

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10843

KANDACE KAY EDWARDS,
on behalf of herself and all others
similarly situated,

Plaintiff-Appellant,

versus

RANDOLPH COUNTY SHERIFF,
RANDOLPH COUNTY CIRCUIT CLERK,
MAGISTRATE OF THE RANDOLPH COUNTY
DISTRICT COURT,
DISTRICT COURT JUDGE OF THE RANDOLPH
COUNTY DISTRICT COURT,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 3:17-cv-00321-WKW-SMD

Before NEWSOM, KIDD, and WILSON, Circuit Judges.

KIDD, Circuit Judge:

Kandace Edwards, a young mother and former military servicemember, was arrested in Randolph County, Alabama. At the time, Randolph County allowed arrestees to be immediately released from jail only if they could pay a predetermined bail amount tied to the charged crime. This meant that someone like Edwards, who could not afford the predetermined bail amount, could wait for days or weeks before receiving a hearing to determine whether she would be released.

After Edwards was arrested, she filed a class action alleging that Randolph County's bail practices unconstitutionally discriminated against indigent individuals. While this case was pending in the district court, Randolph County issued a new, more permissive bail policy. Randolph County moved to dismiss the case based, in part, on a lack of subject matter jurisdiction. The district court granted the motion, concluding that the action was largely moot.

But our caselaw is clear that a defendant cannot circumvent a lawsuit simply by terminating the allegedly wrongful conduct—which is exactly what Randolph County attempted to do in this case. We therefore reverse the district court's mootness dismissal and conclude that the class may proceed with facial and as-applied challenges to Randolph County's prior bail practices, as well as as-applied challenges to the current bail practices. We take no position as to the merits of those claims. But our precedent precludes the

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class from pursuing facial challenges to Randolph County’s current bail policy, so we affirm the dismissal of those claims.

I. BACKGROUND

A. Randolph County’s Former Bail System

Prior to September 2017, a person arrested in Randolph County, Alabama, would be eligible to be released from jail after paying a predetermined bail amount. The predetermined amounts were listed on a “bail schedule”—a document that paired a charged offense with an amount of money the person would have to post. The county’s district judge and clerk of court implemented the bail schedule.

Although the bail schedule provided “that a bail amount may be increased or reduced ‘on a case by case basis,’” Randolph County officials “d[id] not deviate from [it]” “in practice.” Those who could afford to post bail were immediately released, while those who could not post bail remained in jail until their initial appearance before either the county’s magistrate or district judge. The initial appearance had to occur no later than three days after an arrest.

Despite the initial-appearance requirement, Randolph County’s “general practice [was] to refuse to determine an arrestee’s conditions of release at the initial appearance.” Instead, the court deferred release determinations until a preliminary hearing, which could occur up to four weeks from the date of arrest.

B. Kandace Edwards's Arrest and the Filing of the Instant Case

On May 17, 2017, Kandace Edwards, the named plaintiff in this case, was arrested under the original bail system for forging a \$75 check. Edwards served in the Army National Guard, and at the time of her arrest, she was 29 years old, a mother of two young children, and seven-and-a-half months pregnant. She was charged with possession of a forged instrument in the second degree and told that she would be released from jail prior to a June 6 court date only if she could post the \$7,500 bond specified in the bail schedule. But Edwards had fallen on hard times, was dealing with mental health concerns, and was unable to “afford to buy her release from jail.”

The day following her arrest, Edwards, acting on behalf of herself and similarly situated pretrial detainees, filed a class action complaint in federal court pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983, naming four Randolph County officials. The complaint alleged that Randolph County’s bail practices violated detainees’ rights to (1) due process and equal protection by imposing a wealth-based detention system without considering alternative conditions to release, (2) due process by failing to provide “an individualized release hearing with adequate procedural safeguards,” and (3) due process by failing to provide “a sufficiently prompt release hearing.”

Along with the initial complaint, Edwards moved for a temporary restraining order (“TRO”), a preliminary injunction, and

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class certification. The district court granted the TRO and Edwards was released from jail the same day.

C. Changes to Randolph County's Bail System and Defendants' Motions to Dismiss

In September 2017, while the parties were litigating the preliminary injunction in federal court, Randolph County's sole district judge issued a "Standing Order Regarding Pre-Trial Appearance, Establishment of Bonds in Advance of Initial Appearance, and Individualized Determinations of the Necessity and Ability to Post Bond." We will refer to this document as the "2017 Standing Order." In short, the 2017 Standing Order adopted a new bail schedule that lowered the secured bail amounts for many offenses and standardized the procedures for determining the conditions of pre-trial release. It also "supersede[d] any previous policies or procedures that were in place regarding the posting of bail and" specified that "any such previous procedures [were] no longer [to] be enforced."

