

**Template Motion For Immediate Release in a Case that
Doesn't Qualify for Detention Under § 3142(f)(1) &
Appendices**

IN THE
UNITED STATES DISTRICT COURT
FOR THE [REDACTED] DISTRICT OF [REDACTED]

UNITED STATES OF AMERICA

v.

[CLIENT]

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Judge [NAME]
No. XX-CR-XX

DEFENDANT’S MOTION FOR IMMEDIATE RELEASE WITH CONDITIONS

- This motion should be filed immediately after the initial appearance only in the rare case where:
 - o (1) the government requested detention on the grounds of risk of flight/serious risk of flight, but not dangerousness; and
 - o (2) the charge is fraud, extortion, threats, or another charge not listed in § 3142(f)(1).
- This motion should not be filed in the following types of cases because a § 3142(f)(1) factor authorizes detention at the initial appearance: bank robbery, other crime of violence, or terrorism case listed in § 3142(f)(1)(A); drug case listed in (f)(1)(C); § 924(c) gun case, § 922(g) gun case, or minor victim case listed in (f)(1)(E).
- If you have questions about when this motion should be filed, please contact Alison Siegler (alisonsiegler@uchicago.edu).

Defendant [CLIENT], by [his/her] attorney, [ATTORNEY], respectfully requests that this Court order [his/her] release from custody pursuant to the Bail Reform Act (BRA) and the Fifth Amendment’s Due Process Clause. Supreme Court precedent makes it unlawful and unconstitutional for a court to hold a Detention Hearing or detain a defendant at all when, as here, there is no basis for detention under 18 U.S.C. § 3142(f). As all six courts of appeals to directly address the question have recognized, the only permissible bases for detaining a defendant at the Initial Appearance and proceeding to a Detention Hearing are the enumerated factors set out in 18 U.S.C. § 3142(f). Under § 3142(f), ordinary risk of flight is not a permissible basis for detention; rather, the statute only authorizes detention if there is a “*serious risk* that [the defendant] will flee.” § 3142(f)(2)(A) (emphasis added). Further, data from the Administrative

Office of the U.S. Courts show that there is an exaggerated concern over risk of flight in our system, and that the vast majority of released defendants do not flee.

Because [CLIENT] is not charged with a § 3142(f)(1) offense, this is a “non-(f)(1) case” where only a showing of one of the § 3142(f)(2) “serious risk” factors would authorize holding a Detention Hearing.¹ In this case, the government has not presented sufficient evidence that [CLIENT] poses a serious risk of flight. [CLIENT] is therefore being detained unlawfully. Accordingly, [CLIENT] must be released on bond immediately with appropriate conditions of release. *See* 18 U.S.C. § 3142(a)–(c).

In a new national study, The University of Chicago Law School’s Federal Criminal Justice Clinic (FCJC) found that courts nationwide do not consistently adhere to the legal standard in non-(f)(1) cases, in violation of the Bail Reform Act.² Across hundreds of non-(f)(1) cases like this one, 12% of defendants were unlawfully detained at the Initial Appearance, as “no statutory basis for detention existed under § 3142(f).”³ In 97% of non-(f)(1) cases where the government was seeking detention, the prosecutor “cited improper grounds, like danger to the community or ordinary risk of flight.”⁴ Yet every single defendant was nevertheless detained at the Initial Appearance and faced an “improper Detention Hearing.”⁵ The study found that these practices exacerbated racial disparities.⁶

¹ Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 91 (2022), <https://freedomdenied.law.uchicago.edu/report>.

² *Id.* at 93.

³ *Id.* at 95.

⁴ *Id.* at 99.

⁵ *Id.*

⁶ *Id.* at 97–100 (finding that people of color were unlawfully detained in non-(f)(1) cases at a higher rate compared to white defendants and that prosecutors cited improper bases for detention more frequently against people of color).

These troubling national data suggest that courts must vigilantly ensure that the government's detention requests comport with the BRA's requirements. The unlawful detentions the study documents are likely "just the tip of the iceberg."⁷ In fact, 60% of all federal pretrial cases are non-(f)(1) cases, meaning that in over half of cases nationwide, "there is a real question of whether the law allows a judge to hold a Detention Hearing at all."⁸ Yet defendants are detained at the Initial Appearance in 76% of non-(f)(1) cases nationwide, even though the "only valid ground for detention in such cases requires the prosecutor to prove that the arrestee poses a 'serious risk' of flight or obstruction."⁹ In this case, the government has not met that standard and [CLIENT] must be released immediately.

In support of this motion, [CLIENT] states as follows: On [DATE], [CLIENT] was arrested on a criminal complaint charging [him/her] with [LIST CHARGES AND STATUTORY SECTIONS]. Magistrate Judge [JUDGE NAME] held [CLIENT's] [initial appearance/arraignment] on [DATE]. At that Initial Appearance, the government requested detention on the grounds that [CLIENT] posed [a risk of flight/a serious risk of flight]. Magistrate Judge [NAME] detained [CLIENT] as a risk of flight pending a Detention Hearing.

I. The BRA Only Authorizes Detention at the Initial Appearance When One of the § 3142(f) Factors Is Met.

[CLIENT] is being detained in violation of the law. According to the plain language of § 3142(f), "the judicial officer shall hold a [detention] hearing" only "in a case that involves" one of the seven factors listed in § 3142(f)(1) and (f)(2). None of the § 3142(f) factors are present in this case.¹⁰ Ordinary "risk of flight" is not among the § 3142(f) factors. The statute and the

⁷ *Id.* at 100.

⁸ *Id.* at 92.

⁹ *Id.* at 100.

¹⁰ This case does not meet any of the five factors discussed in § 3142(f)(1), as it does not involve: (1) a

caselaw prohibit this Court from holding a Detention Hearing and do not authorize the Court to detain [CLIENT] pending trial.

A. Supreme Court Precedent and the Plain Language of the BRA Prohibit this Court from Detaining the Defendant and Holding a Detention Hearing Without a § 3142(f) Factor.

The Supreme Court’s seminal opinion in *United States v. Salerno*, 481 U.S. 739 (1987), confirms that a Detention Hearing may only be held if one of the seven § 3142(f) factors is present. *See id.* at 747 (“Detention hearings [are] available if” and only if one of the seven § 3142(f) factors is present.). According to the Supreme Court, “[t]he Act operates only on individuals who have been arrested for a specific category of extremely serious offenses. 18 U.S.C. § 3142(f).” *Id.* at 750 (emphasis added); *see also id.* at 747 (“The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes,” specifically the crimes enumerated in § 3142(f) (emphasis added)). *Salerno* thus stands for the proposition that the factors listed in § 3142(f) serve as a gatekeeper, and only certain categories of defendants are eligible for detention in the first place. In fact, “a central reason the Supreme Court upheld the BRA as constitutional in *Salerno* was the gatekeeping function of the (f) factors.”¹¹ As the D.C. Circuit has held, “First, a [judge] must find one of six circumstances triggering a detention hearing.... [under] § 3142(f). Absent one of these circumstances, detention is not an option.” *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999). “Every federal court

crime of violence under (f)(1)(A); (2) an offense for which the maximum sentence is life imprisonment or death under (f)(1)(B); (3) a qualifying drug offense under (f)(1)(C); (4) a felony after conviction for two or more offenses under the very rare circumstances described in (f)(1)(D); or (5) a felony involving a minor victim or the possession/use of a firearm under (f)(1)(E).

The government has also presented no evidence to establish that this case meets either of the two additional factors discussed in § 3142(f)(2): (1) a “serious risk that [the defendant] will flee” under (f)(2)(A); or (2) a “serious risk” that the defendant will engage in obstruction or juror/witness tampering under (f)(2)(B).

¹¹Siegler, *supra* note 1, at 87.

of appeals that has examined this issue agrees that one of the § 3142(f) factors must be proven at the Initial Appearance in order to hold a Detention Hearing.”¹²

For a court to lawfully move forward from an Initial Appearance hearing to a Detention Hearing, “the Government must establish by a preponderance of the evidence that it is entitled to a detention hearing’ by presenting a valid (f) factor.”¹³ If the government does not establish an applicable § 3142(f) factor by a preponderance of the evidence, several conclusions follow: (1) the government is prohibited from seeking detention, (2) there is no legal basis to detain the defendant at the Initial Appearance or pending a Detention Hearing, and (3) there is no legal basis for the court to hold a Detention Hearing.¹⁴ Instead, the court is required to release the defendant on personal recognizance under § 3142(b) or on conditions under § 3142(c).

Detaining [CLIENT] in this case without regard to the limitations in § 3142(f) raises serious constitutional concerns.¹⁵ The strict limitations § 3142(f) places on pretrial detention are part of what led the Supreme Court to uphold the BRA as constitutional. It was the § 3142(f) limitations, among others, that led the Court to conclude that the Act was “regulatory in nature, and does not constitute punishment before trial in violation of the Due Process Clause.” *Salerno*, 481 U.S. at 748.¹⁶ Throughout its substantive Due Process ruling, the *Salerno* Court emphasized

¹² *Id.* at 88.

¹³ *Id.* If the government does not move for detention, the Court may nevertheless find, on its own motion and by a preponderance of the evidence, that a § 3142(f)(2) factor authorizes the holding of a Detention Hearing.

¹⁴ *Id.* at 88, 91; *Bail*, 51 GEO. L.J. ANN. REV. CRIM. PROC. 396, 399 (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).

¹⁵ See Siegler, *supra* note 1, at 73–74, 87.

