

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

UNITED STATES OF AMERICA	)	Case No.: 6:23-mj-00003-CRI-1
	)	
v.	)	
	)	DEFENDANT'S MOTION FOR
LABRANDON COLEMAN	)	PRETRIAL RELEASE IN
	)	PRESUMPTION CASE

DEFENDANT'S MOTION FOR PRETRIAL RELEASE IN PRESUMPTION CASE

Defendant LaBrandon Coleman respectfully requests that this Court release him on bond pursuant to the Bail Reform Act, 18 U.S.C. § 3142 and *United States v. Salerno*, 481 U.S. 739 (1987). Mr. Coleman has rebutted the presumption of detention with evidence that he is (i) not a danger to the community because of his strong family and community ties, employment history, and limited and stale criminal history, (ii) nor a risk of flight because he does not have any history of nonappearance. Furthermore, there are conditions that will reasonably assure Mr. Coleman's reappearance for trial and the safety of the community. Accordingly, Mr. Coleman requests that the Court grant him pretrial release with the any pf the conditions described *infra* Part V. and any additional conditions the Court finds appropriate.

I. The Statutory Presumptions of Detention Should Be Viewed with Caution Because They Lead to High Rates of Detention for Low-Risk Defendants.

Generally, for pretrial detention to be authorized, "the Government must convince a neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person." *United States v. Singh*, 860 F. App'x 283, 284 (4th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 750 (1987)) (citing 18 U.S.C. § 3142(f)). Congress enacted the statutory presumptions of detention in the

Bail Reform Act of 1984 (BRA) “to detain high-risk defendants who were likely to pose a significant risk of danger to the community if they were released pending trial.”¹ But the presumptions of detention have not worked as intended, and federal pretrial detention rates have skyrocketed since the BRA was enacted, rising from 19% in 1985 to 75% in 2019.² A recent study by the Administrative Office of the Courts (AO) attributed this “massive increase”³ in detention rates to the presumptions of detention, especially as they are applied to low-risk defendants.⁴ The statutory presumptions in drug and firearm cases applied to *nearly half* of all federal cases each year.⁵ The presumptions of detention have thus become “an almost de facto detention order for almost half of all federal cases.”⁶

The study further found that the presumptions increase the detention rate without advancing community safety. Rather than jailing the worst of the worst, the presumptions over- incarcerate the lowest-risk offenders in the system, people who are stable, employed, educated, and have minimal to no criminal history.⁷ When a low-risk individual is not facing a presumption, they’re released 94% of the time.⁸ Yet an identically low-risk individual in a

¹ Amaryllis Austin, *The Presumption for Detention Statute’s Relationship to Release Rates*, 81 FED. PROB. 52, 56–57 (2017), archived at <https://perma.cc/9HGU-MN2B>.

² *Pretrial Release and Detention: The Bail Reform Act of 1984*, Bureau of Just. Stat. Special Rep., at 2 (Feb. 1988), <https://www.bjs.gov/content/pub/pdf/prd-bra84.pdf> (Table 1) (18.8% of defendants detained pretrial in 1985); *Judicial Business: Federal Pretrial Services Tables*, Admin. Off. U.S. Courts (“AO Table”), Table H-14 (Sept. 30, 2019) https://www.uscourts.gov/sites/default/files/data_tables/jb_h14_0930.2019.pdf (74.8% of defendants detained pretrial in 2019); *see also* AO Table H-14A (Sept. 30, 2019), https://www.uscourts.gov/sites/default/files/data_tables/jb_h14a_0930.2019.pdf (61% detention rate *excluding immigration cases*).

³ Austin, *supra* note 1, at 61.

⁴ *Id.* at 57.

⁵ *Id.* at 55 (the drug presumption “applied to between 42 and 45 percent of [all federal] cases every year”).

⁶ *Id.* at 61.

⁷ *Id.* at 57.