The same day the 2017 Standing Order was issued, Defendants moved to dismiss Edwards's federal complaint as moot, asserting that Randolph County had terminated the challenged practices. The district court below denied this request because it was reasonably likely that Defendants would "revert to their earlier challenged conduct if their motion . . . [wa]s granted."

The district court certified the following class under Federal Rule of Civil Procedure 23(a) and (b)(2): "all state-court arrestees who are or who will be jailed in Randolph County who are unable

to pay the secured money bail amount required for their release.” Shortly after class certification, Plaintiffs amended their complaint, substituting a defendant and adding a fourth claim challenging the bail practices under the Sixth Amendment.

While this case was proceeding in district court, our Court was considering a similar case in a different Alabama county. *See Schultz v. Alabama*, 42 F.4th 1298 (11th Cir. 2022). The parties took note of this fact, and the district court granted their motions to stay the case pending resolution of *Schultz*. *Schultz* subsequently held that a county’s mid-litigation bail-policy change jurisdictionally limited the intervenor plaintiff, who had been detained under a previous system, to challenging only the facial constitutionality of the operative policy. *Id.* at 1318–22. *Schultz* then determined that the plaintiff’s facial equal-protection and due-process claims to the existing policy failed on the merits. *Id.* at 1322–35.

After the Supreme Court denied certiorari in *Schultz*, *see Hester v. Gentry*, 143 S. Ct. 2610 (2023), the district court lifted the stay in this case and Defendants moved to dismiss the amended complaint under Federal Rule of Civil Procedure 12(b)(1) and (b)(6). The district court granted Defendants’ motions.

Relying on *Schultz*, the district court concluded that it was “required to jurisdictionally limit,” in part, Plaintiffs’ challenge. It, therefore, dismissed as moot the following: (1) “all as-applied and facial challenges [to] Randolph County’s bail system that existed prior to” the 2017 Standing Order; (2) “all as-applied challenges, ei-

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ther as applied to . . . Edwards or the class, against the 2017 Standing . . . Order”; and (3) “any and all pattern, practice, policy, or procedure claims to the bail system that do not directly target the facial terms of the” 2017 Standing Order. The district court then concluded that any facial constitutional challenges to the 2017 Standing Order that remained in the complaint failed to state a plausible claim for relief.

This appeal followed.

II. STANDARD OF REVIEW

We review *de novo* questions of Article III justiciability. *Cook v. Bennett*, 792 F.3d 1294, 1298 (11th Cir. 2015). “When evaluating a district court’s conclusions on a Rule 12(b)(1) motion [to dismiss for lack of subject matter jurisdiction], we review the district court’s legal conclusions *de novo* and its factual findings for clear error.” *Zinni v. ER Sols., Inc.*, 692 F.3d 1162, 1166 (11th Cir. 2012) (citation omitted). We also review *de novo* the grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Baker v. City of Madison*, 67 F.4th 1268, 1276 (11th Cir. 2023).

III. DISCUSSION

Our discussion proceeds in two parts. We begin by explaining why the district court erroneously dismissed a majority of Plaintiffs’ action as moot. We then outline why, to the extent they seek to do so in the operative complaint, Plaintiffs cannot maintain facial challenges to the 2017 Standing Order.

A. Randolph County’s Mid-Litigation Bail-Policy Change Does Not Moot Plaintiffs’ Action

Article III of the Constitution limits the jurisdiction of the federal courts to “Cases” and “Controversies.” U.S. CONST. art. III, § 2. Two crucial and “closely related” justiciability principles are at play in this appeal—standing and mootness. *Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass’n*, 115 F.4th 1266, 1280 (11th Cir. 2024), *cert. denied*, 146 S. Ct. 607 (2025).

To establish Article III standing, “[a] plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant[s], and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). “Standing is determined at the time the . . . complaint is filed.” *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1340 (11th Cir. 2014).

But, “[w]hen events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief,” the question then becomes whether a case must be dismissed as moot. *Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health and Rehab. Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000). “[I]f a suit is moot, it cannot present an Article III case or controversy and the federal courts lack subject matter jurisdiction to entertain it.” *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328 (11th Cir. 2004); *see also Fla. Ass’n of Rehab. Facilities*, 225 F.3d at 1217 (“Any decision on the merits of a moot case or issue would be an impermissible advisory opinion.”).

