand jury indicted him with attempted assault in the fourth degree, unlawful use of mace in the second degree, attempted assault in the second degree, unlawful use of a weapon, and assault in the second degree related to allegations occurring on August 15, 2020. The grand jury also considered uncautioned other acts evidence concerning allegations occurring August 22, 2020, and indicted Defendant with assault in the second degree, unlawful use of a weapon, unlawful use of a weapon with a firearm, menacing, pointing a firearm at another, unlawful use of mace in the second degree, and assault in the fourth degree. Security is set at $534,000, which would require Defendant to post $53,400 for the privilege of release. Defendant cannot afford this amount, and simply because he cannot afford to pay for his release he remains locked in a jail cell. Defendant's continued detention is illegal unless the state explicitly seeks Defendant's detention and this Court conducts a hearing as authorized by Article I, section 43 of the Oregon Constitution and determines "by clear and convincing evidence, that there is danger of physical injury or sexual

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victimization to the victim or members of the public by the criminal defendant while on release." Because the State has not requested such a hearing[1], and because it could not carry its burden at such a hearing, Defendant respectfully requests that this Court reduce the security required to $250, which is an amount Defendant can afford, and since there is no evidence he is a flight risk.

BACKGROUND ON SECURITY

In 2008, the people of Oregon amended the Oregon Constitution to add Article I, section 43, which allows the State to detain a person charged with certain violent felonies prior to trial only if "a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release."

In the 12 years since section 43 was adopted, trial courts have routinely avoided its substantive and procedural protections when ordering legally innocent people jailed. Instead of issuing transparent detention orders and complying with section 43, courts have evaded its protections by imposing unattainable security amounts, which nevertheless function as detention orders. Courts do this even though the Supreme Court of Oregon has previously said that security amounts are "not to be set so as to make it impossible, *as a practical matter*, for a prisoner to secure release." *Gillmore v. Pearce*, 302 Or 572, 580, 731 P2d 1039 (1987) (emphasis added). In addition to violating the Oregon Constitution, the routine use of unattainable security amounts to detain criminal defendants violates longstanding federal constitutional law that forbids pretrial

[1] There are two likely reasons the government has not requested such a hearing. First, it doesn't have the right to such a hearing in this case since none of defendant's charges fit the definition of "violent felony" as defined in ORS 135.240(6). Second, it doesn't believe it need to, thanks to the Multnomah County bench's long history of setting bail in amounts known, as a practical matter, to exceed amounts defendants can afford.

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detention absent substantive findings that such detention is necessary and procedural safeguards that ensure the accuracy of those findings.

As a matter of history and law, the term "bail" means, and has always meant, *release* before trial. *See, e.g.*, *Armatta v. Kitzhaber*, 327 Or 250, 280, 959 P2d 49 (1998) (describing the right to bail in Article I, section 14 of the Oregon Constitution as entitling arrestees to "release").[2] Prior to 1973, Oregon courts, like others across the country, routinely conflated "bail" with "money bail," which is the practice of requiring money for someone's pretrial release. *Cf., e.g.*, *ODonnell v. Harris County*, 251 F Supp 3d 1052, 1068–71 (SD Tex 2017), *aff'd in relevant part*, 892 F3d 147 (5th Cir 2018).

In 1973 Oregon "abandoned the concept of 'bail'" as it had come to be misunderstood in practice, *State ex rel Lowrey v. Merryman*, 296 Or 254, 256 n2, 674 P2d 1173 (1984), and in its place adopted a comprehensive system of pretrial release, *see* ORS 135.230 to .295.

Under this system, most individuals are presumed eligible for release on personal recognizance without any restrictions on their pretrial liberty. ORS 135.245(3). If the magistrate responsible for pretrial-release decisions finds that "release of the person on personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release." ORS 135.245(4). Conditional release "means * * * release which imposes regulations on the activities and associations of the defendant." ORS 135.230(2). Typical regulations may require defendants to surrender their passports, restrict their movements to the state or even their home, check in regularly with the court, or use electronic monitoring to track their whereabouts. Security release "means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property." ORS 135.230(12). To effect a

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[2] *See generally Holland v. Rosen*, 895 F3d 272, 290 (3d Cir 2018) (discussing history of bail "as a means of achieving pretrial release from custody conditioned on adequate assurances"); U.S. Department of Justice—National institute for Corrections, Fundamentals of Bail: A resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform 1 (Sept 2014), https://perma.cc/WZ6B-HK6Y.