⁸ *Id.*

presumption case is released just 68% of the time.⁹ Recent testimony before Congress relied on this government study to call for reform: “These presumptions must be changed because they’ve had far-reaching and devastating consequences that were unforeseen and unintended by Congress.”¹⁰ Moreover, “[t]he BRA’s legislative history demonstrates that Congress did not intend the drug presumption to apply so broadly,” and only intended it to apply to “major drug traffickers,” not people like Brandon.¹¹

Relying on the groundbreaking findings of the AO study, the Judicial Conference’s Committee on Criminal Law recently determined “that the § 3142(e) presumption was unnecessarily increasing detention rates of low-risk defendants, particularly in drug trafficking cases.”¹² To address this problem, the Judicial Conference proposed significant legislative reform that would amend the presumption of detention in drug cases “to limit its application to defendants described therein whose criminal history suggests that they are at a higher risk of failing to appear or posing a danger to the community or another person.”¹³ While the Judicial Conference’s proposed legislation has not been enacted yet, this Court can certainly take it into account when evaluating the presumption of detention in this case.

⁹ *Id.*

¹⁰ See *The Administration of Bail by State and Federal Courts: A Call for Reform: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 115th Cong. (2019), <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2256>; *Testimony of Alison Siegler* at PDF 6–7 (Nov. 14, 2019), <https://docs.house.gov/meetings/JU/JU08/20191114/110194/HHRG-116-JU08-TTF-SieglerA-20191114.pdf>; see also *Written Statement of Alison Siegler* at 13–17 (Nov. 14, 2019), <https://docs.house.gov/meetings/JU/JU08/20191114/110194/HHRG-116-JU08-Wstate-SieglerA-20191114.pdf> (calling for the complete elimination of the presumptions in drug and gun cases).

¹¹ Erica Zunkel & Alison Siegler, *The Federal Judiciary’s Role in Drug Law Reform in an Era of Congressional Dysfunction*, 18 OHIO ST. J. CRIM. L. 283, 292 (2020) (analyzing legislative history of presumptions in detail).

¹² *Report of the Proceedings of the Judicial Conference of the United States* 10 (Sept. 12, 2017), archived at <https://perma.cc/B7RG-5J78>.

¹³ *Id.*

Based on the proposed legislation, commentators have urged judges to give “little, if any, weight to the drug presumption of detention at the detention hearing stage.”¹⁴

The problems with the statutory presumptions of detention are important to Brandon’s motion because, as the AO study confirms, high federal pretrial detention rates come with significant and wide-ranging “social and economic costs.”¹⁵ For example, the study explains that “[e]very day that a defendant remains in custody, he or she may lose employment which in turn may lead to a loss of housing. These financial pressures may create a loss of community ties, and ultimately push a defendant towards relapse and/or new criminal activity.”¹⁶ Indeed, the economic harms stemming from being detained pretrial persist for years: even three to four years after their bail hearing, people released pretrial were still 24.9% more likely to be employed than those who were detained.¹⁷ And these harms are not just limited to the detained person—once someone is incarcerated, the odds that his children become homeless increase by 95%, and the odds that his partner becomes homeless increase by 49%.¹⁸ The other emotional and psychological harms visited upon the children of

¹⁴ Zunkel & Siegler, *supra* note 11, at 289.

¹⁵ Austin, *supra* note 1, at 61.

¹⁶ *Id.* at 53; see also Alexander M. Holsinger & Kristi Holsinger, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, 82(2) Fed. Prob. 39, 42 (2018), archived at <https://perma.cc/LQ2M-PL83> (finding that for people detained pretrial for at least three days, 76.1% had a negative job-related consequence and 37.2% had an increase in residential instability).

¹⁷ Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108(2) Amer. Econ. Rev. 201, 204 (2018), archived at <https://perma.cc/X77W-DAWV>.

