

**Template Motion: Defendant's Motion for Pretrial Release
in Presumption Case**

**IN THE
UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____**

UNITED STATES OF AMERICA

v.

[CLIENT]

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**Judge [NAME]
No. XX-CR-XX**

DEFENDANT’S MOTION FOR PRETRIAL RELEASE IN PRESUMPTION CASE

Defendant [CLIENT], by [his/her] attorney, [ATTORNEY], respectfully requests that this Court release [him/her] on bond pursuant to the Bail Reform Act, 18 U.S.C. § 3142 and *United States v. Salerno*, 481 U.S. 739 (1987). [CLIENT] has rebutted the presumption of detention with evidence that [short summary of evidence under 3142(g) that rebuts the presumption—see Part V]. In support, [CLIENT] states as follows:

I. [CLIENT] Should Be Released on Bond with Conditions.

This Court should [follow Pretrial Services’ recommendation and] release [CLIENT] with conditions. In this case, the statute creates a rebuttable presumption “that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” § 3142(e)(3). The presumption inquiry proceeds in two steps. At Step 1, this Court must consider whether the defense has met the very low burden of production to rebut the presumption. As set forth below, [CLIENT] has presented evidence that rebuts the presumption. At Step 2, this Court must consider the presumption alongside all of the other § 3142(g) factors—even if the presumption has not been rebutted. Release is warranted in this case because there are numerous facts under § 3142(g) that both rebut the presumption of detention and demonstrate that there are conditions of release that will reasonably assure both [CLIENT’s] appearance in court and the safety of the community.

As the Supreme Court held in *Salerno*, “In 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 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 (1983), as reprinted in 1984 U.S.C.C.A.N. 3182, 3189); see also *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992) (“There can be no doubt that this Act clearly favors nondetention.”).

II. The Standard for Release in Presumption Cases

“[C]ase law emphasizes two checks that the BRA and the Constitution impose on the presumption: (1) [At Step 1,] there is an easy-to-meet standard for rebutting the presumption and the prosecution always bears the burden of persuasion, and (2) [at Step 2,] the presumption alone does not warrant detention and must always be weighed along with other factors [in 3142(g)].”¹

However, a recent national study by the University of Chicago Law School’s Federal Criminal Justice Clinic (FCJC) found that judges are not adhering to these two legal requirements and are giving the presumption greater weight than the law allows. Through

¹ Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 151 (2022), <https://freedomdenied.law.uchicago.edu/>; see also *Bail*, 51 GEO. L.J. ANN. REV. CRIM. PROC. 396, 407–08 (2022), [https://www.westlaw.com/Document/I43b1e73f204811ed9f24ec7b211d8087/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I43b1e73f204811ed9f24ec7b211d8087/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0).

courtwatching and qualitative interviews with stakeholders, this study found that the presumption is often treated as a de facto detention order, even though the law makes the presumption easily rebuttable and requires the government to bear—at all times—the “burden of proving that detention is genuinely necessary.”² First, at Step 1, judges are not applying the correct rebuttal standard: “in 95% of presumption cases that held a Detention Hearing in our study, judges either concluded that the arrestee had failed to rebut the presumption or did not mention whether the presumption was rebutted.”³ Second, “data also suggest that judges often disregard Step 2 of the legal test, where they are supposed to weigh the rebutted or unrebutted presumption along with all of the other pretrial release factors in reaching the ultimate release or detention determination.”⁴

The DOJ recently issued a new policy directive aimed at mitigating high detention rates in presumption cases. It instructs that “[p]rosecutors should not seek detention merely because the Bail Reform Act permits such an argument to be made or presumes that detention, based on the charges, is appropriate (as it does for many drug charges, *see* 18 U.S.C. § 3142(e)(3)).”⁵ The new directive requires prosecutors to do a “case- and defendant-specific” analysis in deciding whether to seek detention in all cases, including presumption cases.⁶

² *Id.* In 95% of contested Detention Hearings observed by the Clinic, the court did not mention whether the presumption was rebutted or concluded the presumption was not rebutted. *Id.* at 148. When the court found that the presumption had not been rebutted, the defendant was always detained. *Id.*

³ *Id.* at 161.

⁴ *Id.* at 161–62.

⁵ U.S. Dep’t of Just., Just. Manual § 9-6.100 (2023), <https://www.justice.gov/jm/jm-9-6000-releaseand-detention-pending-judicial-proceedings>.

⁶ *Id.* In response to the FCJC study’s findings, some federal judges and defense attorneys have also emphasized that federal pretrial detention is under “scrutinized,” with Judge Nancy Gertner (ret.) telling USA Today “there should be court watchers all around the country.” Tami Abdollah, *Study: Federal Magistrates, Prosecutors Misunderstand Bail Law, Jailing People Who Should Go Free*, USA TODAY (Dec. 7, 2022), <https://www.usatoday.com/story/news/politics/2022/12/07/federal-judges-misapply-bail-law-illegally-jail-arrestees-study-says/10798949002/>.

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

Congress enacted the statutory presumption of detention in the Bail Reform Act of 1984 (BRA) to detain “a small but identifiable group of particularly dangerous defendants.”⁷ Indeed, Congress intended the presumptions to operate primarily on “*major* drug traffickers.”⁸ Congress emphasized that detention should be presumed only for these major drug traffickers, essentially drug kingpins.⁹ “Congress considered at length arrestees’ pretrial liberty interests, and concluded that the constitutional concerns with pretrial detention required a narrowly tailored statute to secure community safety and appearance in court.”¹⁰

But the presumption of detention has not worked as intended, and federal pretrial detention rates have skyrocketed since the BRA was enacted, rising from 19% in 1985 to 75% in 2019.¹¹ A recent study by the Administrative Office of the Courts (AO) attributed this “massive increase”¹² in detention rates to the presumption of detention, especially as it is applied to low-risk defendants.¹³ The study concludes that the statutory presumption in drug and firearm cases

⁷ S. REP. NO. 98-225, at 6.

⁸ S. REP. NO. 98-225, at 20 (emphasis added).

⁹ S. REP. NO. 98-225, at 7 (emphasizing that it was only for this “limited group of offenders that the courts [needed the] . . . power to deny release pending trial”).

¹⁰ Siegler, *supra* note 1, at 73 (citing S. REP. NO. 98-225, at 8–10).

¹¹ *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).

¹² Amaryllis Austin, *The Presumption for Detention Statute’s Relationship to Release Rates*, 81 FED. PROB. 52, 61 (2017) (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>).

¹³ *Id.* at 57.

applies to *nearly half* of all federal cases and to 93% of drug cases.¹⁴ The 2022 FCJC study demonstrated that the detention rate for defendants facing a presumption of detention is nearly 20 percentage points higher than that for defendants not facing a presumption, even though today “there is no evidence that people in presumption cases pose any greater risk than those in non-presumption cases.”¹⁵

The AO study confirms that the presumption increases the detention rate without advancing community safety. Rather than jailing the worst of the worst, the presumption over-incarcerates the lowest-risk offenders in the system, people who are stable, employed, educated, and have minimal to no criminal history.¹⁶ When a low-risk individual is not facing a presumption, they’re released 94% of the time.¹⁷ Yet an identically low-risk individual in a presumption case is released just 68% of the time.¹⁸ 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.”¹⁹ Moreover, “[t]he BRA’s legislative history demonstrates that Congress did not

¹⁴ *Id.* at 55 (the drug presumption “applied to between 42 and 45 percent of [all federal] cases every year”).