¹⁶ The *Salerno* Court further relied on the limitations in § 3142(f) in another component of its substantive Due Process ruling, its conclusion that “the government’s interest in preventing crime by arrestees is both legitimate and compelling.” *Id.* at 749. To reach this conclusion, the Court contrasted the Bail Reform Act with a statute that “permitted pretrial detention of any juvenile arrested on any charge” by pointing to the gatekeeping function of § 3142(f): “The Bail Reform Act, in contrast, narrowly focuses on a particularly acute problem in which the Government interests are overwhelming. The Act operates *only* on individuals

that the only defendants for whom the government can seek detention are those who are “already indicted or held to answer for a *serious* crime,” meaning the “extremely serious offenses” listed in § 3142(f)(1). *Id.* (emphasis added); *see also United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986) (discussing the BRA’s legislative history).

B. The Courts of Appeals Agree that Detention Is Prohibited When No § 3142(f) Factor is Present.

Following the Supreme Court’s guidance in *Salerno*, six courts of appeals agree that it is illegal to hold a Detention Hearing unless the government invokes one of the factors listed in 18 U.S.C. § 3142(f). *See, e.g., United States v. Ploof*, 851 F.2d 7, 11 (1st Cir. 1988); *United States v. Friedman*, 837 F.2d 48, 48–49 (2d Cir. 1988); *United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986); *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992); *United States v. Twine*, 344 F.3d 987 (9th Cir. 2003); *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999).¹⁷ For example, the First Circuit holds: “Congress did not intend to authorize preventive detention unless the judicial officer first finds that one of the § 3142(f) conditions for holding a detention hearing exists.” *Ploof*, 851 F.2d at 11. The Fifth Circuit agrees. *See Byrd*, 969 F.2d at 109 (“A hearing can be held only if one of the . . . circumstances listed in (f)(1) and (2) is present,” and “[d]etention can be ordered, therefore, only ‘in a case that involves’ one of the . . . circumstances listed in (f).” (quoting 18 U.S.C. § 3142(f)).

Unfortunately, a practice has developed that results in defendants being detained in violation of the BRA, *Salerno*, and the Constitution. Specifically, it is common for the

who have been arrested for a specific category of extremely serious offenses. 18 U.S.C. § 3142(f).” *Id.* at 750 (emphasis added). The Court emphasized that Congress “specifically found that these individuals” arrested for offenses enumerated in § 3142(f) “are far more likely to be responsible for dangerous acts in the community after arrest.” *Id.*

¹⁷ *See Siegler, supra* note 1, at 87–92. (providing a detailed explanation of the legal standard that applies at the Initial Appearance hearing).

government to seek detention at the Initial Appearance on the ground that the defendant is either “a danger to the community,” “a risk of flight,” or both.¹⁸ According to the FCJC study on pretrial detention: “courtwatching data and stakeholder interviews show that lack of adherence to § 3142(f) is not an isolated problem in a few districts but is instead a nearly universal problem that spans federal courts throughout the country.”¹⁹ Because neither “danger to the community” nor ordinary “risk of flight” is a factor listed in § 3142(f), it is flatly illegal to hold a Detention Hearing on either of these grounds at the Initial Appearance.²⁰ The practice in this district must be brought back in line with the law.²¹ That will only happen if this Court demands that the government provide a legitimate § 3142(f) basis for every detention request.²²

¹⁸ The clinic found that prosecutors “failed to cite a valid statutory basis for detention” in 81% of the Initial Appearances that the clinic court-watched and that prosecutors cited invalid bases such as “danger to the community” and “non-serious ‘risk of flight’” in 38% of cases. *Id.* at 94–95. Compliance was even worse in the non-(f)(1) cases where the prosecutor sought detention: 97% of the time, the prosecutor “provided no legitimate basis for detention.” *Id.* at 99 fig.12.

¹⁹ *Id.* at 103. In response to these findings, some federal judges and defense attorneys have 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/>.

²⁰ Siegler, *supra* note 1, at 91–92; *Bail*, *supra* note 14, at 400–01.

²¹ *See id.* at 95 (finding that at 99% of the Initial Appearance hearings where the government failed to meet their legal burden and did not cite a valid basis for detention, the defendant was nevertheless detained).

²² *See id.* at 107–109. Perhaps the confusion arises because the BRA is not organized in the order in which detention issues arise in court. Although the question of detention at the Initial Appearance comes first in the court process, it is not addressed until § 3142(f). To make matters worse, § 3142(f) itself is confusing. The first sentence of § 3142(f) lays out the legal standard that must be met *at the Initial Appearance* before “the judicial officer shall hold a hearing”—meaning a Detention Hearing. Confusingly, the first sentence of § 3142(f) then goes on to reference the legal standard that applies at the next court appearance, *the Detention Hearing*. *See* § 3142(f) (explaining that the purpose of the Detention Hearing is “to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community”). The long paragraph in § 3142(f) that follows § 3142(f)(2)(B) then describes the procedures that apply at the Detention Hearing in depth.

II. It Is Illegal to Detain [CLIENT] At All Because Ordinary “Risk of Flight” Is Not a Statutory Basis for Detention at the Initial Appearance.

It was improper to detain [CLIENT] and set a Detention Hearing on the government’s bare allegation that [he/she] poses a “risk of flight” for three reasons. First, the plain language of the statute permits detention at the Initial Appearance only when the defendant poses a “*serious* risk” of flight, § 3142(f)(2)(A), but in this case the government alleged a mere *ordinary* risk of flight. Second, the government bears the burden of presenting some *evidence* to substantiate its allegation that a defendant is a serious risk of flight, but here the government has provided no such evidence. Third, to establish “serious risk” of flight the government must demonstrate that the defendant presents an “extreme and unusual” risk of willfully fleeing the jurisdiction if released, but the government has not met that burden here. Accordingly, it is improper to hold a Detention Hearing at all, let alone detain [CLIENT] for the duration of the case.

A. Supreme Court Precedent and the Plain Language of the BRA Prohibit this Court from Detaining a Defendant as an Ordinary “Risk of Flight.”

Ordinary “risk of flight” is not a factor in § 3142(f). By its plain language, § 3142(f)(2)(A) permits detention and a hearing only when there is a “*serious* risk that [the defendant] will flee.”²³ There is some risk of nonappearance and potentially some risk of flight in every criminal case; “serious risk” of flight means something more. *See United States v. White*, 2021 WL 2155441, at *10 (M.D. Tenn. May 27, 2021) (recognizing that “serious flight risk” is “narrower” than “flight risk” and is “distinct from ‘risk of non-appearance’”). According to a basic canon of statutory interpretation, the term “*serious* risk” means that the risk must be more significant or extreme than an ordinary risk. *See, e.g., Corley v. United States*, 556 U.S. 303, 314 (2009) (“[O]ne of the most basic interpretative canons [is] that a statute should be

²³ *See* Siegler, *supra* note 1, at 91 (“[O]rdinary risk of flight is ... an impermissible basis on which to order detention at the Initial Appearance or schedule a Detention Hearing.”).

construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” (citation omitted)).

B. It Was Improper to Detain [CLIENT] Because the Government Has Provided No Evidence to Support its Claim that [CLIENT] Is a Serious Risk of Flight.

Where the government’s only legitimate § 3142(f) ground for detention is “serious risk” of flight, the government bears the burden of establishing, by a preponderance of the evidence, that the defendant poses a “serious risk” of flight, rather than the ordinary risk attendant in any criminal case. *See Friedman*, 837 F.2d at 49. Moreover, a defendant “may be detained *only if the record supports a finding* that he presents a serious risk of flight.” *Himler*, 797 F.2d at 160 (emphasis added); *see also United States v. Robinson*, 710 F. Supp. 2d 1065, 1088 (D. Neb. 2010) (criticizing the government for failing to present evidence of “serious risk” of flight at the Initial Appearance and saying “no information was offered to support [the] allegation”); *White*, 2021 WL 2155441, at *7 (holding that “a court may not find that a case involves a serious risk of flight just because the Government claims it does, but rather must make its own determination on the issue”). After all, the statute authorizes detention only “*in a case that involves*” a “serious risk” that the person will flee. § 3142(f)(2)(A) (emphasis added). This contemplates a judicial finding about whether the case in fact involves a *serious* risk of flight.²⁴ The government must provide an evidentiary basis to enable the judge to make an informed decision, typically evidence that relates either to the defendant’s history and characteristics or to the circumstances

²⁴ Had Congress intended to authorize Detention Hearings based on a mere certification by the government, Congress could have enacted such a regime, just as they have done in other contexts. *See, e.g.*, 18 U.S.C. § 5032 (creating exception to general rule regarding delinquency proceedings if “the Attorney General, after investigation, certifies to the appropriate district court of the United States” the existence of certain circumstances); 18 U.S.C. § 3731 (authorizing interlocutory appeals by the government “if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding”).

of the offense.²⁵ The government has presented no such evidence here.

C. Detaining a Defendant as a “Serious Risk of Flight” Is Appropriate Only in “Extreme and Unusual Circumstances” Involving a Heightened Risk of “Intentional” Flight.

The BRA’s legislative history makes clear that detention based on serious risk of flight is only appropriate under “extreme and unusual circumstances.”²⁶ The government must demonstrate that the risk of flight in a particular case rises to the level of extreme or unusual, and no such showing has been made here. Courts have articulated the elements of this extreme or unusual standard in different ways, but the upshot remains the same—defendants are “serious” flight risks in only rare cases. *See United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015) (“Only in rare cases should release be denied, and doubts regarding the propriety of release are to be resolved in favor of the defendant.”); *see also United States v. Runsdorf*, 2022 WL 303548, at *4 (S.D. Fla. Jan. 24, 2022) (finding that the government must establish “a *heightened* likelihood of flight that is demonstrably more than the risk posed by a generic defendant charged with a similar offense” (emphasis added)).

The only defendants who qualify for detention under § 3142(f)(2) are those who are “[t]rue flight risks”—defendants the government can prove are likely to willfully flee the

²⁵ *See* Siegler, *supra* note 1, at 109 (“Because the law demands a showing that any risk of flight is “serious,” the prosecution should present some evidence to meet its burden, such as evidence about the particular arrestee’s history and characteristics (e.g., past failures to appear in court) or to the circumstances of the offense (e.g., the person led the police in a high-speed chase).”).