¹⁸ For children, Christopher Wildeman, *Parental Incarceration, Child Homelessness, and the Invisible Consequences of Mass Imprisonment*, 651 The Annals of the American Academy of Political and Social Science 74, 88 (2014); for partners, see Amanda Geller & Allyson Walker Franklin, *Paternal Incarceration and the Housing Security of Urban Mothers*, 76 J. Fam. & Marriage 411, 420 (2014).

incarcerated parents are well- documented.¹⁹

It is unsurprising, then, that another AO study found a relationship “between the pretrial detention of low-risk defendants and an increase in their recidivism rates, both during the pretrial phase as well as in the years following case disposition.”²⁰ More recent studies have confirmed that pretrial detention is criminogenic²¹ and cautioned that “lower crime rates should not be tallied as a benefit of pretrial detention.”²² One reason why pretrial detention is criminogenic is because jails’ physical and mental health screenings and treatment offerings are often inadequate.²³ In addition, federal “pretrial detention is itself associated with increased likelihood of a prison sentence and with increased sentence length,” even after controlling for criminal history, offense severity, and socio-economic variables.²⁴ These stark statistics must also be considered in light of the fact that 99% of

¹⁹ See, e.g., Joseph Murray et al., *Children’s Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration: A Systematic Review and Meta-Analysis*, 138(2) *Psychological Bulletin* 175, 186 (2012).

²⁰ Austin, *supra* note 1, at 54 (citing Christopher T. Lowenkamp et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (The Laura and John Arthur Foundation 2013), archived at <https://perma.cc/8RPX-YQ78>).

²¹ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stan. L. Rev.* 711, 718 (2017), archived at <https://perma.cc/5723-23AS> (“[D]etention is associated with a 30% increase in new felony charges and a 20% increase in new misdemeanor charges, a finding consistent with other research suggesting that even short-term detention has criminogenic effects.”); Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 *J. Legal Stud.* 471, 496 (2016) (“[O]ur results suggest that the assessment of money bail yields substantial negative externalities in terms of additional crime.”).

²² Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60 *J.L. & Econ.* 529, 555 (2017).

²³ See Laura M. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates*, Bureau of Just. Stat., at 9 (2015), archived at <https://perma.cc/HGT9-7WLL> (comparing healthcare in prisons and jails); see also Faye S. Taxman et al., *Drug Treatment Services for Adult Offenders: The State of the State*, 32 *J. Substance Abuse Treatment* 239, 247, 249 (2007), archived at <https://perma.cc/G55Z-4KQH>.

²⁴ James C. Oleson et al., *The Sentencing Consequences of Federal Pretrial Supervision*, 63 *Crime & Delinquency* 313, 325 (2014), archived at <https://perma.cc/QAW9-PYYV>.

federal defendants are not rearrested for a violent crime while on pretrial release.²⁵ In other words, pretrial detention imposes enormous costs on criminal defendants, their loved ones, and the community, in a counterproductive attempt to prevent crimes that are extremely unlikely to happen in the first place.

There are also significant fiscal costs associated with high federal pretrial detention rates. As of 2016, the average pretrial detention period was 255 days (although several districts averaged over 400 days in pretrial detention).²⁶ Pretrial detention costs an average of \$73 per day per detainee, while pretrial supervision costs an average of just \$7 per day.²⁷

II. Mr. Coleman Should Be Released on Bond with Conditions.

This Court should release Brandon with conditions. In this case, the statute creates a rebuttable presumption “that no condition or combination of conditions will reasonably the appearance of the person as required and the safety of the community.” § 3142(e)(3). However, release is warranted here because there are numerous facts under § 3142(g) that rebut the presumption of detention and demonstrate that there are conditions of release that will reasonably assure the safety of the community.

As the Supreme Court held in *Salerno*, “[i]n our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception.” 481 U.S. at 755. This presumption of release is encapsulated in the BRA, 18 U.S.C. § 3142. The statute states that the Court “shall order” pretrial release, § 3142(b), except in certain narrow circumstances. Even if the Court determines under § 3142(c) that an unsecured bond is not sufficient, the Court “shall order” release subject to “the least restrictive further

²⁵ Thomas H. Cohen et al., *Revalidating the Federal Pretrial Risk Assessment Instrument: A Research Summary*, 82(2) Fed. Prob. 23, 26 (2018), archived at <https://perma.cc/8VM9-JH9T>.