¹⁵ Siegler, *supra* note 1, at 158, 160 & fig.19, 153.

¹⁶ *Id.* at 57.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 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).

intend the drug presumption to apply so broadly,” and only intended it to apply to “major drug traffickers,” not people like [CLIENT].²⁰

[ONLY INCLUDE THIS PARAGRAPH IN A DRUG PRESUMPTION CASE] 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.”²¹ 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.”²² In the wake of the Judicial Conference’s recommendation, Judiciary Committee Chair Dick Durbin introduced a bipartisan bill in the Senate that would eliminate the presumption in all drug cases.²³

This Court can certainly take these developments into account when evaluating the presumption of detention in this case. 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.”²⁴

²⁰ 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).

²¹ *Report of the Proceedings of the Judicial Conference of the United States* 10 (Sept. 12, 2017), archived at <https://perma.cc/B7RG-5J78>; see also Siegler, *supra* note 1, at 152 (“The Judicial Conference relied on a study finding that the presumption increased detention orders by 26% for people in the lowest Pretrial Risk Assessment (PTRA) category. The same study found that detention rates in gun presumption cases climbed from 66% in 1995 to 86% in 2010. These findings strongly suggest that judges place undue weight on the presumption of detention.”).

²² *Judicial Conference*, *supra* note 21, at 10.

²³ Smarter Pretrial Detention for Drug Charges Act, S. 309, 117th Cong. (introduced Feb. 12, 2021).

²⁴ Zunkel & Siegler, *supra* note 20, at 289.

The problems with the statutory presumption of detention are important to [CLIENT's] motion because, as the AO study confirms, high federal pretrial detention rates come with significant and wide-ranging “social and economic costs.”²⁵ 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.”²⁶ Indeed, the economic harms stemming from being detained pretrial persist for years: even three to four years after their Detention Hearing, people released pretrial were still 24.9% more likely to be employed than those who were detained.²⁷ And the repercussions of pretrial detention overwhelmingly fall on poor people of color. Nationally, 81% of people charged with federal crimes are people of color.²⁸ In addition, “90% of defendants in federal court cannot afford to hire their own attorney,” a clear indication that most people facing pretrial detention are poor.²⁹ [IF CLIENT IS MALE: 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

²⁵ Austin, *supra* note 12, at 61; *see also* Siegler, *supra* note 1, at 22 n.5, 61–72 (discussing the devastating consequences of high jailing rates on individuals, their families, their communities, and society, and citing studies in support).

²⁶ *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).

²⁷ 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>.

²⁸ Siegler, *supra* note 1, at 24.

²⁹ *Id.*; *See* Ad Hoc Comm. to Review the Criminal Justice Act, 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act at xiv (2018), <https://perma.cc/FM2Z-8GW3>.

his partner becomes homeless increase by 49%.³⁰ The other emotional and psychological harms visited upon the children of incarcerated parents are well-documented.³¹

Pretrial jailing imposes tremendous human suffering: 118,000 human beings are current locked in federal jails, spending an average of 1 year in jail.³² While in jail, people suffer major personal losses—their job, home, custody of their children.³³ These harms also impact the loved ones and communities of those detained.³⁴ “The brutal reality is that people detained pretrial in federal jails are deprived of necessary medical care, live in dangerously overcrowded conditions, are subjected to violence, and suffer high rates of COVID-19 infection.”³⁵ Moreover, the high federal detention rates fall overwhelmingly on people of color and those from low-income backgrounds.³⁶ The first few days of detention can also be dangerous. According to the Bureau of Justice Statistics, between 38% and 45% of all jailhouse rapes perpetrated on a male victim happen within three days of admission.³⁷ Over 40% of people who die in jail die within their first week.³⁸ Despite the trauma and danger inherent in the first few days of a jail stay, jails’ physical and mental health screenings and treatment offerings are often inadequate.³⁹

³⁰ 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).

³¹ 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).

³² AO Table H-15 (June 30, 2022) (117,978); AO Table H-9A (June 30, 2022) (361 days).

³³ See Siegler, *supra* note 1, at 62 (citing studies).

³⁴ *Id.* at 62.

³⁵ *Id.* at 63.

³⁶ *Id.* at 24.

³⁷ Allen J. Beck, et al., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09*, Bureau of Justice Statistics (2010), 22–23, archived at <https://perma.cc/H33S-QFPK>.

³⁸ Margaret Noonan, et al., *Mortality in Local Jails and State Prisons, 2000–14—Statistical Tables*, Bureau of Justice Statistics 8 (2016), archived at <https://perma.cc/B9CN-ST3K>.

³⁹ See Laura M. Maruschak, et al., *Medical Problems of State and Federal Prisoners and Jail Inmates*, Bureau of Justice Statistics 9, 10 (2015), archived at <https://perma.cc/HGT9-7WLL> (comparing

Data proves that pretrial detention does not make our communities safer or ensure appearance in court: “The harmful effects of pretrial detention cannot be justified as permissible consequences of protecting the community, since research shows that pretrial detention—for any amount of time—is correlated with an *increase* in recidivism.”⁴⁰ The AO cites a famous study that 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.”⁴¹ More recent studies have confirmed that pretrial detention is criminogenic⁴² and cautioned that “lower crime rates should not be tallied as a benefit of pretrial detention.”⁴³ One reason why pretrial detention is criminogenic is because jails’ physical and mental health screenings and treatment offerings are often inadequate.⁴⁴ 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.⁴⁵

healthcare in prisons and jails); *see also* Faye S. Taxman, et al., *Drug Treatment Services for Adult Offenders: The State of the State*, 32 *Journal of Substance Abuse Treatment* 239, 247–49 (2007), archived at <https://perma.cc/G55Z-4KQH>.

⁴⁰ Siegler, *supra* note 1, at 62 & n.102.

⁴¹ Austin, *supra* note 12, at 54.

⁴² 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.”).

⁴³ 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).

⁴⁴ *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>.

⁴⁵ 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>.

These stark statistics must also be considered in light of the fact that 99% of federal defendants are not rearrested for a violent crime while on pretrial release.⁴⁶ 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. The presumption of detention also falls hardest on people of color, intensifying racial disparities in the federal system.⁴⁷ Conversely, releasing more people prior to trial does not correlate with increased rates of failure to appear or rearrest for new crimes.⁴⁸ In fact, the rates at which people on federal pretrial release either fail to appear in court or are rearrested for a new crime are extraordinarily low, “with both sitting at approximately 1–2%.”⁴⁹ “Strikingly, rates of nonappearance and rearrest are just as low in the federal courts with the *highest* pretrial release rates as they are in the districts with the *lowest* release rates.”⁵⁰

There are also enormous fiscal costs associated with high federal pretrial detention rates. In 2021, it cost more than \$35,000 to put a single person in jail for a year.⁵¹ The FCJC study estimated that taxpayers spend “more than *one billion dollars* per year to pay for federal pretrial jailing.”⁵²

⁴⁶ 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>.

⁴⁷ Siegler, *supra* note 1, at 165–66 (“[M]ost arrestees facing a presumption are people of color, since they make up 75% of those convicted of qualify drug offenses nationwide. . . . Our data support the idea that the presumption may fall even more heavily on arrestees of color. . . . Of the cases in which prosecutors invoked the presumption during the Detention Hearing, 97% of the arrestees were people of color, and 3% were white.”); Stephanie Holmes Didwania, *Discretion and Disparity in Federal Detention*, 115 NW. U. L. REV. 1261, 1265 (2021), <https://scholarlycommons.law.northwestern.edu/nulr/vol115/iss5/1/> [<https://perma.cc/3E3R-N4VN>].