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The district court relied on *Schultz* to conclude that, because Edwards was not detained under the 2017 Standing Order and could not bring an as-applied challenge to that order, justiciability principles required Edwards to be limited to challenging the facial constitutionality of the 2017 Standing Order (Randolph County’s current bail policy). And because Edwards was so limited as the named plaintiff, the entire class was so limited.

On appeal, the parties disagree as to whether *Schultz*’s jurisdictional holding applies to this case. For reasons we will explain below, we conclude that *Schultz* does not apply to the facts of this case. Rather, we conclude that the voluntary-cessation doctrine saves *all* of Plaintiffs’ claims from mootness.

1. *Schultz*’s Jurisdictional Holding Is Inapplicable to This Case

In *Schultz*, a group of arrestees filed a class action complaint challenging the constitutionality of the bail system in Cullman County, Alabama. 42 F.4th at 1310. Bradley Hester intervened in the case after filing. *Id.* While the case was pending, but after Hester was released from jail, Cullman County issued a standing order setting a new bail schedule and revising the bail procedures. *Id.* at 1306, 1308, 1310. Just sixteen days later, the district court held an evidentiary hearing and granted Hester a preliminary injunction. *Id.* at 1310–11. The court issued two written orders concluding that the bail system “unconstitutionally discriminated against the indigent by absolutely depriving them of immediate pretrial release and by denying them procedural due process at their bail hearings”

and specifying the steps Cullman County would have to take to make its bail system constitutionally compliant. *Id.*

On appeal, *Schultz* reasoned that Hester could not pursue an as-applied challenge to the existing standing order because he could not “trace his injury to the current operative bail system.” *Id.* at 1319 (citing *Pugh v. Rainwater*, 572 F.2d 1053, 1058–59 (5th Cir. 1978) (en banc), and *Walker v. City of Calhoun*, 901 F.3d 1245, 1267 n.13 (11th Cir. 2018)). *Schultz* emphasized that the limited factual development on the county’s implementation of the standing order was problematic to an as-applied challenge, which “necessarily requires the development of a factual record for the court to consider.” *Id.* (citation omitted). It explained that the facts of Hester’s case “[we]re tied to the now-defunct bail scheme,” so allowing him to pursue “an as-applied challenge to the new bail scheme, given the record before [it], would violate core justiciability principles.” *Id.* *Schultz* ultimately concluded that, because Hester possessed Article III standing when he became a party, the case was not moot as to his facial challenge to the existing standing bail order. *Id.* at 1320–22.

The district court construed *Schultz* to “[stand] for the proposition that when there is a new standing bail order that purports to be the real bail policy of a county . . . court[s] must approach the case singularly from the new standing bail order’s explicit language without probing into any other policies, patterns, practices, or procedures that are alleged and from which a developed record may

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or may not confirm.” (citation modified.). In other words, the district court viewed *Schultz* as mandating that, when there is a mid-litigation policy change, “constitutional challenges to a bail detention program—regardless of the nature of those challenges—are limited to facial constitutional challenges to the operative standing bail order.” (citation modified.).

We find no indication that *Schultz* intended to introduce such a broad jurisdictional rule. Additionally, Plaintiffs point us to two key factors that distinguish *Schultz* from the instant case.

a. Class Certification

Plaintiffs first note that *Schultz* did not involve a certified class, which exists in this case. The district court rejected this distinction because Edwards “did not suffer an injury under the 2017 Standing . . . Order,” and the class members “[step] into [her] shoes . . . and ha[ve] standing to bring only those claims that belonged to [her].” The district court’s conclusions merge the distinct doctrines of standing and mootness, and Defendants perpetuate this confusion in their arguments on appeal.

Notably, prior to class certification, a “district court must determine that at least one named class representative has Article III standing to raise each class subclaim.” *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). “This individual injury requirement is not met by alleging that injury has been suffered by other, unidentified members of the class to which the plaintiff belongs and which he purports to represent.” *Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987) (citation modified).