²⁶ *See Bail Reform Act of 1983: Rep. of the Comm. on the Judiciary*, 98th Cong. 48 (1983) (“Under subsection f(2), a pretrial Detention Hearing may be held upon motion of the attorney for the government or upon the judicial officer’s own motion in three types of cases. . . . [T]hose [types] involving . . . a serious risk that the defendant will flee . . . reflect the scope of current case law that recognizes the appropriateness of denial of release in such cases.”) (emphasis added) (citing *United States v. Abrahams*, 575 F.2d 3, 8 (1st Cir. 1978)—which held that only a “rare case of extreme and unusual circumstances . . . justifies pretrial detention”—as representing the “current case law”); *see also Gavino v. McMahon*, 499 F.2d 1191, 1995 (2d Cir. 1974) (holding that in a noncapital case the defendant is guaranteed the right to pretrial release except in “extreme and unusual circumstances”); *United States v. Kirk*, 534 F.2d 1262, 1281 (8th Cir. 1976) (holding that bail can only be denied “in the exceptional case”).

jurisdiction with the intention of thwarting the judicial process.²⁷ See *White*, 2021 WL 2155441, at *7 (holding that a “case involves a ‘serious risk of flight,’ as opposed to a mere risk of non-appearance, if it involves a serious risk that the defendant intentionally will avoid court proceedings”). Risk of flight is not the same as risk of nonappearance, see *White*, 2021 WL 2155441, at *10, and a defendant should never be detained as a “serious risk” of flight when the risk of flight or nonappearance can be mitigated by conditions of release.

III. In This Case, the Government Has Not Met Its Burden of Proving That [CLIENT] Poses a “Serious” Risk Of Flight Under § 3142(f)(2)(A).

[CLIENT] must be released immediately on conditions because the government did not argue that [CLIENT] posed a *serious* risk of flight and did not present any evidence whatsoever to establish that “there is a serious risk that the [defendant] will flee” the jurisdiction under § 3142(f)(2)(A). Although the defense bears no burden of proof, it is clear from [CLIENT’S] history and characteristics that [he/she] does not pose a serious risk of flight. [DISCUSS FACTS THAT SHOW NO SERIOUS RISK OF FLIGHT: TIES TO COMMUNITY, FAMILY, EMPLOYMENT, PAST COURT APPEARANCES, FTAs ARE STALE, OTHER EVIDENCE OF STABILITY.]

As in *United States v. Morgan*, 2014 WL 3375028 (C.D. Ill. July 9, 2014), “the facts fail to establish any risk of flight,” let alone a risk serious enough to authorize a Detention Hearing. *Id.* at *5 (“[T]he defendant has lived at his current address for over seven years and has lived in the same community for his entire life. His mother and siblings also all live relatively close to his residence, as do his children and their mothers. . . . Additionally, nothing in his criminal history

²⁷ See Lauryn Gouldin, *Defining Flight Risk*, 85 U. Chi. L. Rev. 677, 725 (2017). This rule is sound policy, as the risk of a defendant becoming either a “local absconder” (who intentionally fails to appear but remains in the jurisdiction), *id.* at 735, or a “low-cost non-appearance” (who unintentionally fails to appear), *id.* at 729, can be addressed by imposing conditions of release like electronic monitoring, GPS monitoring, and support from pretrial services.

suggests that he ever failed to appear for a court hearing.”); *see also Friedman*, 837 F.2d at 49–50 (reversing a detention order for “serious risk of flight” where defendant was a lifelong resident of the district, was married with children, had no prior record, had been steadily employed before his arrest, and had been on bond for related state charges without incident); *White*, 2021 WL 2155441, at *13–14 (concluding that the government failed to show “serious risk of flight” where the defendant lacked community ties in the district, was charged with evading arrest and previously failed to appear in court in a different case).

Because [CLIENT] does not present a “serious risk” of flight, neither § 3142(f)(1) nor § 3142(f)(2) is satisfied, a Detention Hearing is not authorized, and [he/she] cannot be detained under the law.

IV. Statistics Showing that It Is Extraordinarily Rare for Defendants on Bond to Flee Further Demonstrate that [CLIENT] Does Not Pose a Serious Risk of Flight.

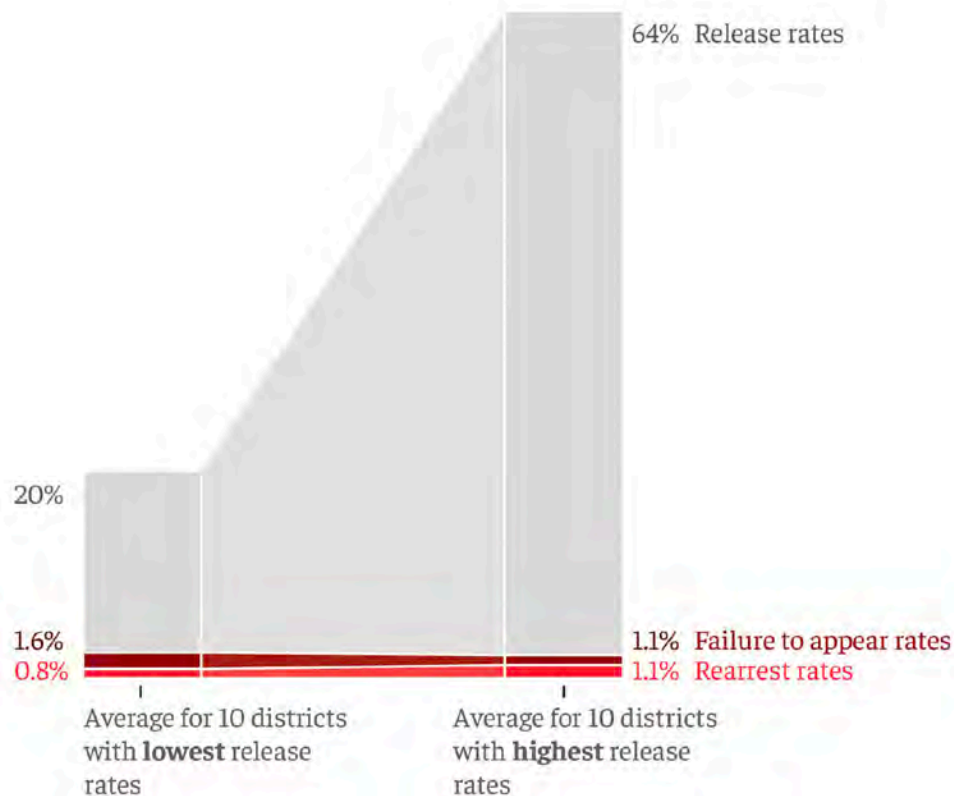
The government’s own data prove that judges can release more people without risking higher rates of crime and flight. In this case, this Court should be guided by AO statistics showing that nearly everyone released pending trial appears in court and does not reoffend. In fact, in 2021, 99% of released federal defendants nationwide appeared for court as required and 99% were not arrested for new crimes on bond.²⁸ Significantly, this near-perfect compliance rate is seen equally in federal districts with very high release rates and those with very low release rates.²⁹ Even in districts that release two-thirds of all federal defendants on bond, just 1% fail to

²⁸ 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%).

²⁹ 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

appear in court and 1% are rearrested while released.³⁰ The below chart reflects shows the same vanishingly low failure to appear and rearrest rates based on AO data spanning 2007 to 2021.³¹

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



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.

³⁰ *See* App. 1; App. 2.

³¹ *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.³² 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.”³³

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 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 presented evidence that shows that [he/she] would be among the approximately 1% of defendants who fail to appear in court or are rearrested on bond, let alone that there is “a serious risk that the defendant intentionally will avoid court proceedings.” *White*, 2021 WL 2155441, at *7. Detaining [CLIENT] without evidence that they pose a “serious risk” of flight violates their constitutionally protected liberty interest.

³² *Id.* at 246 n.42.

³³ *Id.*

V. There Is No Other Basis to Detain [CLIENT] as a Serious Risk of Flight in this Case.

The potential penalty in this case is not a legitimate basis for finding a serious risk of flight. There is no evidence Congress intended courts to de facto detain any client facing a long prison sentence. Indeed, many federal defendants face long sentences—being a defendant in a run-of-the-mill federal case cannot possibly be an “extreme and unusual circumstance.” Relatedly, if a finding of serious risk of flight under § 3142(f)(2) could be justified solely by the seriousness of a given charge and its penalty, Congress could have chosen to list the charge in § 3142(f)(1). *See United States v. Lopez-Chilel*, 2022 WL 1178503, at *3 (E.D. Mich. Apr. 20, 2022); *White*, 2021 WL 2155441, at *13 (“[F]ederal crimes are generally serious with serious penalties, and yet under the Bail Reform Act release is generally favored in federal criminal cases—as it should be, since locking up persons prior to conviction should be something of a last resort. And in the realm of federal crimes, the seriousness here by no means stands out.”); *United States v. Giordano*, 370 F. Supp. 2d 1256, 1264 (S.D. Fla. 2005) (“[I]t is generally accepted that more than evidence of the commission of a serious crime and the fact of a potentially long sentence is required to support a finding of serious risk of flight. A mere theoretical opportunity for flight is not sufficient grounds for pretrial detention.” (citation omitted)).

[USE IF CLIENT HAS A CRIMINAL RECORD BUT NO BOND FORFEITURES]

Additionally, a criminal record also does not automatically render a client a serious risk of flight. To the contrary, evidence that a defendant has complied with court orders in the past supports a finding that he is *not* a serious risk of flight. *See, e.g., United States v. Williams*, 1988 WL 23780, at *1 (N.D. Ill. Mar. 8, 1988) (defendant who made regular state court appearances in the past deemed not a serious flight risk).