⁴⁸ Siegler, *supra* note 1, at 24.

⁴⁹ *Id.*

⁵⁰ *Id.* at 25 fig.4.

⁵¹ *Id.* at 23.

⁵² *Id.* (emphasis added).

IV. Case Law Emphasizes Two Checks That the BRA and the Constitution Impose on the Presumption of Detention.

Case law has established two checks that the BRA and the Constitution impose on the presumption: (1) there is an easy-to-meet standard for rebutting the presumption and the prosecution bears the burden of persuasion, and (2) the presumption alone does not warrant detention and must always be weighed along with other factors in § 3142(g).⁵³ 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. Step 1: The Presumption is Easily Rebutted.

Under the law, very little is required for a defendant to rebut the presumption of detention and therefore judges should find the presumption rebutted in most cases. To rebut the presumption, a defendant simply needs to produce “some evidence that he will not flee or endanger the community if released.” *Dominguez*, 783 F.2d at 707; *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. Gamble*, No. 20-3009, 2020 U.S. App. LEXIS 11558 at *1–2 (D.C. Cir. Apr. 10, 2020) (holding that “[t]he district court erred in concluding that appellant failed to meet his burden of production to rebut the statutory presumption” regarding dangerousness because “appellant did ‘offer some credible evidence contrary to the statutory presumption,’” including information that he had a job offer) (unpublished) (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. Wilks*, 15 F.4th 842, 846–47 (7th Cir. 2021) (explaining that the defense

⁵³ *Id.* at 151.

bears “a light burden of production” to rebut the presumption, “but the burden of persuasion always rests with the government”). 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).” *Dominguez*, 783 F.2d at 707 (emphasis added); *Jessup*, 757 F.2d at 384. Any “evidence of economic and social stability” can rebut the presumption. *Dominguez*, 783 F.2d at 707.

Notably, a defendant’s ties to the community—standing alone—definitively rebut the presumption: “Where the defendant has presented considerable evidence of his longstanding ties to the locality in which he faces trial, as did [this defendant], the presumption contained in § 3142(e) has been rebutted.” *United States v. Jackson*, 845 F.2d 1262, 1266 (5th Cir. 1988). 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. *Dominguez*, 783 F.2d at 707 (“Any evidence favorable to a defendant that comes within a category listed in § 3142(g) can affect the operation of one or both of the presumptions. . . . 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).⁵⁴ Importantly, the government bears the burden of *persuasion* at all times. *Dominguez*, 783 U.S. at 707; *Jessup*, 757 F.2d at 384; *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985).

⁵⁴ 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.

In *Dominguez*, for example, the Seventh Circuit determined that the defendants had sufficiently rebutted the presumption of detention by introducing fairly minimal evidence about their employment and family ties. 783 F.2d at 707. Both defendants were Cuban immigrants who were not U.S. citizens but had been in the country lawfully for five years, and neither had a criminal record. *Id.* One of the defendants was married and had family members in the United States; both were employed. *Id.* These facts alone were sufficient for the Seventh Circuit to find that defendants had rebutted the presumption. *Id.*

B. Step 2: The Presumption Alone is Not Sufficient to Warrant Detention, and Must Be Weighed Along with the § 3142(g) Factors.

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 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).”); *Jessup*, 757 F.2d at 384 (holding that the judge should consider the rebutted presumption along with the § 3142(g) factors). 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) an un rebutted presumption alone, (2) evidence of the defendant’s past dangerousness, or (3) the nature and seriousness of the crime charged, or (4) the weight of the evidence of the person’s guilt.

First, the defendant never bears the burden of persuasion—even if the presumption is un rebutted. It is not incumbent on the defendant to “persuade the judge that there exist conditions

of release that will reasonably assure the safety of the community.”⁵⁵ That burden of persuasion lies with the government, the standard of which is always clear and convincing evidence. *Wilks*, 15 F.4th at 846–47 (“[T]he burden of persuasion always rests with the government and an un rebutted presumption is not, by itself, an adequate reason to order detention.”).

Second, 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[.]” *Dominguez*, 783 F.2d at 707. Instead, past dangerous conduct is relevant only to the extent that the government can prove—by clear and convincing evidence—that the defendant is “likely to continue to engage in criminal conduct undeterred [] by . . . release conditions.” *Id.* 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.

Third, 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. Instead, this Court must analyze the defendant’s individual characteristics under § 3142(g).

Fourth, the Court is forbidden from relying solely on the weight of the evidence of guilt to detain a defendant in a presumption case. A defendant is not required to “‘rebut’ the government’s showing of probable cause to believe that he is guilty of the crimes charged.” *Id.* This makes sense—a person’s likelihood of guilt is analytically distinct from whether there are conditions of release that will reasonably assure the person’s appearance or the safety of the community.

⁵⁵ Siegler, *supra* note 1, at 156.

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

As detailed below, there is more than “some evidence that [CLIENT] will not flee or endanger the community if released.” *Dominguez*, 783 F.2d at 707. It is imperative that this Court follow the letter of the law by giving the presumption of detention “the low weight to which it is assigned by case law.”⁵⁶ The defense has therefore rebutted the presumption in this case. [FILL IN THE BELOW CATEGORIES BASED ON THE SPECIFICS OF YOUR CASE; ADD ADDITIONAL § 3142(g) CATEGORIES AS NEEDED.] [CLIENT] has presented evidence that...

Family Ties

Ties to the Community

Employment History

No Criminal History/Limited Criminal History/Stale Criminal History

No History of Nonappearance

No History of Drug or Alcohol Abuse

The foregoing facts definitively rebut the presumption of detention in this case.

VI. Regardless of the Presumption, [CLIENT] 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, [CLIENT] must be released because there are conditions that will reasonably assure the safety of the community and [CLIENT's] appearance in court. The presumption of detention, on its own, is insufficient to justify detention. *Wilks*, 15 F.4th at 847 (“[A]n unrebutted presumption is not, by itself, an adequate reason to order detention.”); *Jackson*, 845 F.2d at 1266 (concluding that if the presumption alone could justify detention, “there would be no need for Congress to have

⁵⁶ Siegler, *supra* note 1, at 146.

specified ‘the weight of the evidence against the person’ as a separate factor for the court to consider”). The BRA requires courts to weigh all the § 3142(g) factors in every case, even when the presumption has not been rebutted. *Wilks*, 15 F.4th at 847.⁵⁷

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 has not carried 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 also has not proved by a preponderance of the evidence that there are no conditions that would reasonably assure [CLIENT’s] appearance in court. Thus, [CLIENT] cannot be detained.

The following conditions of release under § 3142(c)(1)(B), and any other conditions the Court deems necessary, will reasonably assure [CLIENT’s] appearance in court and the safety of the community. [CHOOSE AMONG THE BELOW BASED ON THE SPECIFICS OF YOUR CASE.]

- Place [CLIENT] in custody of third-party custodian “who agrees to assume supervision and to report any violation of a release condition to the court” [§ 3142(c)(1)(B)(i)] [Be sure to name the third-party custodian and explain why that person is appropriate.]
- Maintain or actively seek employment [(ii)]
- Maintain or commence an educational program [(iii)]
- Follow restrictions on “personal associations, place of abode, or travel” [(iv)]
 - Can include electronic monitoring, GPS monitoring, home detention (which allows defendant to leave for employment/schooling/etc.), home incarceration (re: 24-hour lockdown).
 - Can include residence at a halfway house or community corrections center.