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security release, 10 percent of the security-release amount, but in no event less than $25, must be deposited with the clerk of court. ORS 135.265(2).

In 1987, the Oregon Supreme Court, in *Gillmore*, made three important decisions regarding security amounts. First, this Court clarified that, although "the likelihood that a particular accused person will commit further crimes if released is relevant to the decision to release the person on recognizance or conditional release, * * * this criterion * * * plays no role in setting the *amount* required for security release." *Id.* at 577 (emphasis in original) (citing *Sexson v. Merten*, 291 Or 441, 448, 631 P2d 1367 (1981)). Second, this Court stated that "[s]ecurity amounts as a whole (not the ten per cent actually deposited) * * * are supposed to represent the least onerous amount whose possibility of loss reasonably assures the attendance at trial of the person charged." *Id.* (citation omitted). Third, because release statutes "shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant," ORS 135.245(7), security amounts are "not to be set so as to make it impossible, *as a practical matter*, for a prisoner to secure release," *Gillmore*, 302 Or at 580 (emphasis added).

In the 1990's, Oregon voters adopted several additional pretrial-detention measures which were, in whole or in part, struck down by the Supreme Court of Oregon. Measure 11, passed in 1994, would have "require[d] a trial court to deny release to a defendant accused of [certain offenses], unless the court determine[d] by clear and convincing evidence that the defendant will not commit any new crime while on release." *See State v. Sutherland*, 329 Or 359, 363, 987 P2d 501 (1999). The court found that Measure 11 violated Article I, section 14 of the Oregon Constitution, which provides that "'[o]ffences, except murder, and treason, shall be bailable by sufficient sureties' and thus grants most defendants accused of crimes a constitutional right to bail." *Id.* at 364–65 (citing *Priest v. Pearce*, 314 Or 411, 417, 840 P2d 65 (1992)). That decision triggered a backup provision of Measure 11, which mandates a minimum $50,000

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security amount for certain offenses. The court allowed the backup provision to survive a facial challenge because, in some cases, a $50,000 security amount might be constitutional. But the court explicitly opened the door to as-applied challenges to the backup provision. *Id.* at 366–67. ("We hold that any defendant who wishes to make an 'as applied' challenge to the propriety of imposing the specified security release amount of $50,000 or higher * * * has a constitutional right to a hearing to address that question."); *see also* ORS 135.240(5)(a)(A) (permitting federal and state constitutional challenge to the $50,000 minimum security amount).

In 2008, Oregon voters amended Article I, section 14, through Measure 52, to add, among other provisions, Article I, section 43. If a person is charged with a "violent felony" other than murder or treason, section 43 allows the State to detain that person explicitly, but only after "a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release." Or Const Art I, § 43(1)(b). By its plain terms, section 43 gives defendants robust substantive and procedural rights at a release hearing before they may be detained. These rights mirror what the Due Process Clause of the federal Constitution requires and what the U.S. Supreme Court upheld in *United States v. Salerno*, 481 US 739, 751 (1987). But defendants are routinely deprived of these rights because the State does not seek, and the courts do not order, explicit detention; instead, they jail defendants because they cannot pay money. *See* Justice System Partners, *Multnomah County Pretrial System Assessment* at 33 (Feb 25, 2020) ("[T]he money bail system [in Multnomah County] results in poor people being detained in custody because they are poor, not because they are a danger to others or will not show up to court."). This is illegal and unconstitutional.