There is no dispute that, at the time of filing the initial complaint, Edwards had the requisite standing to pursue a challenge to Randolph County’s pre-September 2017 bail policy. *See Arcia*, 772 F.3d at 1340. Edwards suffered an injury in the form of her pre-trial detention, she could trace that injury to Defendants, and a judicial determination that those practices were unconstitutional could redress her injury. *See Spokeo*, 578 U.S. at 338. Randolph County’s mid-litigation issuance of the 2017 Standing Order requires us to ask whether Edwards’s claims have become moot, not whether she lacked standing to bring this case altogether. *See Cook*, 792 F.3d at 1299 n.3 (“Because standing is measured at the time a lawsuit is filed, subsequent changes in the law are properly considered under mootness doctrine.” (citation modified)); *see also L.E. ex rel. Cavorley v. Scamihorn*, No. 23-11741, 2026 WL 2249000, at *4 (11th Cir. Aug. 5, 2026) (explaining that “[p]ost-filing events might well bear on *mootness*—but not standing”).

Defendants insist that all class members are “locked in” to Edwards’s standing “for all time,” so they cannot pursue any claims that Edwards herself cannot maintain. Not so.

When a class is certified, it “acquire[s] a legal status separate from the interest asserted by” the named plaintiff. *Sosna v. Iowa*, 419 U.S. 393, 399 (1975). That certification “significantly affects the mootness determination,” as a live “controversy may exist . . . between a named defendant and a member of the class represented . . . even though the claim of the named plaintiff has become moot.” *Id.* at 399, 402; *see also Gerstein v. Pugh*, 420 U.S. 103, 110 n.11

(1975) (explaining that, because “[p]retrial detention is by nature temporary,” such an action “belongs . . . to that narrow class of cases in which the termination of a class representative’s claim does not moot the claims of the unnamed members of the class”); *cf. Bd. of Sch. Comm’rs v. Jacobs*, 420 U.S. 128, 129–30 (1975) (holding that a case was moot where the named plaintiffs lacked a stake in the outcome and the case was never properly certified as a class action).

We recognize that the cases providing this proposition often address a named plaintiff’s change in status rather than an alteration or repeal of the challenged law. *See, e.g., Franks v. Bowman Transp. Co.*, 424 U.S. 747, 752–53, 755–56 (1976) (holding that the named plaintiff’s ineligibility for seniority status did not moot the certified class’s challenges to a trucking company’s employment policies); *Sosna*, 419 U.S. at 397–402 (holding that the named plaintiff’s satisfaction of Iowa’s one-year residency rule for filing for divorce by the time the case was before the U.S. Supreme Court did not moot the claims brought by the certified class); *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972) (noting that the named plaintiff’s satisfaction of a voting residency requirement did not moot the certified class’s case). Nevertheless, the Supreme Court’s reasoning underlying those cases applies with equal force to this case. Whether due to a change in circumstances or a change in the law, a controversy that is “no longer live as to” the named plaintiff may “[remain] very much alive for the class of persons she has been certified to represent.” *Sosna*, 419 U.S. at 401.

We also note that the class certified in this case does not differentiate between those detained before and after the 2017 Standing Order’s implementation, despite the certification order post-dating the policy change. Accordingly, the fact that Edwards herself was not detained under the 2017 Standing Order does not automatically doom the as-applied challenges of her fellow class members. *Cf. Stein v. Buccaneers Ltd. P’ship*, 772 F.3d 698, 707 (11th Cir. 2014) (“The relation-back doctrine allows a named plaintiff whose individual claims are moot to represent class members not because the named plaintiff has moved to certify a class[,] but because the named plaintiff will adequately present the class claims[,] and unless the named plaintiff is allowed to do so the class claims will be capable of repetition, yet evading review.”).

b. Procedural Posture

Plaintiffs also correctly note that *Schultz* resolved an appeal from the grant of a preliminary injunction, which further distinguishes it from the instant case. *See Schultz*, 42 F.4th at 1306, 1311. Notably, in reaching its jurisdictional holding, *Schultz* emphasized the “minimal findings of fact concerning” Cullman County’s bail practices and that its conclusions were based on “the undisputed background below.” *Id.* at 1322 n.5. In *Schultz*, however, the district court held a two-day evidentiary hearing at which the parties were able to litigate the issues presented in the request for injunctive relief. *See id.* at 1310; *see also id.* at 1344 (Rosenbaum, J., dissenting in

part). It was therefore clear that the parties had at least some opportunity to develop a factual record as to the implementation of Cullman County’s operative bail policy.

Indeed, many cases resolving mootness issues arise from more developed records. *See, e.g., Keohane v. Fla. Dep’t of Corr. Sec’y*, 952 F.3d 1257, 1263, 1268–70 (11th Cir. 2020) (finding that a change in policy mooted a constitutional challenge on appeal from a bench trial); *Troiano v. Supervisor of Elections*, 382 F.3d 1276, 1278, 1283–86 (11th Cir. 2004) (remarking, on appeal from a summary judgment order, that “all of the available evidence (and it [was] considerable)—and the square finding of fact by the district court—suggest[ed]” mootness); *Cambridge Christian*, 115 F.4th at 1279–81, 1283–86 (finding certain claims moot following a change in law that occurred while the appeal of a summary judgment order was pending with this Court).