⁵⁷ S. REP. NO. 98-225, at 23, *as reprinted in* 1984 U.S.C.C.A.N. at 3206 (“Subsection (g) enumerates factors that are to be considered by the judicial officer in determining whether there are conditions of release that will reasonably assure the appearance of the person and the safety of any other person and the community. Since this determination is made *whenever a person is to be released or detained under this chapter, consideration of these factors is required* . . . a court is expected to weigh all the factors in the case before making its decision as to risk of flight and danger to the community.” (emphasis added)).

- Avoid “all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense” [(v)]
- Report on a “regular basis” to PTS or some other agency [(vi)]
- Comply with a curfew [(vii)]
- Refrain from possessing “a firearm, destructive device, or other dangerous weapon” [(viii)]
- Refrain from “excessive use of alcohol” [(ix)]
- Refrain from “any use of a narcotic drug or other controlled substance . . . without a prescription” [(ix)]
- Undergo “medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency” [(x)] [If possible, research and suggest a program.]
- Post “property of a sufficient unencumbered value, including money” [(xi)]
- Post a “bail bond with solvent sureties” [(xii)]
- Require [CLIENT] to “return to custody for specified hours following release for employment, schooling, or other limited purposes” [(xiii)]
- “[A]ny other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.” [(xiv) (emphasis added)] [Think creatively about other conditions that will reasonably assure your CLIENT’s presence in court and the safety of the community.]

Because there are conditions of release that will reasonably assure [CLIENT’S] appearance in court and the safety of the community, [he/she] should be released.

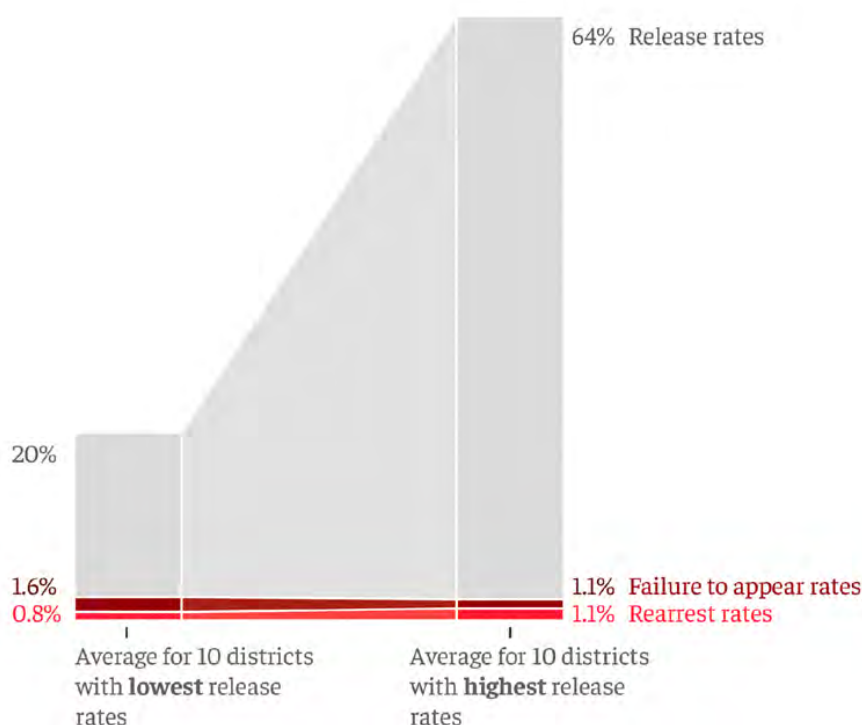
VII. Statistics Showing that It Is Extraordinarily Rare for Defendants on Bond to Flee or Recidivate Further Demonstrate that the Foregoing Conditions of Release Will Reasonably Assure Appearance and Safety.

It is not necessary to detain [CLIENT] to meet the primary goals of the BRA, which are to “reasonably assure” appearance in court and community safety. § 3142(e). 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.⁵⁸ Significantly, this near-perfect compliance rate is seen equally in federal

⁵⁸ 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.*

districts with very high release rates and those with very low release rates.⁵⁹ 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.⁶⁰ The below chart reflects shows the same vanishingly low failure to appear and rearrest rates based on AO data spanning 2007 to 2021.⁶¹

Figure 4: Even When Release Rates Increase, Arrestees Almost Never Flee or Recidivate.



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%).

⁵⁹ The data showing near-perfect compliance on bond is illustrated in the figure below. Siegler, *supra* note 1, at 25 fig.4. 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.

⁶⁰ *See* App. 1; App. 2.

⁶¹ *See* Siegler, *supra* note 1, at 25 fig.4.

In addition, as the federal Probation and Pretrial Services Office recently highlighted, release rates rose slightly during the pandemic but failure-to-appear and rearrest rates did not increase.⁶² Release rates increased from 25% in 2019 to 36% in 2021 but “the rates at which people on pretrial release failed to appear in court or were rearrested remained extremely low.”⁶³

The bond statistics for this district likewise strongly suggest that [CLIENT] should be released. In this district, released federal defendants appeared for court [calculate percentage of defendants who failed to appear while released using Appendix 1, Table H-15]% of the time in 2021, and only [calculate percentage of defendants who were rearrested while released using Appendix 1, Table H-15]% 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 [CLIENT] pose, the government recommends detention in 71% of cases nationwide and in [find percentage associated with your district in using Appendix 3, Table H-3]% of cases in this district. *See* App. 3, AO Table H-3. Clearly the government’s detention requests are not tailored to the low risk of flight and recidivism that defendants in this district and elsewhere pose.

[CLIENT] must be released because the government has not established that [he/she] would be among the approximately 1% of defendants who fail to appear in court or are rearrested on bond. Detaining [CLIENT] without such evidence violates their constitutionally protected liberty interest.

VIII. Conclusion

For these reasons, [CLIENT] respectfully requests that this Court find that the presumption has been rebutted and release [him/her] with conditions.

⁶² *Id.* at 246 n.42.

⁶³ *Id.*

Dated:

Respectfully submitted,

/s/

[Attorney Name]

Attorney for [CLIENT]

Note to Counsel re Section VI Data and the Appendices

- If you don't want to do the district-specific FTA/re-arrest calculations, you can cut that entire paragraph from Section VI and leave the rest of that section as is.
- **To calculate the percentage of defendants in your district who failed to appear in court while on bond, use Appendix 1, Table H-15. Follow these steps:**
 - Find your district in the first column on the left, organized by circuit.
 - For your district, find the total number of released clients by going to the highlighted column "Cases in Release Status."
 - For your district, find the total number of failures to appear violations by going to the highlighted column, "FTA Violations."
 - Divide the total FTA Violations for your district by the total Cases in Release Status for your district.
 - Multiply the result by 100 to get the percentage.
 - *Example:* For D. Maine, there was 1 FTA Violation and 275 Cases in Release Status. Divide 1 by 275, getting 0.0036. Multiply that value by 100 to get 0.36%.
- **To calculate the percentage of defendants in your district who were rearrested while on bond, use Appendix 1, Table H-15. Follow these steps:**
 - Find your district in the first column on the left, organized by circuit.
 - For your district, find the total number of released clients by going to the highlighted column "Cases in Release Status."
 - For your district, find the total number of people who violated bond by getting rearrested by going to the highlighted column, "Rearrest Violations."
 - Add up the 3 types of Rearrest Violations for your district by adding together the numbers in the columns titled Felony + Misdemeanor + Other. That sum represents the total Rearrest Violations for your district.
 - Divide the total Rearrest Violations for your district by the Cases in Release Status for your district.
 - Multiply the result by 100 to get the percentage.
 - *Example:* For D. Maine, there were 2 Felony Rearrests, 10 Misdemeanor Rearrests, and 0 Other. The sum of these three values is 12. That is the total number of Rearrest Violations. There are 275 Cases in Release Status. Divide 12 by 275, getting 0.0436. Multiply that value by 100 to get 4.36%.
 - To calculate the percentage of *felony* rearrest violations in your district, divide the number in the "felony" column by the Cases in Release Status.
 - *Example:* For D. Maine, there were 2 Felony Rearrests. There are 275 Cases in Release Status. Divide 2 by 275, getting .007. Multiply that value by 100 to get .7%.