[USE THIS PARAGRAPH IN FRAUD CASE] The mere fact that **[CLIENT]** is charged with an economic crime likewise does not render **[him/her]** a serious risk of flight. “In economic fraud cases, it is particularly important that the government proffer more than the fact of a serious economic crime that generated great sums of ill-gotten gains . . . [:] evidence of strong foreign family or business ties is necessary to detain a defendant.” *Giordano*, 370 F. Supp. 2d at 1264. The government has not presented any evidence that **[CLIENT]** intends to flee or has anywhere to flee to, meaning that “many of the key factors that would warrant detention in an economic fraud case are absent here.” *Id.* at 1270.

VI. Detaining **[CLIENT] as a Serious Risk of Flight Is Not Only Legally Unsupported, But Is Also Harmful and Unnecessary.**

A. A Few Days of Detention Can Have Disastrous Consequences on Someone’s Life.

Congress was correct to cabin pretrial detention to “extreme and unusual circumstances,” because even very short periods of detention have been shown to seriously harm defendants.³⁴ For example, according to a recent study published by the Administrative Office of the U.S. Courts, 37.9% of federal defendants detained fewer than three days reported having a negative outcome at work (such as losing their job).³⁵ Likewise, 29.9% of people detained fewer than three days reported that their housing became less stable.³⁶ In other words, a substantial minority of people held for only one or two days in federal cases still lose their jobs or their housing as a result of the brief detention.

³⁴ See Siegler, *supra* note 1, at 70–72 (summarizing research on the negative impact of short periods of detention and describing how “pretrial detention places significant burdens on individuals, families, and communities, yet the data show that these costs provide little societal benefit.”).

³⁵ Alexander M. Holsinger & Kristi Holsinger, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, 82(2) Federal Probation 39, 42 (2018), archived at <https://perma.cc/LQ2M-PL83>.

³⁶ *Id.*

There is an intuition that pretrial detention protects society, but this is not borne out by the evidence. “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 By contrast, pretrial release has been shown to improve case outcomes and mitigate the deleterious effects of facing federal criminal charges.”³⁷ In addition, the FCJC’s study estimates that pretrial detention imposes a *one-billion-dollar price tag* on taxpayers.³⁸

These fiscal costs pale compared to the human costs: 118,000 human beings are currently locked in federal jails, spending an average of 1 year in jail.³⁹ While in jail, people suffer major personal losses—their job, home, custody of their children.⁴⁰ These harms also impact the loved ones and communities of those detained.⁴¹ “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.”⁴² Moreover, the high federal detention rates fall overwhelmingly on people of color and those from low-income backgrounds.⁴³

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.⁴⁴ Over 40% of people who die in jail die within their first

³⁷ Siegler, *supra* note 1, at 62 (citing studies).

³⁸ *Id.* at 23.

³⁹ AO Table H-15 (June 30, 2022) (117,978); AO Table H-9A (June 30, 2022) (361 days).

⁴⁰ See Siegler, *supra* note 1, at 62 (citing studies).

⁴¹ *Id.* at 62.

⁴² *Id.* at 63.

⁴³ *Id.* at 24.

⁴⁴ 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>.

week.⁴⁵ 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.⁴⁶

In sum, detaining [CLIENT] for even one or two days in this case is not just illegal—it could also jeopardize [his/her] physical, financial, and mental wellbeing.

B. Many Conditions of Release Have Been Proven to Effectively Manage Ordinary Risk of Flight or Nonappearance.

Any concerns the Court may have about local nonappearance can be allayed by imposing any number of conditions of release that have been shown empirically to reduce the risk of local nonappearance. For example, a study conducted in New York state courts found that text message reminders were able to reduce failures to appear by up to 26%, translating to 3,700 fewer arrest warrants per year.⁴⁷ Holistic pre-trial services focused on providing social services and *support* to clients also reduce the risk of non-appearance across all risk levels in state systems.⁴⁸ Beyond the traditional role of Pretrial Services, this could include providing funding for transportation to court, providing childcare on court dates, and assisting clients in finding stable housing, employment or education.⁴⁹ Moreover, scholars and courts agree that electronic monitoring is especially effective at reducing risk of flight, although it is also particularly

⁴⁵ 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>.

⁴⁶ 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 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>.

⁴⁷ See Brice Cooke et al, *Text Message Reminders Decreased Failure to Appear in Court in New York City*, Abdul Latif Poverty Action Lab (2017), archived at <https://perma.cc/JCW7-JVZW>.

⁴⁸ See generally Christopher Lowenkamp and Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes*, John and Laura Arnold Foundation, Special Report (2013), archived at <https://perma.cc/R3F3-KZ76>.

⁴⁹ See generally John Clark, *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem-Solving Options at the Pretrial Stage*, Pretrial Justice Institute (2007), archived at <https://perma.cc/5C8C-7HJK>.

constricting of liberty, and consequently may only be imposed under the BRA if it is the *least* restrictive condition necessary to “reasonably assure” appearance and community safety.⁵⁰

VII. [CLIENT] Requests Immediate Release with Conditions.

Because there is no basis to detain [CLIENT], [he/she] should be released immediately under the following conditions: [INSERT CONDITIONS TAILORED TO CASE]. These conditions will “reasonably assure” [CLIENT’S] appearance and the safety of the community. § 3142(c). [ADD BRIEF EXPLANATION OF BASES FOR CONDITIONS].

For these reasons, [CLIENT] respectfully requests that [he/she] be released with conditions this Court deems appropriate, under §§ 3142(a)–(c). Because the government has provided no permissible basis for pretrial detention under § 3142(f), continuing to detain [CLIENT] violates the law.

⁵⁰ See, e.g., Samuel R. Wiseman, *Pretrial Detention and the Right to the Monitored*, 123 Yale L. J. 1344, 1347–48 (2014) (“Increasingly sophisticated remote monitoring devices have the potential to sharply reduce the need for flight-based pretrial detention [T]he question of finding other ways of ensuring a non-dangerous defendant’s presence at trial is one not of ability, but of will. . . .”); *id.* at 1368–74 (citing studies in both European and American contexts to demonstrate that electronic monitoring is at least as effective as secured bonds at deterring flight, and that it comes at far reduced cost to both the defendant and the government); *United States v. O’Brien*, 895 F.2d 810, 814–16 (1st Cir 1990) (describing reduction in flight rate from monitoring program and concluding that “evidence concerning the effectiveness of the bracelet alone [] arguably rebuts the presumption of flight”). *But see also* Siegler, *supra* note 1, at 185 (finding through interviews with stakeholders that electronic monitoring is overused despite the possibility of less punitive alternatives and can impose a “high pecuniary burden for arrestees”).

Note to Counsel re Section IV 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 IV 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.

**Template Motion to Revoke Magistrate Judge's
Detention Order and Request for Immediate Release
With Conditions & Appendices**

IN THE
UNITED STATES DISTRICT COURT
FOR THE [REDACTED] DISTRICT OF [REDACTED]

UNITED STATES OF AMERICA

v.

[REDACTED]

)
)
)
)
)
)

Judge [REDACTED]
No. XX-CR-XX

**DEFENDANT’S MOTION TO REVOKE THE MAGISTRATE JUDGE’S DETENTION
ORDER AND REQUEST FOR IMMEDIATE RELEASE WITH CONDITIONS**

- This Motion to Revoke is essentially an appeal of the magistrate judge’s detention order to the district court. If the district court denies release, this motion can be adjusted to serve as an appeal to the court of appeals under § 3145(c) (with adjustments for the standard of review).
- This motion should be filed immediately after the initial appearance only in the rare case where:
 - (1) the government requested detention either on the basis of danger to the community or on the dual grounds of danger to the community & risk of flight; and
 - (2) the charge is fraud, extortion, threats, or another charge not listed in § 3142(f)(1).
- This motion should not be filed in the following types of cases because a § 3142(f)(1) factor authorizes detention at the initial appearance: bank robbery, other crime of violence, or terrorism case listed in § 3142(f)(1)(A), drug case listed in § 3142(f)(1)(C), § 924(c) gun case, § 922(g) gun case, or minor victim case listed in § 3142(f)(1)(E).
- If you have questions about when this motion should be filed, please contact Alison Siegler (alisonsiegler@uchicago.edu).

Defendant [REDACTED], by [his/her] attorney, [ATTORNEY], respectfully moves this Honorable Court to vacate Magistrate Judge [JUDGE NAME’S] detention order pursuant to 18 U.S.C. § 3145(b) and order [REDACTED] released from custody pursuant to the Bail Reform Act (BRA) and the Fifth Amendment’s Due Process Clause. This motion arises under 18 U.S.C. § 3145(b), which provides for de novo review of a magistrate judge’s detention order. *See, e.g., United States v. Torres*, 929 F.2d 291, 292 (7th Cir. 1991) (although § 3145 “speaks of ‘review’ by the district judge, the court may start from scratch”); *United States v. Clark*, 865 F.2d 1433,

1436 (4th Cir. 1989). A motion for revocation or amendment “shall be determined promptly,” reflecting the serious nature of detaining any defendant unnecessarily. § 3145(b). In support of this motion, [CLIENT] states as follows:

On [DATE], [CLIENT] was arrested on a criminal complaint charging [him/her] with [LIST CHARGES AND STATUTORY SECTIONS]. Magistrate Judge [JUDGE NAME] held [CLIENT’s] [initial appearance/arraignment] on [DATE]. At that Initial Appearance, the government requested detention on the grounds that [CLIENT] was a danger to the community and a risk of flight. Judge [JUDGE NAME] detained [CLIENT] as a danger to the community and a risk of flight pending a Detention Hearing. [Add any additional procedural history here.] This motion follows.