By contrast, the record in this case was not fully developed as to how the 2017 Standing Order has been implemented in practice. The district court took judicial notice of the 2017 Standing Order’s existence and language, Fed. R. Evid. 201, but it never answered a key question—whether the implementation of the 2017 Standing Order *actually* terminated the conduct challenged by Plaintiffs. While a district court “may consider extrinsic evidence” in resolving factual challenges to subject matter jurisdiction, *Car-michael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1279 (11th Cir. 2009), it may not rely solely on Defendants’ bare assertion that the complained-of bail practices have come to an end. *Cf.*

United States v. Jones, 29 F.3d 1549, 1553 (11th Cir. 1994) (explaining “that a court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings” (citation modified)).

In summary, we conclude that *Schultz* does not mandate that Plaintiffs be limited to pursuing only facial challenges to the 2017 Standing Order. Accordingly, the district court erred in relying on *Schultz* to reach its jurisdictional determination.

2. The Voluntary-Cessation Doctrine is the Proper Vehicle for Determining Whether Plaintiffs’ Claims Are Moot

We must still determine whether Randolph County’s mid-litigation issuance of the 2017 Standing Order affected the justiciability of the instant case.

“Mootness can occur due to a change in circumstances, or . . . a change in the law.” *Coral Springs*, 371 F.3d at 1328. Importantly, however, defendants cannot “automatically moot a case by the simple expedient of suspending [their] challenged conduct after [they are] sued.” *FBI v. Fikre*, 144 S. Ct. 771, 777 (2024) (citation modified). Indeed, “[t]he doctrine of voluntary cessation provides an important exception to the general rule that a case is mooted by the end of the offending behavior.” *Troiano*, 382 F.3d at 1282. “The basis for th[is] . . . exception is the commonsense concern that a defendant might willingly change its behavior in the hope of avoiding

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a lawsuit but then, having done so, return to its old ways.” *Keohane*, 952 F.3d at 1267 (citation modified).

Notably, “the voluntary cessation exception . . . does not apply where subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Flanigan’s Enters., Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1255 (11th Cir. 2017) (en banc) (citation modified), *abrogated on other grounds by Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021). “The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.” *Cambridge Christian*, 115 F.4th at 1284 (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)).

Government defendants, who are “given considerably more leeway . . . in the presumption that they are unlikely to resume illegal activities,” *Coral Springs*, 371 F.3d at 1328–29, can generally meet their burden by rescinding the challenged law or policy, *Keohane*, 952 F.3d at 1268. And “once the repeal of a policy has caused . . . jurisdiction to be questioned,” the burden shifts to the plaintiff to “[show] a reasonable expectation—or . . . a substantial likelihood—that the government defendant will reverse course and reenact the repealed rule.” *Id.* (citation modified).

Sitting en banc, our Court outlined “three broad factors” to guide this inquiry. *Flanigan’s*, 868 F.3d at 1257. First, a court should “ask whether the change in conduct resulted from substantial deliberation or is merely an attempt to manipulate . . . jurisdiction.”

Id. In answering this question, it should “examine the timing of the repeal, the procedures used in enacting it, and any explanations independent of [the] litigation which may have motivated it.” *Id.* Second, a court should “ask whether the government’s decision to terminate the challenged conduct was unambiguous.” *Id.* (citation modified). This requires an inquiry into “whether the actions that have been taken to allegedly moot the case reflect a rejection of the challenged conduct that is both permanent and complete.” *Id.* Third, a court should ask “whether the government has consistently maintained its commitment to the new policy or legislative scheme.” *Id.*

In *Walker v. City of Calhoun*, we applied this analysis to another case presenting a constitutional challenge to a bail system. There, the plaintiff brought a class action challenging the city’s secured-money bail system as unconstitutionally discriminatory. 901 F.3d at 1251–52. After the suit was filed and the plaintiff was released from jail, the city issued a new standing bail order “alter[ing] the prevailing bail policy.” *Id.* at 1252. The district court entered a preliminary injunction in favor of the plaintiff but did not make any factual findings as to the county’s implementation of its new bail procedures. *Id.* at 1252–54; *see also Schultz*, 42 F.4th at 1322 n.5 (noting that the district court in *Walker* “did not make factual findings on the new bail procedures”). On appeal from the preliminary-injunction order, the plaintiff argued that the city’s original bail policy was “plainly unconstitutional,” and the district court had the “equitable discretion” to cure constitutional violations that

arose prior to the implementation of the new bail system. *Walker*, 901 F.3d at 1269. Our Court agreed. *Id.* at 1270–71.