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ARGUMENT

I. OREGON LAW FORBIDS SETTING AN UNATTAINABLE SECURITY AMOUNT.

The Oregon Supreme Court has repeatedly and explicitly said that security amounts precluding release as a practical matter are impermissible. *Gillmore*, 302 Or at 580; *Owens v. Duryee*, 285 Or 75, 80, 589 P2d 1115 (1979) ("Bail may not be set at an amount chosen in order to make it impossible, as a practical matter, for a prisoner to secure his release."); *Armatta*, 327 Or at 280 (describing Article I, section 14 of the Oregon Constitution as entitling arrestees to "release"). This makes sense in light of Oregon statutes, which provide that a "defendant shall be released" unless he or she is subject to explicit pretrial detention. ORS 135.240(1). And it is the only way to coherently read the Oregon Constitution. If unattainable security amounts are permitted, Article I, section 43's requirement that the State prove, at an adversary hearing, by clear and convincing evidence, that an individual's release would pose an immitigable risk of harm before detaining the person would be meaningless. *See, e.g.*, *State v. Hunt*, 307 Or App 71, 78 (2020) ("In interpreting statutes, 'we assume that the legislature did not intend any portion of its enactments to be meaningless surplusage.'" (quoting *State v. Stamper*, 197 Or App 413, 418, 106 P3d 172 (2005)). By setting unattainable security amounts in order to detain people that the courts do not want to release, the courts have made Article I, section 43's requirements meaningless.

An order setting an *attainable* security amount has a different purpose under state law from an order of detention. Under Oregon law, if a defendant is not released on recognizance or on conditional release, release should be secured by an "amount that will reasonably assure the defendant's appearance." ORS 135.265(1). This, of course, assumes that the defendant will be released: "secured release" is secured *release*, not secured detention. On the other hand, state law says that a defendant may be detained only if there exists clear and convincing evidence that

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releasing the defendant would pose a danger to the community. ORS 135.240(4)(a)(B). That is, the purpose of detention is to ensure community safety, while the purpose of setting attainable security amounts is reasonably securing appearance. Setting *unattainable* security amounts obliterates this distinction.

Judges of this Court have routinely relied on *Delaney v. Shobe*, 218 Or 626, 356 P2d 126 (1959), as controlling authority for the factors trial courts look to in setting the amount of security. This reliance is misplaced. First, *Delaney* was decided in 1959, 14 years prior to the criminal code revisions that created the structure for our current system of pretrial release—and decades before *Gillmore* and section 43. By definition *Delaney* has nothing to say about how the courts should interpret those statutes. Second, the *Delaney* court did not engage in any analysis of the meaning of Article I, section 16 (Oregon's excessive bail clause). The per curiam opinion, which was issued without an opposition brief or oral argument, turned on the simple fact that the petitioner failed to offer *any* evidence in the trial court to prove that his bail was excessive, and thus could not meet the weighty abuse-of-discretion standard on appeal. 218 Or at 628–29. The so-called *Delaney* factors are dicta. The court merely stated that *other courts* have "indicated certain factors that should be taken into consideration in fixing bail." *Id*. at 628. The factors listed are directly taken from an ALR from 1959. The court gave no indication that those factors have anything to do with what any provision of the Oregon constitution required.

Contrast that flimsy authority with the repeated, direct statements from the court 28 years later in *Gillmore*:

> "We state the principle once more, to assure clarity: while the possibility that a person charged may commit other criminal offenses if released may be considered in determining whether the person should be released on his personal recognizance or be subjected to conditional release, the release amount chosen is not to be based on the same criterion. The *sole criterion* to be considered in establishing the amount of security is the reasonable assurance of appearance by defendant for trial."

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302 Or at 579 (emphasis added). One simply cannot synthesize such directly contradictory statements—the newer cases, analyzing and interpreting today's release system, are the controlling authority. Finally, even if *Delaney* has any continuing precedential value in determining whether a particular security amount is excessive under Article I, section 16, the arguments Defendant makes here are not that the security amount is excessive under that provision: the argument made here is that a security amount which is more than a defendant can pay is an order of detention, which must be justified as such under Article I, section 43 and the Due Process Clause of the federal Constitution.

The unattainable security amount required for Defendant's release violates these statutes. There is no evidence at all that Defendant is able to pay the security amount required, and he has presented evidence that he is not able to pay it. Security has therefore been set such that, as a practical matter, renders release impossible. Oregon Supreme Court decisions, and the Oregon Constitution, do not allow that, and this Court should accordingly either reduce security to $250, which is the maximum amount that Defendant can afford, or alternatively order Defendant's release on reasonable conditions.

II. EVEN IF UNATTAINABLE SECURITY AMOUNTS ARE SOMETIMES PERMISSIBLE, THEY ARE FORBIDDEN UNLESS DETENTION OUTRIGHT WOULD BE PERMITTED.

