

2026 Conference for the U.S. District Court for the District of Oregon
Handout: A Data-Driven Approach to Federal Pretrial Release and Detention
(Prof. Alison Siegler • May 7, 2026)

I. Key Resources on Pretrial Detention and the Bail Reform Act

- Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* (2022), <https://freedomdenied.law.uchicago.edu> (separate handout).
 - Report Website: <https://freedomdenied.law.uchicago.edu>
- **THE BENCHBOOK FOR UNITED STATES DISTRICT COURTS** (FED. JUD. CTR. 7th ed. 2026), <https://www.fjc.gov/content/397447/benchbook-us-district-courts-seventh-edition>
 - **“In the Seventh Edition, the first three sections have been rewritten to provide a comprehensive step-by-step guide to the procedures and requirements of the Bail Reform Act of 1984, and to provide greater guidance on the right to the assistance of counsel with emphasis on the importance of timely appointment of counsel.”** *Id.* at iii.
 - *Initial Appearance*: Ch. 1.01 at 1–23
 - *Counsel at Initial Appearance*: Ch. 1.01 at 3–6 (*Appointment of Counsel*); Ch. 1.02 at 25–29 (*Appointment of Counsel or Pro Se Representation*)
 - *Release or Detention Pending Trial*: Ch. 1.03 at 31–72
 - *Presumptions law*: Ch. 1.03 at 48
- **THE BAIL REFORM ACT OF 1984** (FED. JUD. CTR. 4th ed. 2022), <https://www.fjc.gov/content/373297/bail-reform-act-1984-fourth-edition>: Chapters 1 and 2
 - *Initial Appearance law*: Ch. 2 at 18
 - *Counsel at Initial Appearance*: Ch. 1 at 2, Ch. 2 at 18; non-citizens: Ch. 2 at 20, 25
 - *Detention Hearing law*: Ch. 2 at 29
 - *Presumptions law*: Ch. 2 at 35
- *Initial Appearance Hearings Flowchart* (attached).
- *Detention Hearing Flowchart* (attached).

II. DOJ Policy Directive re: Pretrial Detention

- **Citation**: U.S. Dep’t of Just., Just. Manual § 9-6.100 (2023), <https://www.justice.gov/jm/jm-9-6000-release-and-detention-pending-judicial-proceedings> (attached).
- **Initial Appearance & Detention Hearing**:
 - “As with all prosecutorial decisions, a determination as to whether to advocate for detention, or instead to advocate for or agree to a particular set of release conditions, should be case- and defendant-specific.” § 9-6.100 (emphasis added).
 - “There also are cases in which detention is not warranted. Prosecutors should not seek detention merely because the Bail Reform Act permits such an argument to be made Rather, a weighing of all the facts and circumstances, including but not limited to what charges or violations a defendant presently faces, and the strength of the evidence in support of those charges or violations, is required.” *Id.* (emphasis added).
- **Presumption Cases**: “Prosecutors should not seek detention merely because the Bail Reform Act permits such an argument to be made or presumes that detention, based on the charges, is appropriate (as it does for many drug charges, *see* 18 U.S.C. § 3142(e)(3)).” § 9-6.100 (emphasis added).

- **Limitations on Continuances Between Initial Appearance Hearing and Detention Hearing:** “Continuances Pending Detention Hearings: While prosecutors can and should invoke this provision [in § 3142(f) requesting a continuance for the detention hearing] in certain cases, they should do so only after a consideration of case- and defendant-specific facts and circumstances, including whether detention appears warranted and such a continuance is reasonably necessary. Prosecutors should endeavor, where practicable in light of all facts and circumstances, and consistent with district and judicial procedure and practice, to proceed to a detention hearing reasonably soon after a defendant’s arrest, and where feasible and appropriate, be ready to proceed more quickly than the three days permitted in certain cases under the Bail Reform Act.” § 9-6.110.
- **Counsel at Initial Appearance:** “[P]rosecutors *must recognize* that ‘a defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding [including] initial appearance,’ except where ‘the defendant waives this right.’” (emphasis added) (citing Fed. R. Crim. P. 44(a), 18 U.S.C. § 3006A). § 9-6.110.

III. Initial Appearance Hearing Law

A distinct legal standard applies at the Initial Appearance; if the Court does not make a finding that the § 3142(f) standard has been met, the Court is prohibited from holding a Detention Hearing and the defendant must be released immediately.