Walker first noted that the city was “unnecessarily secretive” in adopting the standing bail order, as it refused to explain its process, and the abandonment of the original bail policy was “not unambiguous” because a single judge order changed it rather than a legislative act. *Id.* at 1271. *Walker* further found that we “[could not] say that this judge might not revert to the original policy, given [this] lack of transparency surrounding the issuance of the” new order. *Id.* *Walker* noted, however, that it was unclear “whether the government . . . consistently maintained its commitment to the new policy or legislative scheme” because enforcement of the standing order was enjoined only two months after its issuance. *Id.*

Plaintiffs contend that *Walker* governs this case, and we agree. *Schultz* does not purport to overrule or undermine *Walker*. Rather, *Schultz* relied considerably on *Walker* to support its jurisdictional conclusion. *See Schultz*, 42 F.4th at 1321–22 (finding that *Walker* supported its jurisdictional analysis because our Court “addressed the facial constitutionality of the city’s new bail policy instead of determining that the plaintiff lacked standing” and “the ‘reasonable expectation’ factors for mootness” in each case “ha[d] key factual similarities”). To the extent that the holdings of these two cases conflict, *Walker* governs our analysis because it is “the earliest precedent that reached a binding decision on the issue.” *Rodemaker v. City of Valdosta Bd. of Educ.*, 110 F.4th 1318, 1326 (11th Cir. 2024) (citation modified), *cert. denied*, 145 S. Ct. 2701 (2025).

Walker leads us to conclude that Defendants cannot circumvent this lawsuit by voluntarily enacting a new bail policy. Indeed, the district court recognized the applicability of the voluntary-cessation doctrine when rejecting Defendants’ motion to dismiss filed pre-*Schultz*. In that previous order, the district court walked through the *Flanigan*’s factors and found that Defendants were reasonably likely to “revert to their earlier challenged conduct” if Plaintiffs’ complaint were dismissed. The court noted, among other things, that (1) the 2017 Standing Order was issued the very same day Defendants moved to dismiss the case as moot; (2) the 2017 Standing Order was unilaterally issued by Randolph County’s single district judge; (3) Defendants did not provide a clear reason for the order’s implementation other than the fact that it “obviate[d] the need for a preliminary injunction”; and (4) Defendants failed to admit to any wrongdoing with their previous bail practices.

All these facts remain true. Indeed, the district court noted in its instant dismissal order that “[b]ut for” its (mistaken) view of “*Schultz*’s directive . . . [it] would be inclined to revisit . . . the voluntary-cessation doctrine,” and potentially “permit challenges to the pre-[2017] Standing . . . Order system that seek an injunction preventing Defendants from returning to that system.” And despite that Plaintiffs pointed out the district court’s previous mootness findings in its briefing on appeal, Defendants do not meaningfully contest these determinations before our Court.

As such, we conclude that, at this stage, it is not “absolutely clear that [Defendants’] allegedly wrongful behavior could not reasonably be expected to recur.” *See Flanigan’s*, 868 F.3d at 1255 (citation modified); *see also Fikre*, 144 S. Ct. at 779 (classifying a mootness determination as “provisional” because “[a]s the case unfolds, the complaint’s allegations will be tested rather than taken as true, and different facts may emerge that may call for a different conclusion”). And we find that Plaintiffs’ alleged constitutional injuries can still be favorably redressed by some form of relief—such as an injunction preventing Defendants from reverting to their previous bail policy. *See Cambridge Christian*, 115 F.4th at 1283.

Plaintiffs may therefore proceed with their facial and as-applied claims against the Randolph County officials as they relate to the original bail schedule. Plaintiffs seek redress for, among other things, injuries to their constitutional rights of due process and equal protection under the Fourteenth Amendment for Randolph County’s pre-2017-Standing-Order practice of holding those who could not afford bail until their preliminary hearing in county court.

We hold that this case is not moot and we reverse the district court’s dismissal of Plaintiffs’ challenges on that jurisdictional basis.