An unattainable condition of pretrial release is an order of pretrial detention. Oregon law forbids pretrial detention without clear and convincing evidence that release would pose an immitigable risk to public safety. Similarly, the federal Constitution requires that orders of detention satisfy exacting substantive and procedural standards. Defendant's ongoing pretrial detention, therefore, violates Oregon and federal law unless the state meets those exacting standards, which it cannot do here.

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A. Setting an Unattainable Security Amount is Tantamount to Ordering Pretrial Detention

Unattainable money bail "is simply a less honest method of unlawfully denying bail altogether." *State v. Brown*, 338 P3d 1276, 1292 (NM 2014). If the state requires a money-bail amount that a person cannot afford to pay, it has entered "the functional equivalent of an order for pretrial detention." *Brangan v. Commonwealth*, 80 NE3d 949, 963 (Mass 2017). Although styled as a "release order," an order requiring an unattainable monetary obligation as a condition of release is "tantamount to setting no conditions at all" that would result in the defendant's release. *United States v. Leathers*, 412 F2d 169, 171 (DC Cir 1969) (per curiam).

Courts across the country have squarely held that a money-bail order exceeding a person's ability to pay is an order of detention. *See United States v. Mantecon-Zayas*, 949 F2d 548, 550 (1st Cir 1991) (per curiam); *United States v. McConnell*, 842 F2d 105, 110 (5th Cir 1988); *Caliste v. Cantrell*, 329 F Supp 3d 296, 311 (ED La 2018), *aff'd* 937 F3d 525 (5th Cir 2019); *Valdez-Jimenez v. Eighth Judicial Dist Ct in & for County of Clark*, 460 P3d 976 (Nev 2020); *In re Humphrey*, 19 Cal App 5th 1006, 1029 (2018), *review granted* 417 P3d 769 (Cal 2018), *given precedential effect statewide in relevant part* 472 P3d 435 (Cal 2020) (en banc); *Brown*, 338 P3d at 1292. It is easy to understand why. From the perspective of someone who cannot pay it, an unattainable money-bail order is equivalent to an order that he be released if he runs a mile in less than a minute: Both orders impose release conditions that are impossible to meet, and are therefore equivalent to no release condition at all.

Accordingly, state and federal courts across the country have held that, because an order requiring an unattainable monetary condition is an order of pretrial detention, an order requiring unaffordable money bail is constitutionally permissible only where a pretrial-detention order would be constitutionally permissible. *See, e.g.*, *Valdez-Jimenez*, 460 P3d at 987 ("[W]hen bail is set in an amount that results in continued detention, it functions as a detention order, and accordingly is subject to the same due process requirements applicable to a deprivation of

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liberty."). In these circumstances, the trial court's "insist[ence] on terms in a 'release' order that will cause the defendant to be detained pending trial . . . must satisfy the procedural requirements for a valid detention order." *Mantecon-Zayas*, 949 F2d at 550 (emphasis omitted). Specifically, the court's decision requiring unaffordable money bail "must be evaluated in light of the same due process requirements applicable to such a deprivation of liberty." *Brangan*, 80 NE3d at 963.

B. Oregon Law Forbids Detention Without a Finding by Clear and Convincing Evidence that Releasing the Detainee Would Pose a Risk to Public Safety

Article I, section 43 of the Oregon Constitution, as implemented by ORS 135.240, entitles a defendant to a release hearing at which the court is to consider whether there is probable cause that the defendant committed the crime charged, ORS 135.240(4)(a)(A), *and* whether there is "clear and convincing evidence[] that there is a danger of physical injury or sexual victimization to the victim or members of the public" if the defendant is released, ORS 135.240(4)(a)(B). The state bears the burden of producing evidence at the release hearing. ORS 135.240(4)(c). Unless the court makes these findings, the "defendant shall be released." ORS 135.240(1). These protections would be meaningless if courts could achieve via unattainable security amounts what they would not be permitted to achieve via transparent orders of detention.

In this case, none of these substantive or procedural requirements have been followed. The State has not even explicitly argued that Defendant *should* be detained. Instead, the State has argued that Defendant should be *released*, but only if he is capable of paying money. The State could not carry its burden under ORS 135.240(4)(c) to prove that Defendant is dangerous in this case. Moreover, the prosecutor's arguments, *including statements in a prosecutor's affidavit or probable cause statement,* are not evidence. *State v. Slight*, 301 Or. App. 237, 252-53, 456 P.3d 366, 375 (2019) ("Although that colloquy involved representations by the prosecutor, we have

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repeatedly held that an attorney's arguments are not evidence."); *State of Oregon v. Michael Hanson,* Order, Multnomah Circuit Court Judge Heidi H. Mowad, March 16, 2021, 20CR55932.