APPENDIX 1

AO TABLE H-15 (Sept. 30, 2021)

Table H-15.**U.S. District Courts ---- Pretrial Services Violations Summary Report****For the 12-Month Period Ending September 30, 2021**

Circuit and District	Total Cases Open	Cases In Release Status	Pct.	Cases with Violations	Pct.	Rearrest Violations			FTA Violations	Technical Violations	Reports to Court
						Felony	Misde-meanor	Other			
TOTAL	172,647	60,482	35.0	10,239	16.9	656	637	70	800	9,339	16,533
1ST	6,703	2,702	40.3	398	14.7	31	26	0	14	345	560
ME	574	275	47.9	50	18.2	2	10	0	1	42	70
MA	1,820	884	48.6	126	14.3	16	4	0	10	104	168
NH	587	299	50.9	65	21.7	3	6	0	0	56	82
RI	486	222	45.7	41	18.5	8	6	0	1	31	53
PR	3,236	1,022	31.6	116	11.4	2	0	0	2	112	187
2ND	11,224	5,596	49.9	747	13.3	74	73	9	65	637	1,212
CT	1,242	671	54.0	138	20.6	21	12	2	5	119	266
NY,N	958	385	40.2	73	19.0	2	4	0	29	67	111
NY,E	3,344	1,702	50.9	210	12.3	16	18	2	9	188	353
NY,S	3,994	1,972	49.4	171	8.7	28	29	4	17	117	235
NY,W	1,337	698	52.2	113	16.2	6	7	0	5	105	166
VT	349	168	48.1	42	25.0	1	3	1	0	41	81
3RD	9,762	4,519	46.3	571	12.6	75	67	13	30	530	908
DE	232	73	31.5	1	1.4	0	0	0	0	1	1
NJ	3,969	2,099	52.9	170	8.1	38	31	1	19	154	199
PA,E	1,891	714	37.8	124	17.4	7	6	2	9	123	270
PA,M	1,411	515	36.5	72	14.0	6	5	7	1	60	109
PA,W	2,030	1,008	49.7	198	19.6	22	25	3	1	188	323
VI	229	110	48.0	6	5.5	2	0	0	0	4	6
4TH	11,781	4,432	37.6	721	16.3	45	68	7	31	642	1,044
MD	1,659	716	43.2	105	14.7	4	7	1	3	99	156
NC,E	2,327	760	32.7	144	18.9	16	31	5	4	116	233
NC,M	769	233	30.3	44	18.9	3	2	0	3	39	51
NC,W	1,280	264	20.6	32	12.1	2	1	0	1	25	34
SC	1,813	765	42.2	102	13.3	6	7	0	7	92	147
VA,E	1,863	787	42.2	57	7.2	4	4	1	7	47	72
VA,W	744	305	41.0	46	15.1	6	3	0	3	41	57
WV,N	764	398	52.1	144	36.2	2	10	0	1	139	238
WV,S	562	204	36.3	47	23.0	2	3	0	2	44	56
5TH	37,774	8,353	22.1	1,007	12.1	72	50	5	106	916	1,156
LA,E	802	332	41.4	10	3.0	2	1	0	0	7	12
LA,M	300	133	44.3	23	17.3	2	4	0	0	21	32
LA,W	756	221	29.2	8	3.6	2	1	0	0	6	10
MS,N	339	142	41.9	21	14.8	2	2	0	0	17	29
MS,S	872	279	32.0	7	2.5	2	0	0	0	5	7
TX,N	2,842	953	33.5	124	13.0	15	11	2	9	99	152
TX,E	2,401	577	24.0	45	7.8	4	1	0	4	41	48
TX,S	17,363	3,159	18.2	325	10.3	30	21	1	56	288	369
TX,W	12,099	2,557	21.1	444	17.4	13	9	2	37	432	497

Table H-15.
U.S. District Courts ---- Pretrial Services Violations Summary Report
For the 12-Month Period Ending September 30, 2021

Circuit and District	Total Cases Open	Cases In Release Status	Pct.	Cases with Violations	Pct.	Rearrest Violations			FTA Violations	Technical Violations	Reports to Court
						Felony	Misde-meanor	Other			
6TH	12,843	4,970	38.7	807	16.2	44	38	5	54	759	1,339
KY,E	1,056	282	26.7	28	9.9	1	2	0	6	25	31
KY,W	838	342	40.8	37	10.8	5	4	0	3	36	79
MI,E	2,291	1,166	50.9	235	20.2	5	4	1	3	235	428
MI,W	643	210	32.7	47	22.4	1	7	0	2	39	65
OH,N	2,305	982	42.6	74	7.5	2	3	1	33	60	96
OH,S	1,876	922	49.1	152	16.5	0	0	1	1	150	247
TN,E	1,682	359	21.3	36	10.0	3	1	0	2	34	39
TN,M	911	302	33.2	89	29.5	23	13	1	2	78	163
TN,W	1,241	405	32.6	109	26.9	4	4	1	2	102	191
7TH	8,155	3,312	40.6	700	21.1	36	46	5	46	670	1,336
IL,N	3,107	1,499	48.2	296	19.7	21	26	2	9	284	669
IL,C	822	226	27.5	43	19.0	1	0	0	2	42	70
IL,S	680	277	40.7	77	27.8	4	2	1	2	75	126
IN,N	951	298	31.3	36	12.1	1	3	0	4	33	38
IN,S	1,411	481	34.1	116	24.1	0	0	0	3	117	201
WI,E	858	434	50.6	111	25.6	7	13	2	8	100	196
WI,W	326	97	29.8	21	21.6	2	2	0	18	19	36
8TH	14,168	4,737	33.4	1,421	30.0	100	100	15	86	1,324	3,199
AR,E	2,026	864	42.6	275	31.8	29	18	1	45	245	530
AR,W	568	129	22.7	15	11.6	0	0	0	1	14	20
IA,N	720	214	29.7	70	32.7	3	9	0	12	64	93
IA,S	1,157	255	22.0	82	32.2	2	5	2	3	79	127
MN	923	410	44.4	86	21.0	10	11	1	4	75	134
MO,E	3,143	936	29.8	424	45.3	15	4	8	5	411	1,569
MO,W	2,447	644	26.3	166	25.8	16	19	2	0	155	330
NE	1,151	450	39.1	84	18.7	11	10	0	3	76	103
ND	892	377	42.3	87	23.1	2	0	0	3	85	95
SD	1,141	458	40.1	132	28.8	12	24	1	10	120	198
9TH	35,973	13,470	37.4	2,644	19.6	98	103	4	283	2,427	4,146
AK	490	185	37.8	49	26.5	0	0	0	0	47	74
AZ	9,218	2,119	23.0	517	24.4	16	15	2	77	485	668
CA,N	1,962	1,183	60.3	200	16.9	0	0	0	6	199	361
CA,E	2,020	727	36.0	44	6.1	2	4	0	3	36	51
CA,C	6,307	2,310	36.6	316	13.7	26	25	2	56	267	471
CA,S	8,745	3,504	40.1	891	25.4	35	35	0	109	797	1,482
HI	582	304	52.2	41	13.5	0	0	0	1	40	61
ID	717	244	34.0	41	16.8	2	3	0	6	37	59
MT	709	286	40.3	69	24.1	6	8	0	0	66	76
NV	1,463	534	36.5	77	14.4	0	3	0	7	67	88
OR	1,544	911	59.0	208	22.8	4	3	0	7	202	389
WA,E	693	278	40.1	74	26.6	3	3	0	3	71	157
WA,W	1,375	769	55.9	97	12.6	4	3	0	8	93	169
GUAM	108	81	75.0	15	18.5	0	1	0	0	15	23
NM,I	40	35	87.5	5	14.3	0	0	0	0	5	17