I. It is unlawful and unconstitutional for a court to hold a Detention Hearing or detain a defendant at all when, as here, there is no basis for detention under 18 U.S.C. § 3142(f).

The Magistrate Judge erred as a matter of law in detaining [CLIENT] without a § 3142(f) factor having been established by a preponderance of the evidence. As all six courts of appeals to directly address the question have recognized, the only permissible bases for detaining a defendant at the Initial Appearance and proceeding to a Detention Hearing are the enumerated factors set out in 18 U.S.C. § 3142(f). The concepts of “dangerousness” or “safety of the community” are simply not among the factors listed in § 3142(f) and are therefore not legitimate bases for detention at the Initial Appearance hearing. The federal courts of appeals all reach this same conclusion. Further, data from the Administrative Office of the U.S. Courts show that there is an exaggerated concern over risk of flight in our system, and that the vast majority of released defendants do not flee.

Because [CLIENT] is not charged with a § 3142(f)(1) offense, this is a “non-(f)(1) case” where only a showing of one of the § 3142(f)(2) “serious risk” factors would authorize holding a Detention Hearing.¹ In this case, the government has not presented sufficient evidence that [CLIENT] poses a “serious risk” of flight to authorize detention under § 3142(f)(2)(A). [CLIENT] is therefore being detained unlawfully. Accordingly, [CLIENT] must be released on bond immediately with appropriate conditions of release. *See* 18 U.S.C. § 3142(a)–(c).

In a new national study, The University of Chicago Law School’s Federal Criminal Justice Clinic (FCJC) found that courts nationwide do not consistently adhere to the legal standard in non-(f)(1) cases, in violation of the Bail Reform Act.² Across hundreds of non-(f)(1) cases like this one, 12% of defendants were unlawfully detained at the Initial Appearance, as “no statutory basis for detention existed under § 3142(f).”³ In 97% of non-(f)(1) cases where the government was seeking detention, the prosecutor “cited improper grounds, like danger to the community or ordinary risk of flight.”⁴ Yet every single defendant was nevertheless detained at the Initial Appearance and faced an “improper Detention Hearing.”⁵ The study found that these practices exacerbated racial disparities.⁶ In response to these findings, some judges and defense attorneys have emphasized that federal pretrial detention is under “scrutinized,” with Judge Nancy Gertner (ret.), who spent 17 years on the federal bench, telling USA Today: “I didn’t

¹ Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 91 (2022), <https://freedomdenied.law.uchicago.edu/report>.

² *Id.* at 93.

³ *Id.* at 95.

⁴ *Id.* at 99.

⁵ *Id.*

⁶ *Id.* at 97–100 (finding that people of color were unlawfully detained in non-(f)(1) cases at a higher rate compared to white defendants and that prosecutors cited improper bases for detention more frequently against people of color).

really know what was going on at the magistrate level because no one brought it to our attention . . . This is a completely unexamined, un-appealed process.”⁷

These troubling national data suggest that federal magistrate judges must vigilantly ensure that the government’s detention requests comport with the BRA’s requirements. On review, this Court must reverse any detention order—such as this one—that is not legally supported by the BRA, and must not allow Detention Hearings to be held without statutory authorization.

The unlawful detentions that the FCJC’s study documents are likely “just the tip of the iceberg.”⁸ In fact, 60% of all federal pretrial cases are non-(f)(1) cases, meaning that in over half of cases nationwide, “there is a real question of whether the law allows a judge to hold a Detention Hearing at all.”⁹ Yet defendants are detained at the Initial Appearance in 76% of non-(f)(1) cases nationwide, even though the “only valid ground for detention in such cases requires the prosecutor to prove that the arrestee poses a ‘serious risk’ of flight or obstruction.”¹⁰ In this case, the government has not met that standard and [CLIENT] must be released immediately.

II. The BRA Only Authorizes Detention at the Initial Appearance When One of the § 3142(f) Factors Is Met.

[CLIENT] is being detained in violation of the law. According to the plain language of § 3142(f), “the judicial officer shall hold a [detention] hearing” only “in a case that involves” one of the seven factors listed in § 3142(f)(1) and (f)(2). None of the § 3142(f) factors are present in

⁷ 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/>.

⁸ *Id.* at 100.

⁹ *Id.* at 92.

¹⁰ *Id.* at 100.

this case.¹¹ Ordinary “risk of flight” is not among the § 3142(f) factors. The statute and the caselaw therefore prohibit any court from holding a Detention Hearing and from detaining [CLIENT] pending trial.

A. Supreme Court Precedent and the Plain Language of the BRA Prohibit a Court from Detaining the Defendant and Holding a Detention Hearing Without a § 3142(f) Factor.

The Supreme Court’s seminal opinion in *United States v. Salerno*, 481 U.S. 739 (1987), confirms that a Detention Hearing may only be held if one of the seven § 3142(f) factors is present. *See id.* at 747 (“Detention hearings [are] available if” and only if one of the seven § 3142(f) factors is present.). According to the Supreme Court, “[t]he Act operates only on individuals who have been arrested for a specific category of extremely serious offenses. 18 U.S.C. § 3142(f).” *Id.* at 750 (emphasis added); *see also id.* at 747 (“The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes,” specifically the crimes enumerated in § 3142(f) (emphasis added)). *Salerno* thus stands for the proposition that the factors listed in § 3142(f) serve as a gatekeeper, and only certain categories of defendants are eligible for detention in the first place. In fact, “a central reason the Supreme Court upheld the BRA as constitutional in *Salerno* was the gatekeeping function of the (f) factors.”¹² As the D.C. Circuit has held, “First, a [judge] must find one of six circumstances triggering a detention hearing.... [under] § 3142(f). Absent one of these circumstances, detention

¹¹ This case does not meet any of the five factors discussed in § 3142(f)(1), as it does not involve: (1) a crime of violence under (f)(1)(A); (2) an offense for which the maximum sentence is life imprisonment or death under (f)(1)(B); (3) a qualifying drug offense under (f)(1)(C); (4) a felony after conviction for two or more offenses under the very rare circumstances described in (f)(1)(D); or (5) a felony involving a minor victim or the possession/use of a firearm under (f)(1)(E).

The government has also presented no evidence to establish that this case meets either of the two additional factors discussed in § 3142(f)(2): (1) a “serious risk that [the defendant] will flee” under (f)(2)(A); or (2) a “serious risk” that the defendant will engage in obstruction or juror/witness tampering under (f)(2)(B).

¹²Siegler, *supra* note 1, at 87.

is not an option.” *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999). “Every federal court of appeals that has examined this issue agrees that one of the § 3142(f) factors must be proven at the Initial Appearance in order to hold a Detention Hearing.”¹³

For a court to lawfully move forward from an Initial Appearance hearing to a Detention Hearing, “the Government must establish by a preponderance of the evidence that it is entitled to a detention hearing’ by presenting a valid (f) factor.”¹⁴ If the government does not establish an applicable § 3142(f) factor by a preponderance of the evidence, several conclusions follow: (1) the government is prohibited from seeking detention, (2) there is no legal basis to detain the defendant at the Initial Appearance or pending a Detention Hearing, and (3) there is no legal basis for the court to hold a Detention Hearing.¹⁵ Instead, the court is required to release the defendant on personal recognizance under § 3142(b) or on conditions under § 3142(c).

Detaining [CLIENT] in this case without regard to the limitations in § 3142(f) raises serious constitutional concerns.¹⁶ The strict limitations § 3142(f) places on pretrial detention are part of what led the Supreme Court to uphold the BRA as constitutional. It was the § 3142(f) limitations, among others, that led the Court to conclude that the Act was “regulatory in nature, and does not constitute punishment before trial in violation of the Due Process Clause.” *Salerno*, 481 U.S. at 748.¹⁷ Throughout its substantive Due Process ruling, the *Salerno* Court emphasized

¹³ *Id.* at 88.

¹⁴ *Id.* If the government does not move for detention, the Court may nevertheless find, on its own motion and by a preponderance of the evidence, that a § 3142(f)(2) factor authorizes the holding of a Detention Hearing.

¹⁵ *Id.* at 88, 91. *Bail*, 51 GEO. L.J. ANN. REV. CRIM. PROC. 396, 399 (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).

¹⁶ Siegler, *supra* note 1, at 73–74, 87.

¹⁷ The *Salerno* Court further relied on the limitations in § 3142(f) in another component of its substantive Due Process ruling, its conclusion that “the government’s interest in preventing crime by arrestees is both legitimate and compelling.” *Id.* at 749. To reach this conclusion, the Court contrasted the Bail Reform Act

that the only defendants for whom the government can seek detention are those who are “already indicted or held to answer for a *serious* crime,” meaning the “extremely serious offenses” listed in § 3142(f)(1). *Id.* (emphasis added); *see also United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986) (discussing the BRA’s legislative history). An interpretation “of the [BRA] that allows danger to the community as the sole ground for detaining a defendant where detention was moved for only under (f)(2)(A) runs the risk of undercutting one of the rationales that led the *Salerno* Court to uphold the statute as constitutional.” *United States v. Gibson*, 384 F. Supp. 3d 955, 963 (N.D. Ind. 2019).