C. Federal Constitutional Law Requires Robust Substantive and Procedural Protections Before a Court May Enter an Order of Detention

Two lines of federal constitutional precedent strictly limit pretrial detention. First, equal protection and due process forbid jailing a person solely because of her inability to make a payment. *ODonnell v. Harris County*, 892 F3d 147, 161 (5th Cir 2018); *see also Bearden v. Georgia*, 461 US 660, 665 (1983); *Pugh v. Rainwater*, 572 F2d 1053, 1057 (5th Cir 1978); *Frazier v. Jordan*, 457 F2d 726, 728 (5th Cir 1972). As the Fifth Circuit has explained, bail-setting practices pursuant to which "poor arrestees . . . are incarcerated where similarly situated wealthy arrestees are not, solely because the indigent cannot afford to pay a secured bond" create a "basic injustice" that infringes the right against wealth-based detention. *ODonnell*, 892 F3d at 162.

Second, due process protects a "fundamental" interest in pretrial liberty. *See, e.g.*, *Salerno*, 481 US at 750 (recognizing the "importance and fundamental nature" of "the individual's strong interest in liberty").[3] "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 US 71, 80 (1992) (citation omitted); *see also Zadvydas v. Davis*, 533 US 678, 690 (2001); *Reno v. Flores*, 507 US 292, 302 (1993) (explaining that *Salerno* concerned "fundamental liberty interests" (citation and quotation marks omitted)). "[A]n indigent defendant's loss of personal liberty through imprisonment" falls squarely within the protection of

[3] *See also Lopez-Valenzuela v. Arpaio*, 770 F3d 772, 780 (9th Cir 2014) (recognizing the "fundamental" right to pretrial liberty); *Humphrey*, 19 Cal App 5th at 1049 (same); *Brangan*, 80 NE3d at 961 (same); *Buffin v. City & County of San Francisco*, No. 15-cv-4959, 2018 WL 424362, at *6 (ND Cal Jan 16, 2018) (holding that pretrial detention "implicates plaintiffs' fundamental right to liberty").

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the Due Process Clause. *Turner v. Rogers*, 564 US 431, 445 (2011) (citing *Foucha*, 504 US at 80).

These two constitutional rights—the right against wealth-based detention and the fundamental right to pretrial liberty—may not be curtailed unless the government demonstrates that pretrial detention is necessary to serve a compelling interest. *Frazier*, 457 F2d at 728–30; *Salerno*, 481 US at 739, 750–51; *see also ODonnell*, 251 F Supp 3d at 1156–57; *Reem v. Hennessy*, No. 17-cv-6628, 2017 WL 6765247, at *1 (ND Cal Nov 29, 2017); *Valdez-Jimenez*, 460 P3d at 985 (citing *Salerno*, 481 US at 750, and *Bearden*, 461 US at 668–69); *Humphrey*, 19 Cal App 5th at 1028, 1037; *Brangan*, 80 NE3d at 962. This principle holds true regardless of whether pretrial detention is achieved via a transparent order of detention or a *de facto* order of detention resulting from unattainable money bail. *See, e.g.*, *Valdez-Jimenez*, 460 P3d at 987. Accordingly, for detention from unattainable money bail to be constitutionally permissible, the court must conduct a "meaningful consideration of . . . alternatives" to "incarceration of those who cannot" pay a financial condition of release, and make a finding that secured money bail "is *necessary* to reasonably assure [the] defendant's presence at trial." *Rainwater*, 572 F2d at 1057 (emphasis added). It follows that if the government's interest in court appearance could reasonably be assured by alternative conditions of release, then pretrial detention from unattainable money bail is unconstitutional. *Id.* at 1058. Put differently, the amount of the monetary condition must "not be in an amount greater than necessary," *Valdez-Jimenez*, 460 P3d at 984, "to further the State's compelling interests in bail," *id.* at 985; *see also Brangan*, 80 NE3d at 954.