²⁶ Austin, *supra* note 1, at 53.

²⁷ *Id.* Thus, 255 days of pretrial detention would cost taxpayers an average of \$18,615 per detainee, while pretrial supervision for the same time would cost an average of \$1,785.

condition[s]” that will “*reasonably assure*” the defendant’s appearance in court and the safety of the community. § 3142(c)(1) (emphasis added). Under this statutory scheme, “it is only a ‘limited group of offenders’ who should be detained pending trial.” *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987) (quoting S. Rep. No. 98-225, at 7 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3189); *see also Singh*, 860 F. App’x at 284 (explaining that in enacting the BRA, “Congress’s clear intent [was] that only a limited number of defendants be subject to pretrial detention” (quoting *United States v. Tortora*, 922 F.2d 880, 884 (1st Cir. 1990))); *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992) (“There can be no doubt that this Act clearly favors nondetention.”).

III. The Presumption of Detention Can Be Easily Rebutted and, Once Rebutted, Must Be Considered Alongside All of the Evidence That Weighs in Favor of Release.

The law is clear that (1) very little is required for Brandon to rebut the presumption, and (2) courts must weigh the rebutted presumption against every factor that militates in favor of release before detaining a defendant. In addition, it is impermissible to detain a defendant in a presumption case based solely on evidence of past dangerousness, the nature of the crime charged, or the weight of the evidence.

A. Rebutting the Presumption

Very little is required for a defendant to rebut the presumption of detention. A defendant simply needs to produce “some evidence that he will not flee or endanger the community if released.” *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986); *see also United States v. Jessup*, 757 F.2d 378, 384 (1st Cir. 1985), *abrogated on other grounds by United States v. O’Brien*, 895 F.2d 810 (1st Cir. 1990) (“[T]o rebut the presumption, the defendant must produce some evidence.”); *United States v. Canfield*, No. 1:15CR232-1, 2015 WL 4479125, at *1 (M.D.N.C. July 22, 2015) (“[T]he presumption operate[s] at a minimum to

impose a burden of production on the defendant to offer some credible evidence contrary to the statutory presumption.” (quoting *United States v. Alatishe*, 768 F.2d 364, 371 (D.C.Cir.1985))). This “burden of production is not a heavy one to meet.” *Dominguez*, 783 F.2d at 707. *See also* *United States v. Moquette*, No. CRIM. WDQ-13-0419, 2014 WL 7336476, at *2 (D. Md. Dec. 19, 2014) (same) (quoting *Dominguez*, 783 F.2d at 707). Indeed, the presumption of detention is rebutted by “[a]ny evidence favorable to a defendant that comes within a category listed in § 3142(g) . . . including evidence of their marital, family and employment status, ties to and role in the community . . . and other types of evidence encompassed in § 3142(g)(3).” *Id.* (emphasis added). Any “evidence of economic and social stability” can rebut the presumption. *Dominguez*, 783 F.2d at 707. As long as a defendant “come[s] forward with some evidence” pursuant to § 3142(g), the presumption of flight risk and dangerousness is definitively rebutted. *Id.* (“Once this burden of production is met, the presumption is ‘rebutted.’”) (quoting *Jessup*, 757 F.2d at 384); *see also O’Brien*, 895 F.2d at 816 (finding presumption of flight risk rebutted by evidence of effectiveness of electronic monitoring ankle bracelet together with posting of defendant’s home).²⁸ The Government always bears the burden of *persuasion*. *Id.*; *Jessup*, 757 F.2d at 384; *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985).

B. Weighing the Rebutted Presumption

After the presumption is rebutted, the Court must weigh the presumption against all of the other evidence about the defendant’s history and characteristics that tilts the scale in favor of release. *See Dominguez*, 783 F.2d at 707 (“[T]he rebutted presumption is not

²⁸ To rebut the presumption of flight risk, for example, a defendant does not “have to *prove* that he would not flee—*i.e.*, he would [not] have to *persuade* the judicial officer on the point. [Instead], he would only have to introduce a certain amount of evidence contrary to the presumed fact.” *Jessup*, 757 F.2d at 380–81; *accord Dominguez*, 783 F.2d at 707.

erased. Instead it remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g).”). The Court should not give the presumption undue weight if evidence relating to other § 3142(g) factors supports release.