B. The Courts of Appeals Agree that Detention Is Prohibited When No § 3142(f) Factor is Present.

Following the Supreme Court’s guidance in *Salerno*, six courts of appeals agree that it is illegal to hold a Detention Hearing unless the government invokes one of the factors listed in 18 U.S.C. § 3142(f). *See, e.g., United States v. Ploof*, 851 F.2d 7, 11 (1st Cir. 1988); *United States v. Friedman*, 837 F.2d 48, 48–49 (2d Cir. 1988); *United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986); *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992); *United States v. Twine*, 344 F.3d 987 (9th Cir. 2003); *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999).¹⁸ For example, the First Circuit holds: “Congress did not intend to authorize preventive detention unless the judicial officer first finds that one of the § 3142(f) conditions for holding a detention hearing exists.” *Ploof*, 851 F.2d at 11. The Fifth Circuit agrees. *See Byrd*, 969 F.2d at 109 (“A

with a statute that “permitted pretrial detention of any juvenile arrested on any charge” by pointing to the gatekeeping function of § 3142(f): “The Bail Reform Act, in contrast, narrowly focuses on a particularly acute problem in which the Government interests are overwhelming. The Act operates *only on individuals who have been arrested for a specific category of extremely serious offenses*. 18 U.S.C. § 3142(f).” *Id.* at 750 (emphasis added). The Court emphasized that Congress “specifically found that these individuals” arrested for offenses enumerated in § 3142(f) “are far more likely to be responsible for dangerous acts in the community after arrest.” *Id.*

¹⁸ *See Sieglar, supra* note 1, at 87–92. (providing a detailed explanation of the legal standard that applies at the Initial Appearance hearing).

hearing can be held only if one of the . . . circumstances listed in (f)(1) and (2) is present,” and “[d]etention can be ordered, therefore, only ‘in a case that involves’ one of the . . . circumstances listed in (f).” (quoting 18 U.S.C. § 3142(f)).

Unfortunately, a practice has developed that results in defendants being detained in violation of the BRA, *Salerno*, and the Constitution. Specifically, it is common for the government to seek detention at the Initial Appearance on the ground that the defendant is either “a danger to the community,” “a risk of flight,” or both.¹⁹ According to the FCJC study on pretrial detention: “courtwatching data and stakeholder interviews show that lack of adherence to § 3142(f) is not an isolated problem in a few districts but is instead a nearly universal problem that spans federal courts throughout the country.”²⁰ Because neither “danger to the community” nor ordinary “risk of flight” is a factor listed in § 3142(f), it is flatly illegal to hold a Detention Hearing on either of these grounds at the Initial Appearance.²¹ The practice in this district must be brought back in line with the law.²² That will only happen if this Court acts as a bulwark against unlawful practices at the Initial Appearance, reversing detention orders that lack a legitimate basis under § 3142(f).²³

¹⁹ The Clinic found that prosecutors “failed to cite a valid statutory basis for detention” in 81% of the Initial Appearances that the clinic court-watched and that prosecutors cited invalid bases such as “danger to the community” and “non-serious ‘risk of flight’” in 38% of cases. *Id.* at 94–95. Compliance was even worse in the non-(f)(1) cases where the prosecutor sought detention: 97% of the time, the prosecutor “provided no legitimate basis for detention.” *Id.* at 99 fig.12.

²⁰ *Id.* at 103.

²¹ Siegler, *supra* note 1, at 91–92; *Bail*, *supra* note 15, at 400–401.

²² *See id.* at 95 (finding that at 99% of the Initial Appearance hearings where the government failed to meet their legal burden and did not cite a valid basis for detention, the defendant was nevertheless detained).

²³ *See id.* at 107–109. Perhaps the confusion arises because the BRA is not organized in the order in which detention issues arise in court. Although the question of detention at the Initial Appearance comes first in the court process, it is not addressed until § 3142(f). To make matters worse, § 3142(f) itself is confusing. The first sentence of § 3142(f) lays out the legal standard that must be met *at the Initial Appearance* before “the judicial officer shall hold a hearing”—meaning a Detention Hearing. Confusingly, the first sentence of § 3142(f) then goes on to reference the legal standard that applies at the next court

III. It Is Illegal to Detain [CLIENT] as a Danger to the Community.

The Magistrate Judge erred as a matter of law in detaining [CLIENT] as a danger to the community. “[A]lthough at the Initial Appearance the prosecutor frequently asks the judge to detain the arrestee as a ‘danger to the community,’ the courts of appeals have stated unambiguously that when none of the (f) factors are met, ‘pretrial detention solely on the ground of dangerousness to another person or to the community is not authorized.’”²⁴ Neither the “non-offense-specific risk factors” under § 3142(f)(2) nor the “offense-specific factors” under § 3142(f)(1) “allow a judge to proceed to a Detention Hearing based on . . . danger to the community.”²⁵ The courts of appeals agree that it is unlawful for a judge to detain someone at the Initial Appearance as a “danger” or a “financial danger.” See *United States v. Dillard*, 214 F.3d 88, 96 (2d Cir. 2000) (“The question whether the defendant poses a danger to the safety of the community . . . cannot be considered unless the defendant is found to be eligible for detention under subsection 3142(f). *A defendant who is not eligible must be released, notwithstanding alleged dangerousness.*” (emphasis added)); *Friedman*, 837 F.2d at 49 (“The Bail Reform Act does not permit detention on the basis of dangerousness”); *Himler*, 797 F.2d at 160; *Byrd*, 969 F.2d at 110. In fact, as the Ninth Circuit has held, interpreting the BRA to “authorize[] pretrial detention without bail based solely on a finding of dangerousness . . . would render meaningless 18 U.S.C. § 3142(f)(1) and (2).” *Twine*, 344 F.3d at 987. The Fifth Circuit in *Byrd*

appearance, *the Detention Hearing*. See § 3142(f) (explaining that the purpose of the Detention Hearing is “to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community”). The long paragraph in § 3142(f) that follows § 3142(f)(2)(B) then describes the procedures that apply at the Detention Hearing in depth.

²⁴ Siegler, *supra* note 1, at 91 (quoting *Ploof*, 851 F.2d at 11).

²⁵ Siegler, *supra* note 1, at 91.

emphasized that even “a defendant who *clearly* may pose a danger to society cannot be detained on that basis alone.” 969 F.2d at 110 (emphasis added).

[FOR FRAUD CASES ONLY] The fraud charge in [CLIENT’S] case is not among the enumerated offenses in § 3142(f)(1), nor is potential economic harm a basis for detention under § 3142(f). “In non-(f)(1) cases alleging a financial crime, the law prohibits the court from detaining someone at the Initial Appearance or holding a Detention Hearing on the basis of ‘financial danger.’”²⁶ Even in cases where a § 3142(f) factor exists and a detention hearing is appropriate, at the detention hearing stage courts “rarely conclude that the economic harm presented rises to the level of danger of the community for which someone should be detained.” *United States v. Madoff*, 586 F. Supp. 2d 240, 253–54 (S.D.N.Y. 2009) (releasing Madoff on conditions despite concerns that he posed an economic danger). Regardless, potential economic harm to the community cannot be weighed against a defendant when the case does not involve a § 3142(f) factor. Any concerns that [CLIENT] poses an economic danger to the community cannot serve as a basis for holding a detention hearing or detaining [him/her] pending trial.

Because no § 3142(f)(1) or § 3142(f)(2) factor is met in [CLIENT’S] case, detaining [him/her] is illegal.

IV. It Is Illegal to Detain [CLIENT] At All Because Ordinary “Risk of Flight” Is Not a Statutory Basis for Detention at the Initial Appearance.

It was improper for the Magistrate Judge to detain [CLIENT] and set a Detention Hearing on the government’s bare allegation that [he/she] poses a “risk of flight,” for three reasons. First, the plain language of the statute permits detention at the Initial Appearance only when the

²⁶ *Id.* at 92. “Yet despite this prohibition, judges detain 37% of those charged with fraud offenses at the Initial Appearance” nationwide.” *Id.* Given that a court is only authorized to hold a Detention hearing in a “narrow subset of ‘non-(f)(1) cases,’” this statistic is striking. *Id.* at 91. The FCJC study regularly observed unlawful detentions in fraud cases. *Id.* at 101–102.

defendant poses a “*serious* risk” of flight, § 3142(f)(2)(A), but in this case the government alleged a mere *ordinary* risk of flight. Second, the government bears the burden of presenting some *evidence* to substantiate its allegation that a defendant is a serious risk of flight, but here the government has provided no such evidence. Third, to establish “serious risk” of flight the government must demonstrate that the defendant presents an “extreme and unusual” risk of willfully fleeing the jurisdiction if released, but the government has not met that burden here. Accordingly, it is improper to hold a Detention Hearing at all, let alone detain [CLIENT] for the duration of the case.

A. Supreme Court Precedent and the Plain Language of the BRA Prohibit Detaining a Defendant as an Ordinary “Risk of Flight.”

Ordinary “risk of flight” is not a factor in § 3142(f). By its plain language, § 3142(f)(2)(A) permits detention and a hearing only when there is a “*serious* risk that [the defendant] will flee.”²⁷ There is some risk of nonappearance and potentially some risk of flight in every criminal case; “serious risk” of flight means something more. *See United States v. White*, 2021 WL 2155441, at *10 (M.D. Tenn. May 27, 2021) (recognizing that “serious flight risk” is “narrower” than “flight risk” and is “distinct from ‘risk of non-appearance’”). According to a basic canon of statutory interpretation, the term “*serious* risk” means that the risk must be more significant or extreme than an ordinary risk. *See, e.g., Corley v. United States*, 556 U.S. 303, 314 (2009) (“[O]ne of the most basic interpretative canons [is] that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” (citation omitted)).

²⁷ *See* Siegler, *supra* note 1, at 91 (“[O]rdinary risk of flight is ... an impermissible basis on which to order detention at the Initial Appearance or schedule a Detention Hearing.”).

B. It Was Improper to Detain [CLIENT] Because the Government Has Provided No Evidence to Support its Claim that [CLIENT] Is a Serious Risk of Flight.