Furthermore, the federal Constitution, like Oregon law, requires that these findings—that detention via unattainable money bail is necessary to further the government's compelling interests, and that no alternative non-monetary conditions will suffice—be made by clear and convincing evidence. As the Supreme Court explained in *Addington v. Texas*, 441 US 418

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(1979), the deprivation of the fundamental right to bodily liberty requires a heightened standard of proof beyond a mere preponderance to ensure the accuracy of the decision, *id.* at 432–33. Since *Addington*, the Supreme Court has never permitted application of a standard lower than "clear and convincing" evidence in any context in which bodily liberty is at stake. *See Santosky v. Kramer*, 455 US 745, 756 (1982) ("This Court has mandated an intermediate standard of proof—'clear and convincing evidence'—when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'" (quoting *Addington*, 441 US at 424)); *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 US 261, 282–83 (1990) (explaining that the Court has required the clear and convincing evidence standard for deportation, denaturalization, civil commitment, termination of parental rights, allegations of civil fraud, and in a variety of other civil cases implicating important interests); *Foucha*, 504 US at 85–86. The Courts of Appeals have followed suit. *See, e.g.*, *Velasco Lopez v. Decker*, 978 F3d 842, 855–56 (2d Cir 2020); *Singh v. Holder*, 638 F3d 1196, 1203–04 (9th Cir 2011) ("[I]t is improper to ask the individual to 'share equally with society the risk of error when the possible injury to the individual'—deprivation of liberty—is so significant * * * ." (quoting *Addington*, 441 US at 427)).

Other courts, interpreting these cases alongside *Salerno*, have consistently required clear and convincing evidence to justify detaining a person prior to trial. *See, e.g.*, *Valdez-Jimenez*, 460 P3d at 986–87; *Humphrey*, 19 Cal App 5th at 1034; *Caliste*, 329 F Supp 3d at 311. The clear-and-convincing-evidence standard is required for determinations of flight risk and dangerousness alike. *See Kleinbart v. United States*, 604 A2d 861, 870 (DC 1992) ("A defendant's liberty interest is no less—and thus requires no less protection—when the risk of his or her flight, rather than danger, is the basis for justifying detention without right to bail."). The American Bar Association's Criminal Justice Standards on Pretrial Release are consistent with

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this view.[4] And this principle makes particular sense when detention is in practice effected via unattainable money bail, given the divergent purposes of detention and money bail. *Compare, e.g.*, ORS 135.265(1) (explaining that money bail should be set to minimize flight risk), *with* ORS 135.240(4)(a)(B) (explaining that detention should only be ordered to protect the community).

In this case, had the state sought detention, this court would have been required to find probable cause that the Defendant committed the crimes of which he is accused and clear and convincing evidence that releasing him would pose a danger. But the State has not made this request. And if it does in the future, it will not be able to support that request with the required evidence.

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[4] Standard 10-5.8(a) explains that the "clear and convincing" standard applies to decisions relating to dangerousness and risk of flight. Standards for Criminal Justice: Pretrial Release § 10-5.8(a) (Am Bar Ass'n 2007). Courts have long looked to the Standards for guidance when answering constitutional questions about the appropriate balance between individual rights and public safety in the field of criminal justice. *See, e.g.*, *Padilla v. Kentucky*, 559 US 356, 367 (2010); *Strickland v. Washington*, 466 US 668, 688–89 (1984).

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CONCLUSION

Based on the above, defendant asks that the Court order Defendant's release pursuant to a security amount of no more than $250, and subject to whatever additional reasonable restrictions the Court believes is necessary to protect the public and ensure defendant's appearance at future court dates, or in the alternative that the Court order a detention hearing compliant with Article I, section 43 of the Oregon Constitution and order Defendant's release because the State cannot prove by clear and convincing evidence that her release would pose an immitigable danger to the community.

Dated: May 3, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing

DEFENDANT'S ARTICLE I, §43 RELEASE MOTION

on:

Deputy District Attorney Nathan Vasquez
nathan.vasquez@mcda.us

by the e-mailing a full, true, and correct copy thereof to the individual(s) at the e-mail address(es) shown above and via the Oregon File & Serve system on the date set forth below.

Dated: May 3, 2021.

/s/ Joseph Westover
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