C. Forbidden Considerations in a Presumption Case

A judge may not detain a defendant in a presumption case based solely on (1) evidence of past dangerousness, (2) the nature and seriousness of the crime charged, or (3) the weight of the evidence against him. First, even if the presumption is not rebutted, a judge is prohibited from detaining a defendant “based on evidence that he has been a danger in the past, except to the extent that his past conduct suggests the likelihood of future misconduct.” *Dominguez*, 783 F.2d at 707. Even when a defendant is charged with a serious crime or has a significant criminal history, there may be release conditions that will reasonably assure the safety of the community. *Id.* Second, to rebut the presumption of dangerousness, a defendant need not “demonstrate that narcotics trafficking [or another serious crime] is not dangerous to the community.” *Id.* at 706. *See also United States v. Davis*, 449 F. Supp. 3d 532, 539 (D. Md. 2020) (“[R]are is the case in which there will be no evidence of danger to the community based on alleged criminal conduct. The plain language of the statute requires the Court to evaluate the ‘nature and seriousness of the danger.’ This language makes clear that there are different types of dangers and varying levels of seriousness.”). Instead, this Court must analyze the Brandon’s individual characteristics under § 3142(g). *See United States v. Bilbrough*, 452 F. Supp. 3d 264, 269–70 (D. Md. 2020) “Detention decisions must be individualized and should not be swayed by the concern that release of one detainee may cause others to seek the same relief.”). Third, the Court is forbidden from relying solely on the weight of the evidence to detain a defendant in a presumption case. Brandon is not required to “rebut’ the government’s showing of probable cause to believe that he is guilty

of the crimes charged.” *Id.*

IV. The Presumption of Detention Is Rebutted in This Case.

As detailed below, there is more than “some evidence that [Brandon] will not . . . endanger the community if released.” *Dominguez*, 783 F.2d at 707. Accordingly, the presumption is rebutted in this case.

A. Family Ties

Brandon has significant family ties in South Carolina, as evidenced by the twelve support letters attached to this Motion. He lives with Keshuna Oglesby-Burgess, with whom he shares his only child, Paisley, their almost three-year-old daughter. If released on bond, he would return to their home in Greenville. Keshuna and Brandon have been partners for six years. They raise and care for their daughter together. While Keshuna works during the day, Brandon cares for Paisley. And his bond with her is strong. *See* Exhibit 1, Keshuna Oglesby-Burgess Letter. Additionally, Brandon has strong bonds with his mother, whom he has worked with for ten years, stepfather, grandmothers, grandfather, cousins, uncles, and friends. In the words of his cousin Lantravious, Brandon has “tons of family to love on him.” Exhibit 2, Lantravious Butler Letter. Their letters describe Brandon as “hardworking,” Ex. 1; “intelligent,” Ex. 2; “respectful and generous,” Exhibit 3, Robert Carter Letter; has a “heart of gold,” Exhibit 4 Brittney McIntyre Letter; “kind,” Exhibit 5, Ponda Watford Letter; “responsible,” Exhibit 6, Sharon Patterson Letter; and “a person of good moral character,” Exhibit 7, Daniel Shands Letter. Brandon’s strong family ties and “heart of gold” are maybe best represented by his care for his aunt, who passed away from cancer in May 2022. He cared for Lucille for the last four years of her life; the last two, he lived with her (the first time in six years that he had not lived with his partner). Thus, Brandon forged the strong bond with his daughter, and partnered with Keshuna on Paisley’s care, while he provided end-of life care and support for his aunt. The depth of Brandon’s family ties—their love and

support for one another—alone is enough to rebut the § 3142(e) presumption.