Table H-15.**U.S. District Courts ---- Pretrial Services Violations Summary Report****For the 12-Month Period Ending September 30, 2021**

Circuit and District	Total Cases Open	Cases In Release Status	Pct.	Cases with Violations	Pct.	Rearrest Violations			FTA Violations	Technical Violations	Reports to Court
						Felony	Misde-meanor	Other			
10TH	11,079	3,564	32.2	588	16.5	16	25	2	55	542	818
CO	1,204	403	33.5	51	12.7	1	3	0	22	46	76
KS	1,094	416	38.0	81	19.5	5	4	0	1	73	119
NM	4,170	1,211	29.0	172	14.2	0	1	0	13	168	193
OK,N	1,041	312	30.0	74	23.7	1	0	0	2	70	134
OK,E	596	88	14.8	15	17.0	2	0	0	2	13	15
OK,W	1,211	535	44.2	89	16.6	1	4	1	8	81	157
UT	1,421	516	36.3	95	18.4	6	13	1	4	82	113
WY	342	83	24.3	11	13.3	0	0	0	3	9	11
11TH	13,185	4,827	36.6	635	13.2	65	41	5	30	547	815
AL,N	990	373	37.7	57	15.3	3	1	1	0	52	72
AL,M	346	189	54.6	18	9.5	3	0	0	6	13	21
AL,S	564	187	33.2	34	18.2	3	1	2	1	30	40
FL,N	776	341	43.9	63	18.5	12	4	0	2	53	92
FL,M	3,025	906	30.0	138	15.2	19	11	0	1	121	192
FL,S	3,352	1,218	36.3	129	10.6	3	2	1	3	127	164
GA,N	2,140	834	39.0	72	8.6	7	11	0	9	51	88
GA,M	1,017	413	40.6	76	18.4	11	4	1	3	59	92
GA,S	975	366	37.5	48	13.1	4	7	0	5	41	54

NOTE: This table excludes data for the District of Columbia and includes transfers received.

APPENDIX 2

AO TABLE H-14A (Sept. 30, 2021)

<https://perma.cc/CYV5-3TZ6>

Table H-14A.
**U.S. District Courts ---- Pretrial Services Release and Detention, Excluding Immigration Cases
For the 12-Month Period Ending September 30, 2021**

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct.
TOTAL	55,037	30,959	56.3	24,078	43.7
1ST	1,963	1,127	57.4	836	42.6
ME	152	55	36.2	97	63.8
MA	492	217	44.1	275	55.9
NH	214	100	46.7	114	53.3
RI	177	78	44.1	99	55.9
PR	928	677	73.0	251	27.0
2ND	2,976	1,313	44.1	1,663	55.9
CT	300	117	39.0	183	61.0
NY,N	336	174	51.8	162	48.2
NY,E	721	279	38.7	442	61.3
NY,S	1,152	536	46.5	616	53.5
NY,W	356	146	41.0	210	59.0
VT	111	61	55.0	50	45.0
3RD	2,634	1,162	44.1	1,472	55.9
DE	71	34	47.9	37	52.1
NJ	995	398	40.0	597	60.0
PA,E	495	252	50.9	243	49.1
PA,M	373	183	49.1	190	50.9
PA,W	637	274	43.0	363	57.0
VI	63	21	33.3	42	66.7
4TH	4,199	2,211	52.7	1,988	47.3
MD	541	242	44.7	299	55.3
NC,E	888	533	60.0	355	40.0
NC,M	320	208	65.0	112	35.0
NC,W	407	294	72.2	113	27.8
SC	548	285	52.0	263	48.0
VA,E	750	310	41.3	440	58.7
VA,W	188	75	39.9	113	60.1
WV,N	328	130	39.6	198	60.4
WV,S	229	134	58.5	95	41.5
5TH	12,219	8,331	68.2	3,888	31.8
LA,E	245	98	40.0	147	60.0
LA,M	72	25	34.7	47	65.3
LA,W	249	134	53.8	115	46.2
MS,N	138	59	42.8	79	57.2
MS,S	290	192	66.2	98	33.8
TX,N	892	549	61.5	343	38.5
TX,E	925	595	64.3	330	35.7
TX,S	4,854	3,571	73.6	1,283	26.4
TX,W	4,554	3,108	68.2	1,446	31.8

Table H-14A.

**U.S. District Courts ---- Pretrial Services Release and Detention, Excluding Immigration Cases
For the 12-Month Period Ending September 30, 2021**

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct.
6TH	4,462	2,479	55.6	1,983	44.4
KY,E	312	197	63.1	115	36.9
KY,W	255	137	53.7	118	46.3
MI,E	735	297	40.4	438	59.6
MI,W	295	184	62.4	111	37.6
OH,N	951	490	51.5	461	48.5
OH,S	655	271	41.4	384	58.6
TN,E	617	502	81.4	115	18.6
TN,M	217	144	66.4	73	33.6
TN,W	425	257	60.5	168	39.5
7TH	2,333	1,262	54.1	1,071	45.9
IL,N	687	293	42.6	394	57.4
IL,C	277	191	69.0	86	31.0
IL,S	266	126	47.4	140	52.6
IN,N	299	187	62.5	112	37.5
IN,S	502	344	68.5	158	31.5
WI,E	242	99	40.9	143	59.1
WI,W	60	22	36.7	38	63.3
8TH	5,184	3,189	61.5	1,995	38.5
AR,E	402	164	40.8	238	59.2
AR,W	144	89	61.8	55	38.2
IA,N	310	185	59.7	125	40.3
IA,S	392	275	70.2	117	29.8
MN	357	149	41.7	208	58.3
MO,E	1,452	1,018	70.1	434	29.9
MO,W	717	487	67.9	230	32.1
NE	497	286	57.5	211	42.5
ND	353	207	58.6	146	41.4
SD	560	329	58.8	231	41.3
9TH	10,286	4,993	48.5	5,293	51.5
AK	152	76	50.0	76	50.0
AZ	1,849	793	42.9	1,056	57.1
CA,N	526	182	34.6	344	65.4
CA,E	421	235	55.8	186	44.2
CA,C	1,103	458	41.5	645	58.5
CA,S	3,879	2,338	60.3	1,541	39.7
HI	149	53	35.6	96	64.4
ID	253	149	58.9	104	41.1
MT	248	103	41.5	145	58.5
NV	345	168	48.7	177	51.3
OR	439	166	37.8	273	62.2
WA,E	217	120	55.3	97	44.7
WA,W	651	141	21.7	510	78.3
GUAM	32	9	28.1	23	71.9
NM,I	22	2	9.1	20	90.9

Table H-14A.