B. Plaintiffs Cannot Maintain Plausible Facial Challenges to the 2017 Standing Order

Although we conclude that the district court erroneously dismissed many of Plaintiffs’ claims on mootness grounds, we still

must determine whether, to the extent the operative complaint seeks to do so, any class member can maintain a plausible facial challenge to the 2017 Standing Order.

Generally, “[t]o survive a [Rule 12(b)(6)] 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.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Ordinarily, at this stage, courts are limited to considering “the pleadings and any exhibits attached to it.” *Baker*, 67 F.4th at 1276. But a court may consider material outside of the complaint, if it is material “of which [it] may take judicial notice,” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007), such as information that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” Fed. R. Evid. 201(b)(2). The 2017 Standing Order is such a document.

As an initial matter, Plaintiffs appear to concede that *Schultz* forecloses their facial equal-protection and substantive-due-process challenges to the 2017 Standing Order. *See Schultz*, 42 F.4th at 1322–32. And if they do not concede the issue, we find that they have abandoned their claims because they fail to adequately brief any challenges to the dismissal of those claims. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014). But Plaintiffs have preserved their remaining facial challenges.

Plaintiffs maintain that they can allege plausible facial procedural-due-process and Sixth-Amendment challenges to the 2017 Standing Order. But Plaintiffs have a steep hill to climb because “[a] facial challenge . . . is . . . the most difficult challenge to mount successfully.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). Indeed, they “must establish that no set of circumstances exists under which the [2017 Standing Order] would be valid.” *Id.* We conclude that they cannot do so here.

1. Procedural Due Process

Plaintiffs argue “that Randolph County’s bail system does not provide adequate procedural safeguards.” Specifically, they contend that the 2017 Standing Order does not provide arrestees with either “constitutionally adequate notice” of their initial appearance hearing or “a meaningful opportunity to be heard” at said hearing.

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the . . . Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified). In conducting a due-process inquiry, “[w]e first ask whether there exists a liberty or property interest of which a person has been deprived, and if so we ask whether the procedures followed by the State were constitutionally sufficient.” *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011).

“In the pretrial detention context, procedural due process requires that the procedures used be ‘adequate to authorize the pretrial detention of at least some persons charged with crimes,’ whether or not they might be insufficient in some other circumstances.” *Schultz*, 42 F.4th at 1332 (alteration omitted) (quoting *Salerno*, 481 U.S. at 751). “Answering that question requires two separate inquiries: First, does preventive detention serve a legitimate state objective? And, second, are the procedural safeguards adequate to authorize the pretrial detention?” *Id.* (citation modified).

There is “no question about the first inquiry,” as “states maintain not only a legitimate, but a ‘compelling interest in assuring the presence at trial of persons charged with crime.’” *Id.* (quoting *Rainwater*, 572 F.2d at 1056). We therefore turn to our consideration of whether the 2017 Standing Order’s “procedural safeguards” are sufficient to pass facial constitutional muster.

In relevant part, the 2017 Standing Order provides that any arrestee who can post the scheduled bail typically is entitled to release after booking is completed. Anyone unable to post the bond is “entitled to a judicial determination of the conditions of their release . . . no later than 72 hours after arrest.” Before the initial appearance before a judge, arrestees “complete an affidavit of substantial hardship” detailing their financial situations. At the initial appearance, the presiding judge must determine whether pretrial release is appropriate, and if so, what conditions should be imposed.

When making a detention decision, Alabama Rule of Criminal Procedure 7.2(a) instructs judges to consider fourteen listed factors. The Rule 7.2(a) factors include the defendant's background, reputation, criminal history, ties to the community, employment status, and financial condition. In accordance with the Rule 7.2(a) factors, the 2017 Standing Order states that a judge "will consider a defendant's ability to post a bond in determining [a] defendant's conditions of release." The judge will also "consider the defendant's affidavit of substantial hardship and may elicit testimony about the defendant's financial condition." If, after considering these factors, the judge "determines that there is no less onerous condition for securing the defendant's appearance or protecting the public," the judge shall "make a written finding as to why the posting of a bond is reasonably necessary to assure the defendant's presence at trial in such a case."

While *Schultz* does not inform our jurisdictional inquiry, *see supra* Part III.A, it does guide our merits analysis of this constitutional challenge because the *Schultz* panel upheld bail procedures that were materially identical to those included in the 2017 Standing Order. *See Schultz*, 42 F.4th at 1333 (explaining that "there is nothing inherently unattainable about a prediction of flight risk or danger to the community" (quoting *Salerno*, 481 U.S. at 751)).