B. Community Ties

Brandon also has significant community ties. He grew up in Greenwood and graduated from Wren High School in Piedmont, South Carolina, in 2013, where he was a standout wide receiver. *See* Exhibit 13. Following his graduation from Wren, Brandon went to East Mississippi Community College, a two-year junior college. After that, he transferred to Paine College in Augusta, Georgia, on a football scholarship. However, due to school administration issues, he was granted a waiver to transfer to Limestone University in Gaffney, South Carolina. As described in the letters of his loved ones, Brandon serves the homeless and those in need in the Parker Cone (Rutherford Road) and District area (White Horse and Frontage Road) of Greenville by providing clothes and food. *See* Exhibits 1–12. He also volunteers with a youth football team in Duncan, South Carolina, that is coached by his cousin, Lantravious.

C. Employment History

Brandon's employment history is strong—he's a hard worker who has maintained steady employment. Most recently, in 2022, Brandon worked with FCA Packaging, an industrial packing company in Simpsonville, South Carolina, where he built wooden crates. Also in 2022, he worked with Warehouse Services, Inc., where he was a material handler. In 2021, Brandon started his own business, Topside Trucking, LLC, which he still operates. His long-term goal is to haul freight, but at present, he tows cars up to 350 miles, changes tires, and provides lockout services. Brandon also works with his mom in her commercial cleaning business, which currently contracts with seventeen businesses for cleaning services. Brandon has worked with his mom for early ten years.

D. Criminal History

Brandon's criminal history consists of only four convictions.

Date	Court	Offense	Disposition
11/15/2013 (Age 20)	Powdersville-Piedmont Summary Court Easley, SC	Unlawful Use of Telephone	Paid \$400 fine
01/12/2016 (Age 22)	Easley Municipal Court Easley, SC	Shoplifting, Value \$2,000 or less, 1st Offense	Pled guilty; paid \$1092.50
01/12/2016 (Age 22)	Easley Municipal Court Easley, SC	Poss. of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Pled guilty; paid \$620.00
01/12/2016 (Age 22)	General Sessions Court Pickens, SC	Unlawful Carrying of Pistol	Pled guilty; 18 months suspended to 9 months' probation and upon completion of 50 hours of Public Service Employment

Brandon's last conviction is over seven years old and happened when he was twenty-two years old. He also successfully completed his nine-month probation term. None of his convictions are violent, and three of them arose from one incident. Also, Brandon's criminal history doesn't include any instances of non-appearance. Accordingly, Brandon's criminal history is limited and stale and does not support the presumption of detention in this case.

V. Regardless of the Presumption, Mr. Coleman Must Be Released Because There are Conditions That Will Reasonably Assure Appearance and Safety.

Regardless of whether this Court finds that the presumption of detention is rebutted, Brandon must be released because there are conditions that will reasonably assure the safety of the community and Brandon's appearance in court. A defendant cannot be

detained “unless a finding is made that no release conditions ‘*will* reasonably assure . . . the safety of the community” and the defendant’s appearance in court. *Dominguez*, 783 F.2d at 707 (quoting § 3142(e)). Here, the Government cannot carry its high burden of proving by clear and convincing evidence that there are *no* release conditions that will reasonably assure the safety of the community. *See id.* at 708 n.8. The Government cannot prove by a preponderance of the evidence that there are no conditions that would reasonably assure Brandon’s appearance in court. Thus, Brandon cannot be detained.