Where the government's only legitimate § 3142(f) ground for detention is "serious risk" of flight, the government bears the burden of establishing, by a preponderance of the evidence, that the defendant poses a "serious risk" of flight, rather than the ordinary risk attendant in any criminal case. *See Friedman*, 837 F.2d at 49. Moreover, a defendant "may be detained *only if the record supports a finding* that he presents a serious risk of flight." *Himler*, 797 F.2d at 160 (emphasis added); *see also United States v. Robinson*, 710 F. Supp. 2d 1065, 1088 (D. Neb. 2010) (criticizing the government for failing to present evidence of "serious risk" of flight at the Initial Appearance and saying "no information was offered to support [the] allegation"); *White*, 2021 WL 2155441, at *7 (holding that "a court may not find that a case involves a serious risk of flight just because the Government claims it does, but rather must make its own determination on the issue"). After all, the statute authorizes detention only "*in a case that involves*" a "serious risk" that the person will flee. § 3142(f)(2)(A) (emphasis added). This contemplates a judicial finding about whether the case in fact involves a *serious* risk of flight.²⁸ The government must provide an evidentiary basis to enable the judge to make an informed decision, typically evidence that relates either to the defendant's history and characteristics or to the circumstances of the offense.²⁹ The government has presented no such evidence here.

²⁸ Had Congress intended to authorize Detention Hearings based on a mere certification by the government, Congress could have enacted such a regime, just as they have done in other contexts. *See, e.g.*, 18 U.S.C. § 5032 (creating exception to general rule regarding delinquency proceedings if "the Attorney General, after investigation, certifies to the appropriate district court of the United States" the existence of certain circumstances); 18 U.S.C. § 3731 (authorizing interlocutory appeals by the government "if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding").

²⁹ *See Siegler, supra* note 1, at 109 ("Because the law demands a showing that any risk of flight is "serious," the prosecution should present some evidence to meet its burden, such as evidence about the particular arrestee's history and characteristics (e.g., past failures to appear in court) or to the circumstances of the offense (e.g., the person led the police in a high-speed chase).").

C. Detaining a Defendant as a “Serious Risk of Flight” Is Appropriate Only in “Extreme and Unusual Circumstances” Involving a Heightened Risk of “Intentional” Flight.

The BRA’s legislative history makes clear that detention based on serious risk of flight is only appropriate under “extreme and unusual circumstances.”³⁰ The government must demonstrate that the risk of flight in a particular case rises to the level of extreme or unusual, and no such showing has been made here. Courts have articulated the elements of this extreme or unusual standard in different ways, but the upshot remains the same—defendants are “serious” flight risks in only rare cases. *See United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015) (“Only in rare cases should release be denied, and doubts regarding the propriety of release are to be resolved in favor of the defendant.”); *see also United States v. Runsdorf*, 2022 WL 303548, at *4 (S.D. Fla. Jan. 24, 2022) (finding that the government must establish “a *heightened* likelihood of flight that is demonstrably more than the risk posed by a generic defendant charged with a similar offense” (emphasis added)).

The only defendants who qualify for detention under § 3142(f)(2) are those who are “[t]rue flight risks”—people the government can prove are likely to willfully flee the jurisdiction with the intention of thwarting the judicial process.³¹ *See White*, 2021 WL 2155441, at *7

³⁰ *See Bail Reform Act of 1983: Rep. of the Comm. on the Judiciary*, 98th Cong. 48 (1983) (“Under subsection f(2), a pretrial Detention Hearing may be held upon motion of the attorney for the government or upon the judicial officer’s own motion in three types of cases. . . . [T]hose [types] involving . . . a serious risk that the defendant will flee . . . reflect the scope of current case law that recognizes the appropriateness of denial of release in such cases.”) (emphasis added) (citing *United States v. Abrahams*, 575 F.2d 3, 8 (1st Cir. 1978)—which held that only a “rare case of extreme and unusual circumstances . . . justifies pretrial detention”—as representing the “current case law”); *see also Gavino v. McMahon*, 499 F.2d 1191, 1195 (2d Cir. 1974) (holding that in a noncapital case the defendant is guaranteed the right to pretrial release except in “extreme and unusual circumstances”); *United States v. Kirk*, 534 F.2d 1262, 1281 (8th Cir. 1976) (holding that bail can only be denied “in the exceptional case”).

³¹ *See* Lauryl Gouldin, *Defining Flight Risk*, 85 U. Chi. L. Rev. 677, 725 (2017). This rule is sound policy, as the risk of a defendant becoming either a “local absconder” (who intentionally fails to appear but remains in the jurisdiction), *id.* at 735, or a “low-cost non-appearance” (who unintentionally fails to appear), *id.* at 729, can be addressed by imposing conditions of release like electronic monitoring, GPS monitoring, and support from pretrial services.

(holding that a “case involves a ‘serious risk of flight,’ as opposed to a mere risk of non-appearance, if it involves a serious risk that the defendant intentionally will avoid court proceedings”). Risk of flight is not the same as risk of nonappearance, *see White*, 2021 WL 2155441, at *10, and a defendant should never be detained as a “serious risk” of flight when the risk of flight or nonappearance can be mitigated by conditions of release.

V. In This Case, the Government Has Not Met Its Burden of Proving That [CLIENT] Poses a “Serious” Risk Of Flight Under § 3142(f)(2)(A).

[CLIENT] must be released immediately on conditions because the government [did not argue that [CLIENT] posed a “serious risk” of flight and] did not present any evidence whatsoever to establish that “there is a serious risk that the [defendant] will flee” the jurisdiction under § 3142(f)(2)(A). Although the defense bears no burden of proof, it is clear from [CLIENT’S] history and characteristics that [he/she] does not pose a serious risk of flight. [DISCUSS FACTS HERE THAT SHOW NO SERIOUS RISK OF FLIGHT: TIES TO COMMUNITY, FAMILY, EMPLOYMENT, PAST COURT APPEARANCES, FTAs ARE STALE, OTHER EVIDENCE OF STABILITY.]

As in *United States v. Morgan*, 2014 WL 3375028 (C.D. Ill. July 9, 2014), “the facts fail to establish any risk of flight,” let alone a risk serious enough to authorize a Detention Hearing. *Id.* at *5 (“[T]he defendant has lived at his current address for over seven years and has lived in the same community for his entire life. His mother and siblings also all live relatively close to his residence, as do his children and their mothers. . . . Additionally, nothing in his criminal history suggests that he ever failed to appear for a court hearing.”); *see also Friedman*, 837 F.2d at 49–50 (reversing a detention order for “serious risk of flight” where defendant was a lifelong resident of the district, was married with children, had no prior record, had been steadily employed before his arrest, and had been on bond for related state charges without incident);

White, 2021 WL 2155441, at *13–14 (concluding that the government failed to show “serious risk of flight” where the defendant lacked community ties in the district, was charged with evading arrest and previously failed to appear in court in a different case).

Because [CLIENT] does not present a “serious risk” of flight, § 3142(f)(2)(A) is not met. As neither § 3142(f)(1) nor § 3142(f)(2) is satisfied, a Detention Hearing is not authorized, and [he/she] cannot be detained under the law.

VI. Statistics Showing that It Is Extraordinarily Rare for Defendants on Bond to Flee or Recidivate Further Demonstrate that [CLIENT] Does Not Pose a Serious Risk of Flight.

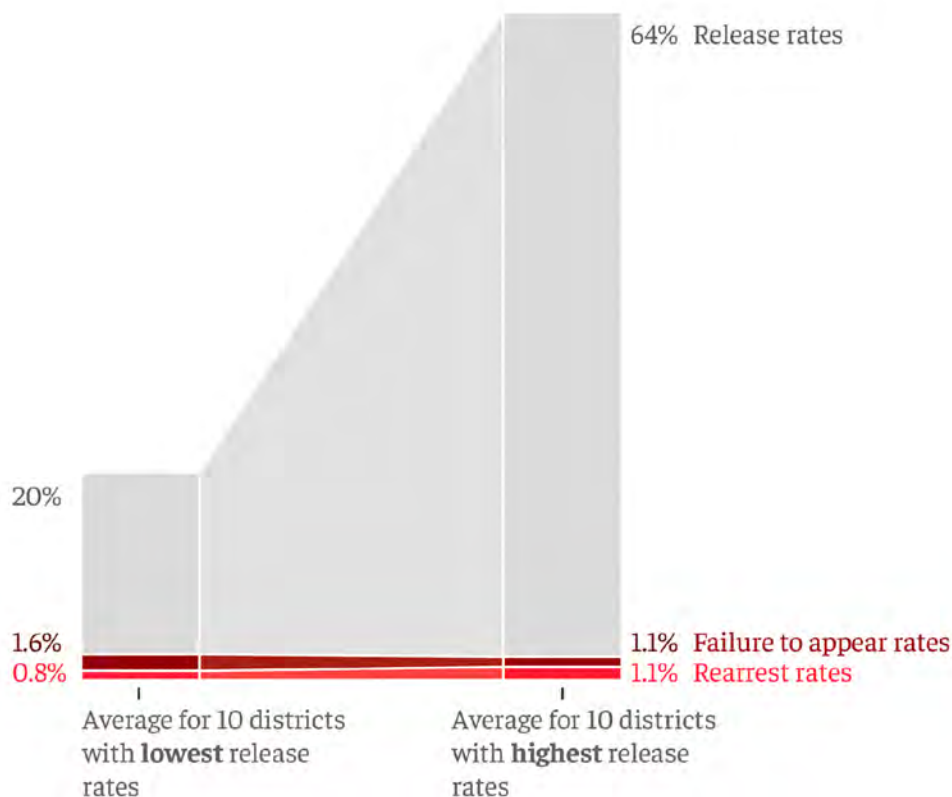
The government’s own data prove that judges can release more people without risking higher rates of crime and flight. In this case, this Court should be guided by AO statistics showing that nearly everyone released pending trial appears in court and does not reoffend. In fact, in 2021, 99% of released federal defendants nationwide appeared for court as required and 99% were not arrested for new crimes on bond.³² Significantly, this near-perfect compliance rate is seen equally in federal districts with very high release rates and those with very low release rates.³³ Even in districts that release two-thirds of all federal defendants on bond, just 1% fail to

³² 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%).