We recognize that in *Schultz*, the arrestees were presented both an affidavit of substantial hardship and a "Release Questionnaire," which the panel determined collectively "provide[d] pretrial detainees notice of the hearing to take place and g[ave] them an

opportunity to present information relevant to the bail determination.” *Id.* By contrast, the 2017 Standing Order requires only that arrestees receive the affidavit of substantial hardship—which does not notify an arrestee of any upcoming hearing or outline the factors that will be considered in determining whether pretrial release is warranted. But, nothing in the 2017 Standing Order precludes Randolph County from using the release questionnaire in its bail proceedings, and the questionnaire is made publicly available by the Alabama Administrative Office of Courts.¹

We also acknowledge that the 2017 Standing Order does not mandate that the presiding judge elicit financial information from the arrestee or dictate what specific findings the judge must make by written order upon completion of the hearing, as was the case in *Schultz*. *See id.* Nevertheless, the 2017 Standing Order requires commencement of a hearing within seventy-two hours following an arrest, at which time the presiding judge may consider several factors that relate to an arrestee’s ability to post bail. Comparable judicial hearings “[are] treated as the most extensive form of process that can be required.” *Walker*, 901 F.3d at 1268. And from the face of the 2017 Standing Order, we are not left with the impression “that [the judge] ‘automatically’ impose[s] monetary bail conditions on indigent arrestees.” *See Schultz*, 42 F.4th at 1335.

¹ *See Release Questionnaire*, AOC E-Forms, <https://eforms.alacourt.gov/media/dilb0j/release-questionnaire.pdf> [<https://perma.cc/UP7L-HMRL>]; *see also* Fed. R. Evid. 201(b)(2).

Perhaps most importantly, if an arrestee is unhappy with the outcome of the bail decision, the arrestee may move to “modify the conditions of release.” Ala. R. Crim. P. 7.4(b). “[I]ndigent arrestees are entitled to the aid of counsel in the filing of that motion,” which “may be granted upon a showing of mere ‘good cause.’” *Schultz*, 42 F.4th at 1334 (quoting Ala. R. Crim. P. 7.4(b)).

For these reasons, we find that, on its face, the 2017 Standing Order’s procedures are “adequate to authorize the pretrial detention of at least some persons charged with crimes.” *Salerno*, 481 U.S. at 751 (citation modified).

2. Sixth Amendment

“Once the adversary judicial process has been initiated, the Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings.” *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (citation modified). “Critical stages are ‘trial-like confrontations’ between the State and the accused.” *Mills v. Hamm*, 102 F.4th 1245, 1249 (11th Cir. 2024) (quoting *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 212 n.16 (2008)).

Plaintiffs contend that Randolph County’s failure to provide the assistance of counsel for indigent arrestees at the initial appearance—when the court determines the conditions of release—violates the Sixth Amendment. We have not determined whether a state initial appearance is a “critical stage” at which the Sixth Amendment requires the right to counsel. *Cf. United States v. Mendoza-Cecelia*, 963 F.2d 1467, 1473–74 (11th Cir. 1992) (concluding that a defendant’s “initial appearance before a [federal] magistrate

judge” was not “a critical proceeding” because it “is largely administrative” and “[a] defendant in seeking bail is not required to reveal the facts of his case”), *abrogated on other grounds by Coleman v. Singletary*, 30 F.3d 1420 (11th Cir. 1994). And we decline to do so here.

Even if we assume that the state initial appearance is a critical hearing, Plaintiffs nevertheless would be unable to mount a Sixth Amendment facial challenge to the 2017 Standing Order. The reason is simple: While the 2017 Standing Order does not directly contemplate the appointment of counsel for indigent defendants, it also does not *explicitly forbid* the presence of counsel at the initial appearance. As such, the 2017 Standing Order would not be unconstitutionally applied in every potential scenario, such as when an arrestee independently obtains counsel for the initial appearance or if the court were to appoint counsel sua sponte. *See Salerno*, 481 U.S. at 745.

In short, “[t]he fact that the [2017 Standing Order] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid.” *See id.* As such, we affirm the district court’s dismissal of Plaintiff’s challenges to the facial constitutionality of the 2017 Standing Order.

IV. CONCLUSION

The district court’s dismissal order is **AFFIRMED IN PART** and **VACATED IN PART**. We **REVERSE** the dismissal of any claims the district court resolved on mootness grounds. But we **AFFIRM** the dismissal of Plaintiffs’ facial challenges to the 2017

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Standing Order. This case is **REMANDED** to the district court for further proceedings consistent with this opinion.