The following conditions of release under § 3142(c)(1)(B), and any other conditions the Court deems necessary, will reasonably assure Brandon’s appearance in court and the safety of the community: (a) maintaining employment, § 3142(c)(1)(B)(ii); (b) restrictions on “personal associations, place of abode, or travel,” such as electronic monitoring, GPS monitoring, home detention, or home incarceration, § 3142(c)(1)(B)(iv); (c) reporting on a “regular basis” to pretrial services or some other agency, § 3142(c)(1)(B)(vi); compliance with a curfew, § 3142(c)(1)(B)(vii); refraining from possessing “a firearm, destructive device, or other dangerous weapon,” § 3142(c)(1)(B)(viii); refraining from “excessive use of alcohol,” § 3142(c)(1)(B)(ix); refrain from “any use of a narcotic drug or other controlled substance . . . without a prescription,” § 3142(c)(1)(B)(ix); and undergoing “medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency,” § 3142(c)(1)(B)(x). Because there are conditions of release that will reasonably assure Brandon’s appearance in court and the safety of the community, he should be released. Additionally, in their letters, several of Brandon’s family members committed to helping him stay on the right path [Lantravious letter]. Thus, his family and friends would effectively serve as designated people reasonably able to assure that Brandon will appear as required and will not pose a danger to the community. *See* § 3142(c)(1)(B)(i).

VI. Statistics Showing that It Is Extraordinarily Rare for Defendants on

Bond to Flee or Recidivate Further Demonstrate that the Foregoing Conditions of Release Will Reasonably Assure Appearance and Safety.

It is not necessary to detain Brandon to meet the primary goals of the BRA, which are to reasonably assure appearance in court and community safety. In this case, this Court should be guided by AO statistics showing that nearly everyone released pending trial in the federal system appears in court and does not reoffend. In fact, in 2021, 99% of released federal defendants nationwide appeared for court as required and 99% were not arrested for new crimes on bond.²⁹

Moreover, when release rates increase, crime and flight do not. A near-perfect compliance rate on bond is seen equally in federal districts with very high release rates and those with very low release rates.³⁰ Even in districts that release two-thirds of all federal defendants on bond, just 1% fail to appear in court and 1% are rearrested while released.³¹

The bond statistics for this district likewise strongly suggest that Brandon should be released. In this district, released federal defendants appeared for court 98.8% of the time in

²⁹ App. 1, AO Table H-15 (Sept. 30, 2022). These high compliance rates have remained remarkably consistent over time, both before and after the pandemic. *See, e.g.*, Mot. for Bond, *United States v. Rodriguez*, No. 19-CR-77 (E.D. Wis. Apr. 2, 2020), ECF No. 41, Ex. 1, archived at <https://perma.cc/LYG4-AX4H> (showing a nationwide appearance rate of 99% and non-rearrest rate of 98%).

³⁰ The data showing near-perfect compliance on bond is illustrated in the chart, “Federal Clients on Bond Rarely Flee or Recidivate (2016-2021 Data).” The districts with the highest and lowest release rates were identified using the version of AO Table H-14A for the 12-month period ending September 30, 2021. *See* App. 2, AO Table H-14A (Sept. 30, 2021), <https://perma.cc/CYV5-3TZ6>. The failure-to-appear and rearrest rates for these districts were calculated using App. 1, AO Table H-15. With regard to flight, the ten federal districts with the lowest release rates (average 20.00%) have an average failure-to-appear rate of 1.6%, while the ten districts with the highest release rates (average 64%) have an *even lower* failure-to-appear rate of 1.1%. *See* App. 1; App. 2. With regard to recidivism, the ten districts with the lowest release rates have an average rearrest rate on bond of 0.8%, while the ten districts with the highest release rates have an average rearrest rate of 1.1%. *See* App. 1; App. 2.

³¹ *See* App. 1; App. 2.

2019, and only 0.6% of defendants were rearrested on release. *See* App. 1, AO Table H-15. Yet despite the statistically low risk of flight and recidivism that defendants like Brandon pose, the Government recommends detention in 71% of cases nationwide and in 59.3% of cases in this district. *See* App. 3, AO Table H-3. Thus, the Government's detention requests are not tailored to the low risk of flight and recidivism that defendants in this district and elsewhere pose.

Brandon must be released because the Government cannot establish that he would be among the approximately 1% of defendants who fail to appear in court or are rearrested on bond. Detaining Brandon without such evidence violates their constitutionally protected liberty interest.

VII. Conclusion

For these reasons, Mr. Coleman respectfully requests that this Court find that the presumption has been rebutted and release him with conditions.

Respectfully submitted,

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