

**5<sup>TH</sup> CIRCUIT RULINGS FEB 2018 & AUG 2018**  
**RE: BAIL SCHEDULES AND PR RELEASE**

**Bail Schedules are permissible as long as an individualized hearing is provided within 48 hours for those who claim inability to pay the preset amount:**

*“Harris County is enjoined from imposing prescheduled bail amounts as a condition of release on arrestees who attest that they cannot afford such amounts without providing an adequate process for ensuring that there is individual consideration for each arrestee of whether another amount or condition provides sufficient sureties” O’Donnell vs. Harris County, 5<sup>th</sup> Circuit, Feb 2018, Page 22*

*“Those who cannot afford the set bail are entitled to an individualized hearing within 48 hours to determine whether lowering that bail would be release on sufficient sureties... That some arrestees would continue to afford and pay bail while others would avail themselves of the new hearing within 48 hours is an inherent part of this calculus.” O’Donnell vs. Harris County, 5th Circuit Aug 2018, Pages 11-12*

*“At the hearing...If the decision-maker declines to lower bail from the prescheduled amount to an amount the arrestee is able to pay, then the decisionmaker must provide written factual findings or factual findings on the record explaining the reason for the decision...” O’Donnell vs. Harris County, 5th Circuit, Feb 2018, Page 24*

**Defendants are not entitled to PR Release solely because they cannot afford the preset bail amount:**

*“the County must implement the constitutionally-necessary procedures to engage in a case by case evaluation of a given arrestee’s circumstances, taking into account the various factors required by Texas state law (only one of which is ability to pay).” O’Donnell vs. Harris County, 5<sup>th</sup> Circuit Feb 2018, Page 21*

*“Since bail is not purely defined by what the detainee can afford, see Charlesworth, 600 S.W.2d at 317, the constitutional provision forbidding denial of release on bail for misdemeanor arrestees does not create an automatic right to pretrial release. Instead, Texas state law creates a right to bail that appropriately weighs the detainees’ interest in pretrial release and the court’s interest in securing he detainee’s attendance.” O’Donnell vs. Harris County, 5th Circuit Feb 2018, Pages 12-13*

*“Release might be warranted were “one [to] assume[] a fundamental sub-stantive due process right to be free from any form of wealth-based detention. But . . . no such right is in view.” ...Secured bail was not to be eliminated for any category of indigent arrestees...” O’Donnell vs. Harris County, 5th Circuit Aug 2018, Page 8*

*“The question is what amount the arrestee could reasonably pay within 24 hours of his or her arrest, from any source, including the contributions of family and friends.” O’Donnell vs. Harris County, 5th Circuit Feb 2018, Page 23*