**U.S. District Courts ---- Pretrial Services Release and Detention, Excluding Immigration Cases
For the 12-Month Period Ending September 30, 2021**

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct.
10TH	4,316	2,670	61.9	1,646	38.1
CO	341	191	56.0	150	44.0
KS	327	155	47.4	172	52.6
NM	1,347	823	61.1	524	38.9
OK,N	629	427	67.9	202	32.1
OK,E	380	315	82.9	65	17.1
OK,W	534	229	42.9	305	57.1
UT	642	446	69.5	196	30.5
WY	116	84	72.4	32	27.6
11TH	4,465	2,222	49.8	2,243	50.2
AL,N	265	93	35.1	172	64.9
AL,M	160	34	21.3	126	78.8
AL,S	203	97	47.8	106	52.2
FL,N	297	140	47.1	157	52.9
FL,M	905	578	63.9	327	36.1
FL,S	1,360	709	52.1	651	47.9
GA,N	453	160	35.3	293	64.7
GA,M	332	148	44.6	184	55.4
GA,S	490	263	53.7	227	46.3

NOTE: This table excludes data for the District of Columbia and includes transfers received.

NOTE: Includes data reported for previous periods on Table H-9.

¹ Data represents defendants whose cases were activated during the 12-month period. Excludes dismissals, cases in which release is not possible within 90 days, transfers out, and cases that were later converted to diversion cases during the period.

² Includes data reported for previous periods as "never released."

³ Includes data reported for previous periods as "later released," "released and later detained," and "never detained."

APPENDIX 3

AO TABLE H-3 (Sept. 30, 2021)

<https://perma.cc/5P82-ACXB>

Table H-3.

U.S. District Courts ---- Pretrial Services Recommendations Made For Initial Pretrial Release

For the 12-Month Period Ending September 30, 2021

Circuit and District	Cases Activated	Type of PSO ¹ Recommendation Made ³						Type of AUSA ² Recommendation Made ³					
		PSO Recommended		Detention		Release		AUSA Recommendation		Detention		Release	
		Total	Pct.	Total	Pct.	Total	Pct.	Total	Pct.	Total	Pct.	Total	Pct.
TOTAL	76,367	69,105	90.5	42,705	61.8	26,400	38.2	69,001	90.4	48,999	71.0	20,002	29.0
1ST	2,211	1,973	89.2	1,101	55.8	872	44.2	1,967	89.0	1,416	72.0	551	28.0
ME	194	136	70.1	43	31.6	93	68.4	136	70.1	50	36.8	86	63.2
MA	562	520	92.5	214	41.2	306	58.8	520	92.5	301	57.9	219	42.1
NH	248	168	67.7	62	36.9	106	63.1	167	67.3	70	41.9	97	58.1
RI	187	169	90.4	70	41.4	99	58.6	169	90.4	109	64.5	60	35.5
PR	1,020	980	96.1	712	72.7	268	27.3	975	95.6	886	90.9	89	9.1
2ND	3,427	3,210	93.7	1,451	45.2	1,759	54.8	3,221	94.0	1,767	54.9	1,454	45.1
CT	351	286	81.5	128	44.8	158	55.2	282	80.3	159	56.4	123	43.6
NY,N	389	347	89.2	211	60.8	136	39.2	350	90.0	222	63.4	128	36.6
NY,E	864	841	97.3	350	41.6	491	58.4	841	97.3	435	51.7	406	48.3
NY,S	1,271	1,265	99.5	534	42.2	731	57.8	1,265	99.5	629	49.7	636	50.3
NY,W	423	360	85.1	157	43.6	203	56.4	374	88.4	238	63.6	136	36.4
VT	129	111	86.0	71	64.0	40	36.0	109	84.5	84	77.1	25	22.9
3RD	3,358	3,014	89.8	1,319	43.8	1,695	56.2	2,998	89.3	1,539	51.3	1,459	48.7
DE	85	80	94.1	43	53.8	37	46.3	80	94.1	48	60.0	32	40.0
NJ	1,365	1,237	90.6	480	38.8	757	61.2	1,236	90.5	546	44.2	690	55.8
PA,E	596	592	99.3	295	49.8	297	50.2	592	99.3	344	58.1	248	41.9
PA,M	504	433	85.9	249	57.5	184	42.5	420	83.3	263	62.6	157	37.4
PA,W	739	627	84.8	234	37.3	393	62.7	624	84.4	317	50.8	307	49.2
VI	69	45	65.2	18	40.0	27	60.0	46	66.7	21	45.7	25	54.3
4TH	5,098	3,890	76.3	2,289	58.8	1,601	41.2	3,897	76.4	2,656	68.2	1,241	31.8
MD	612	573	93.6	314	54.8	259	45.2	566	92.5	328	58.0	238	42.0
NC,E	984	703	71.4	494	70.3	209	29.7	701	71.2	572	81.6	129	18.4
NC,M	359	349	97.2	235	67.3	114	32.7	349	97.2	270	77.4	79	22.6
NC,W	518	472	91.1	351	74.4	121	25.6	467	90.2	371	79.4	96	20.6
SC	718	509	70.9	255	50.1	254	49.9	487	67.8	289	59.3	198	40.7
VA,E	943	602	63.8	259	43.0	343	57.0	658	69.8	429	65.2	229	34.8
VA,W	299	179	59.9	78	43.6	101	56.4	169	56.5	83	49.1	86	50.9
WV,N	394	291	73.9	154	52.9	137	47.1	291	73.9	137	47.1	154	52.9
WV,S	271	212	78.2	149	70.3	63	29.7	209	77.1	177	84.7	32	15.3
5TH	20,888	19,648	94.1	14,936	76.0	4,712	24.0	19,486	93.3	16,834	86.4	2,652	13.6
LA,E	281	261	92.9	95	36.4	166	63.6	261	92.9	121	46.4	140	53.6
LA,M	94	64	68.1	19	29.7	45	70.3	64	68.1	29	45.3	35	54.7
LA,W	366	256	69.9	145	56.6	111	43.4	245	66.9	144	58.8	101	41.2
MS,N	160	129	80.6	70	54.3	59	45.7	129	80.6	63	48.8	66	51.2
MS,S	361	311	86.1	239	76.8	72	23.2	310	85.9	245	79.0	65	21.0
TX,N	1,008	940	93.3	511	54.4	429	45.6	929	92.2	657	70.7	272	29.3
TX,E	1,192	1,024	85.9	669	65.3	355	34.7	952	79.9	747	78.5	205	21.5
TX,S	10,250	9,574	93.4	8,125	84.9	1,449	15.1	9,541	93.1	8,396	88.0	1,145	12.0
TX,W	7,176	7,089	98.8	5,063	71.4	2,026	28.6	7,055	98.3	6,432	91.2	623	8.8
6TH	5,310	4,609	86.8	2,696	58.5	1,913	41.5	4,705	88.6	3,145	66.8	1,560	33.2
KY,E	479	333	69.5	232	69.7	101	30.3	332	69.3	231	69.6	101	30.4
KY,W	309	268	86.7	146	54.5	122	45.5	268	86.7	171	63.8	97	36.2
MI,E	935	878	93.9	418	47.6	460	52.4	877	93.8	488	55.6	389	44.4
MI,W	344	326	94.8	186	57.1	140	42.9	326	94.8	237	72.7	89	27.3
OH,N	1,072	984	91.8	586	59.6	398	40.4	980	91.4	662	67.6	318	32.4
OH,S	741	663	89.5	229	34.5	434	65.5	661	89.2	333	50.4	328	49.6
TN,E	660	638	96.7	539	84.5	99	15.5	637	96.5	550	86.3	87	13.7
TN,M	293	133	45.4	120	90.2	13	9.8	239	81.6	193	80.8	46	19.2
TN,W	477	386	80.9	240	62.2	146	37.8	385	80.7	280	72.7	105	27.3