³³ 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.

appear in court and 1% are rearrested while released.³⁴ The below chart reflects shows the same vanishingly low failure to appear and rearrest rates based on AO data spanning 2007 to 2021.³⁵

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



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.³⁶ 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.”³⁷

³⁴ See App. 1; App. 2.

³⁵ See Siegler, *supra* note 1, at 25 fig.4.

³⁶ *Id.* at 246 n.42.

³⁷ *Id.*

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 presented evidence that shows that [he/she] would be among the approximately 1% of defendants who fail to appear in court or are rearrested on bond, let alone that there is “a serious risk that the defendant intentionally will avoid court proceedings.” *White*, 2021 WL 2155441, at *7. Detaining [CLIENT] without evidence that they pose a “serious risk” of flight violates their constitutionally protected liberty interest.

VII. There Is No Other Basis to Detain [CLIENT] as a Serious Risk of Flight in this Case.

The potential penalty in this case is not a legitimate basis for finding a serious risk of flight. There is no evidence Congress intended courts to de facto detain any client facing a long prison sentence. Indeed, many federal defendants face long sentences—being a defendant in a run-of-the-mill federal case cannot possibly be an “extreme and unusual circumstance.” Relatedly, if a finding of serious risk of flight under § 3142(f)(2) could be justified solely by the seriousness of a given charge and its penalty, Congress could have chosen to list the charge in

§ 3142(f)(1). *See United States v. Lopez-Chilel*, 2022 WL 1178503, at *3 (E.D. Mich. Apr. 20, 2022); *White*, 2021 WL 2155441, at *13 (“[F]ederal crimes are generally serious with serious penalties, and yet under the Bail Reform Act release is generally favored in federal criminal cases—as it should be, since locking up persons prior to conviction should be something of a last resort. And in the realm of federal crimes, the seriousness here by no means stands out.”); *United States v. Giordano*, 370 F. Supp. 2d 1256, 1264 (S.D. Fla. 2005) (“[I]t is generally accepted that more than evidence of the commission of a serious crime and the fact of a potentially long sentence is required to support a finding of serious risk of flight. A mere theoretical opportunity for flight is not sufficient grounds for pretrial detention.” (citation omitted)).

[USE IF CLIENT HAS A CRIMINAL RECORD BUT NO BOND FORFEITURES]

Additionally, a criminal record also does not automatically render a client a serious risk of flight. To the contrary, evidence that a defendant has complied with court orders in the past supports a finding that [he/she] is *not* a serious risk of flight. *See, e.g., United States v. Williams*, 1988 WL 23780, at *1 (N.D. Ill. Mar. 8, 1988) (defendant who made regular state court appearances in the past deemed not a serious flight risk).

[USE THIS PARAGRAPH IN FRAUD CASE] The mere fact that [CLIENT] is charged with an economic crime likewise does not render [him/her] a serious risk of flight. “In economic fraud cases, it is particularly important that the government proffer more than the fact of a serious economic crime that generated great sums of ill-gotten gains . . . [;] evidence of strong foreign family or business ties is necessary to detain a defendant.” *Giordano*, 370 F. Supp. 2d at 1264. The government has not presented any evidence that [CLIENT] intends to flee or has anywhere to flee to, meaning that “many of the key factors that would warrant detention in an economic fraud case are absent here.” *Id.* at 1270.

VIII. Detaining [CLIENT] as a Serious Risk of Flight Is Not Only Legally Unsupported, But Is Also Harmful and Unnecessary.

A. A Few Days of Detention Can Have Disastrous Consequences on Someone's Life.

Congress was correct to cabin pretrial detention to “extreme and unusual circumstances,” because even very short periods of detention have been shown to seriously harm defendants.³⁸ For example, according to a recent study published by the Administrative Office of the U.S. Courts, 37.9% of federal defendants detained fewer than three days reported having a negative outcome at work (such as losing their job).³⁹ Likewise, 29.9% of people detained fewer than three days reported that their housing became less stable.⁴⁰ In other words, a substantial minority of people held for only one or two days in federal cases still lose their jobs or their housing as a result of the brief detention.

There is an intuition that pretrial detention protects society, but this is not borne out by the evidence. “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 By contrast, pretrial release has been shown to improve case outcomes and mitigate the deleterious effects of facing federal criminal charges.”⁴¹ In addition, the FCJC’s study estimates that pretrial detention imposes a *one-billion-dollar price tag* on taxpayers.⁴²

³⁸ See Siegler, *supra* note 1, at 70–72 (summarizing research on the negative impact of short periods of detention and describing how “pretrial detention places significant burdens on individuals, families, and communities, yet the data show that these costs provide little societal benefit.”).

³⁹ Alexander M. Holsinger & Kristi Holsinger, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, 82(2) Federal Probation 39, 42 (2018), archived at <https://perma.cc/LQ2M-PL83>.

⁴⁰ *Id.*

⁴¹ Siegler, *supra* note 1, at 62 (citing studies).

⁴² *Id.* at 23.

These fiscal costs pale compared to the human costs: 118,000 human beings are current locked in federal jails, spending an average of 1 year in jail.⁴³ While in jail, people suffer major personal losses—their job, home, custody of their children.⁴⁴ These harms also impact the loved ones and communities of those detained.⁴⁵ “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.”⁴⁶ Moreover, the high federal detention rates fall overwhelmingly on people of color and those from low-income backgrounds.⁴⁷

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.⁴⁸ Over 40% of people who die in jail die within their first week.⁴⁹ 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.⁵⁰

In sum, detaining [CLIENT] for even one or two days in this case is not just illegal—it could also jeopardize [his/her] physical, financial, and mental wellbeing.

⁴³ AO Table H-15 (June 30, 2022) (117,978); AO Table H-9A (June 30, 2022) (361 days).

⁴⁴ See Siegler, *supra* note 1, at 62 (citing studies).

⁴⁵ *Id.* at 62.

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 24.

⁴⁸ 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>.

⁴⁹ 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>.

⁵⁰ 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 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>.

B. Many Conditions of Release Have Been Proven to Effectively Manage Ordinary Risk of Flight or Nonappearance.

If the Court somehow finds that the government met its burden below of establishing serious risk of flight such that a Detention Hearing is authorized, [CLIENT] must nevertheless be released because there are conditions of release that will “reasonably assure” [CLIENT’s] appearance. Any concerns the Court may have about local nonappearance can be allayed by imposing any number of conditions of release that have been shown empirically to reduce the risk of local nonappearance. For example, a study conducted in New York state courts found that text message reminders were able to reduce failures to appear by up to 26%, translating to 3,700 fewer arrest warrants per year.⁵¹ Holistic pre-trial services focused on providing social services and *support* to clients also reduce the risk of non-appearance across all risk levels in state systems.⁵² Beyond the traditional role of Pretrial Services, this could include providing funding for transportation to court, providing childcare on court dates, and assisting clients in finding stable housing, employment or education.⁵³ Moreover, scholars and courts agree that electronic monitoring is especially effective at reducing risk of flight, although it is also particularly constricting of liberty, and consequently may only be imposed under the BRA if it is the *least* restrictive condition necessary to “reasonably assure” appearance and community safety.⁵⁴

⁵¹ See Brice Cooke et al, *Text Message Reminders Decreased Failure to Appear in Court in New York City*, Abdul Latif Poverty Action Lab (2017), archived at <https://perma.cc/JCW7-JVZW>.

⁵² See generally Christopher Lowenkamp and Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes*, John and Laura Arnold Foundation, Special Report (2013), archived at <https://perma.cc/R3F3-KZ76>.

⁵³ See generally John Clark, *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem-Solving Options at the Pretrial Stage*, Pretrial Justice Institute (2007), archived at <https://perma.cc/5C8C-7HJK>.

⁵⁴ See, e.g., Samuel R. Wiseman, *Pretrial Detention and the Right to the Monitored*, 123 Yale L. J. 1344, 1347–48 (2014) (“Increasingly sophisticated remote monitoring devices have the potential to sharply reduce the need for flight-based pretrial detention [T]he question of finding other ways of ensuring a non-dangerous defendant’s presence at trial is one not of ability, but of will. . . .”); *id.* at 1368–74 (citing studies in both European and American contexts to demonstrate that electronic monitoring is at least as

IX. [CLIENT] Requests Immediate Release with Conditions

Because there is no basis to detain [CLIENT], [he/she] should be released immediately under the following conditions: [INSERT CONDITIONS TAILORED TO CASE]. These conditions will “reasonably assure” [CLIENT’S] appearance and the safety of the community. § 3142(c). [ADD BRIEF EXPLANATION OF BASES FOR CONDITIONS].

X. Conclusion

For these reasons, [CLIENT] respectfully asks this Court to vacate the detention order and order [him/her] released on conditions this Court deems appropriate under §§ 3142(a)–(c). Because the government has provided no permissible basis for pretrial detention under § 3142(f), continuing to detain [CLIENT] violates the law.

effective as secured bonds at deterring flight, and that it comes at far reduced cost to both the defendant and the government); *United States v. O’Brien*, 895 F.2d 810, 814–16 (1st Cir 1990) (describing reduction in flight rate from monitoring program and concluding that “evidence concerning the effectiveness of the bracelet alone [] arguably rebuts the presumption of flight”). *But see also* Siegler, *supra* note 1, at 185 (finding through interviews with stakeholders that electronic monitoring is overused despite the possibility of less punitive alternatives and can impose a “high pecuniary burden for arrestees”).

Note to Counsel re Section V 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 V 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.

Detention Hearing Materials

- Detention Hearing Checklist & Flowchart for Defense Attorneys
- Template Motion: Defendant's Motion for Pretrial Release in Presumption Case
- Non-Citizen Cases: Sample Motion for Release in U.S. v. Melo-Ramirez, Case No. 4:19-CR68, Dkt. 9 (E.D. Va.) (filed 6/26/19)