Table H-3.
U.S. District Courts ---- Pretrial Services Recommendations Made For Initial Pretrial Release
For the 12-Month Period Ending September 30, 2021

Circuit and District	Cases Activated	Type of PSO ¹ Recommendation Made ³						Type of AUSA ² Recommendation Made ³					
		PSO Recommended		Detention		Release		AUSA Recommendation		Detention		Release	
		Total	Pct.	Total	Pct.	Total	Pct.	Total	Pct.	Total	Pct.	Total	Pct.
7TH	2,827	2,441	86.3	1,275	52.2	1,166	47.8	2,449	86.6	1,630	66.6	819	33.4
IL,N	855	814	95.2	319	39.2	495	60.8	815	95.3	446	54.7	369	45.3
IL,C	313	281	89.8	203	72.2	78	27.8	278	88.8	216	77.7	62	22.3
IL,S	292	250	85.6	122	48.8	128	51.2	250	85.6	179	71.6	71	28.4
IN,N	336	306	91.1	198	64.7	108	35.3	313	93.2	221	70.6	92	29.4
IN,S	553	493	89.2	314	63.7	179	36.3	496	89.7	418	84.3	78	15.7
WI,E	327	244	74.6	102	41.8	142	58.2	244	74.6	133	54.5	111	45.5
WI,W	151	53	35.1	17	32.1	36	67.9	53	35.1	17	32.1	36	67.9
8TH	5,953	5,238	88.0	3,272	62.5	1,966	37.5	5,215	87.6	3,938	75.5	1,277	24.5
AR,E	491	406	82.7	208	51.2	198	48.8	406	82.7	234	57.6	172	42.4
AR,W	228	160	70.2	118	73.8	42	26.3	158	69.3	118	74.7	40	25.3
IA,N	371	323	87.1	193	59.8	130	40.2	323	87.1	227	70.3	96	29.7
IA,S	454	405	89.2	260	64.2	145	35.8	405	89.2	326	80.5	79	19.5
MN	414	400	96.6	179	44.8	221	55.3	401	96.9	206	51.4	195	48.6
MO,E	1,576	1,498	95.1	1,085	72.4	413	27.6	1,501	95.2	1,214	80.9	287	19.1
MO,W	842	670	79.6	448	66.9	222	33.1	660	78.4	554	83.9	106	16.1
NE	581	548	94.3	360	65.7	188	34.3	538	92.6	408	75.8	130	24.2
ND	401	266	66.3	138	51.9	128	48.1	264	65.8	175	66.3	89	33.7
SD	595	562	94.5	283	50.4	279	49.6	559	93.9	476	85.2	83	14.8
9TH	15,555	14,859	95.5	8,040	54.1	6,819	45.9	14,753	94.8	9,200	62.4	5,553	37.6
AK	190	163	85.8	96	58.9	67	41.1	162	85.3	124	76.5	38	23.5
AZ	4,672	4,489	96.1	3,454	76.9	1,035	23.1	4,482	95.9	3,751	83.7	731	16.3
CA,N	621	612	98.6	226	36.9	386	63.1	614	98.9	395	64.3	219	35.7
CA,E	534	526	98.5	359	68.3	167	31.7	527	98.7	421	79.9	106	20.1
CA,C	1,639	1,598	97.5	854	53.4	744	46.6	1,583	96.6	960	60.6	623	39.4
CA,S	4,941	4,810	97.3	1,811	37.7	2,999	62.3	4,726	95.6	2,032	43.0	2,694	57.0
HI	176	144	81.8	39	27.1	105	72.9	144	81.8	81	56.3	63	43.8
ID	339	288	85.0	185	64.2	103	35.8	290	85.5	216	74.5	74	25.5
MT	354	263	74.3	120	45.6	143	54.4	263	74.3	145	55.1	118	44.9
NV	481	451	93.8	272	60.3	179	39.7	450	93.6	308	68.4	142	31.6
OR	522	504	96.6	220	43.7	284	56.3	504	96.6	302	59.9	202	40.1
WA,E	282	232	82.3	163	70.3	69	29.7	228	80.9	202	88.6	26	11.4
WA,W	747	724	96.9	226	31.2	498	68.8	725	97.1	241	33.2	484	66.8
GUAM	35	33	94.3	13	39.4	20	60.6	33	94.3	18	54.5	15	45.5
NM,I	22	22	100.0	2	9.1	20	90.9	22	100.0	4	18.2	18	81.8
10TH	5,631	5,162	91.7	3,640	70.5	1,522	29.5	5,165	91.7	3,996	77.4	1,169	22.6
CO	429	365	85.1	235	64.4	130	35.6	367	85.5	264	71.9	103	28.1
KS	413	345	83.5	188	54.5	157	45.5	345	83.5	213	61.7	132	38.3
NM	2,212	2,111	95.4	1,622	76.8	489	23.2	2,114	95.6	1,711	80.9	403	19.1
OK,N	699	656	93.8	466	71.0	190	29.0	656	93.8	521	79.4	135	20.6
OK,E	418	354	84.7	286	80.8	68	19.2	357	85.4	321	89.9	36	10.1
OK,W	635	579	91.2	259	44.7	320	55.3	578	91.0	299	51.7	279	48.3
UT	680	638	93.8	490	76.8	148	23.2	638	93.8	563	88.2	75	11.8
WY	145	114	78.6	94	82.5	20	17.5	110	75.9	104	94.5	6	5.5
11TH	6,109	5,061	82.8	2,686	53.1	2,375	46.9	5,145	84.2	2,878	55.9	2,267	44.1
AL,N	422	268	63.5	111	41.4	157	58.6	267	63.3	117	43.8	150	56.2
AL,M	175	160	91.4	40	25.0	120	75.0	161	92.0	48	29.8	113	70.2
AL,S	299	206	68.9	111	53.9	95	46.1	202	67.6	139	68.8	63	31.2
FL,N	368	327	88.9	168	51.4	159	48.6	327	88.9	176	53.8	151	46.2
FL,M	1,306	1,077	82.5	604	56.1	473	43.9	1,077	82.5	762	70.8	315	29.2
FL,S	1,819	1,603	88.1	855	53.3	748	46.7	1,798	98.8	795	44.2	1,003	55.8
GA,N	718	609	84.8	316	51.9	293	48.1	562	78.3	340	60.5	222	39.5
GA,M	425	341	80.2	164	48.1	177	51.9	292	68.7	186	63.7	106	36.3
GA,S	577	470	81.5	317	67.4	153	32.6	459	79.5	315	68.6	144	31.4

NOTE: This table excludes data for the District of Columbia and includes transfers received.

¹ PSO = Pretrial Services Officer.

² AUSA = Assistant U.S. Attorney.

³ Excludes dismissals and cases in which release is not possible within 90 days.