- [THE BENCHBOOK](#) (2026):
 - **The (f) threshold is a strict prerequisite to holding a detention hearing:**
 - “The motion for a detention hearing must not be granted automatically. A detention hearing may be held *only* if the government establishes that at least one of the circumstances listed in § 3142(f)(1) or (2) applies to the defendant. Those § 3142(f) circumstances also list the types of cases in which a court may order pretrial detention at all.” *Id.* at 12.
 - **The defendant must be released at the Initial Appearance if the motion for detention fails:**
 - “If the motion for detention fails to allege at least one of the factors in subsection (f)(1) or (2), the motion must be denied and the defendant must be released.” *Id.* at 14.
 - **The Initial Appearance Hearing and the Detention Hearing are legally distinct:**
 - “Although the motion for a detention hearing usually occurs during the initial appearance hearing, the detention hearing itself is a separate and distinct hearing under § 3142 with its own specific procedural requirements, factors to consider, evidentiary standards, and burdens of proof.” *Id.* at 12.
 - **There is no authority to hold the defendant past initial appearance without a granted motion:**
 - “There is no provision in the statute or rule that permits a continuance for the court to decide the motion for a detention hearing after the initial appearance. The defendant cannot be detained once the initial appearance has ended unless the motion for a detention hearing and then a motion for a continuance were both granted.” *Id.* at 12.

- Federal Judicial Center’s [THE BAIL REFORM ACT OF 1984](#) (4th ed. 2022):
 - “If none of the factors listed in 18 U.S.C. § 3142(f)(1) or (2) are present, there is no authority to hold a detention hearing and therefore the defendant must be released at the initial appearance. . . .” *Id.* at 1.
- Key Court of Appeals Cases
 - [United States v. Ploof](#), 851 F.2d 7, 11 (1st Cir. 1988) (“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.”).
 - [United States v. Friedman](#), 837 F.2d 48, 49 (2d Cir. 1988) (“[D]etention is permitted only when the charge is for certain enumerated crimes, 18 U.S.C. § 3142(f)(1). . . , or when there is a serious risk that the defendant will flee or obstruct . . . justice.”).
 - [United States v. Himler](#), 797 F.2d 156, 160 (3d Cir. 1986) (“[T]he requisite circumstances for invoking a detention hearing [enumerated in § 3142(f)] in effect serve to limit the types of cases in which detention may be ordered prior to trial.” (quoting S. REP. NO. 225, at 20 (1983), as reprinted in 1984 U.S.C.C.A.N. 3182, 3189)).
 - [United States v. Byrd](#), 969 F.2d 106, 109 (5th Cir. 1992) (emphasizing the limitations § 3142(f) places on detention and stating, “[t]here can be no doubt that this Act clearly favors nondetention”).
 - [United States v. Twine](#), 344 F.3d 987, 987 (9th Cir. 2003) (“We are not persuaded that the [BRA] authorizes pretrial detention without bail based solely on a finding of dangerousness. This interpretation of the Act would render meaningless 18 U.S.C. § 3142(f)(1) and (2).”) (collecting cases).
 - [United States v. Gerkin](#), 570 F. App’x 819, 822-23 (10th Cir. 2014) (“The existence of a serious flight risk is the predicate for a detention hearing under [§ 3142\(f\)\(2\)\(A\)](#), but it does not alone justify detention. Under [§ 3142\(e\)\(1\)](#), judges can order detention only if they find that no conditions or combination of conditions will reasonably assure community safety and appearance in court.”)
 - [United States v. Singleton](#), 182 F.3d 7, 9 (D.C. Cir. 1999) (“Detention until trial is relatively difficult to impose” given the limitations in § 3142(f).).
- Key District Court Cases
 - [United States v. Spirea](#), 2024 WL 4903759, at *3 (D. Or. Nov. 27, 2024) (“It is now well settled in the Ninth Circuit that the Government may not seek a defendant’s pretrial detention unless the (f)(1) or (f)(2) criteria are satisfied, despite the defendant’s dangerousness.”) (collecting cases).
 - “The Court will then determine whether a detention hearing is authorized before holding a detention hearing.” *Spirea*, 2024 WL 4903759 at *3 n.3
 - “A recent study of federal pretrial detention identifies ... a ‘problematic feedback loop’: ‘[T]he prosecutor requests pretrial detention for reasons not authorized by the law, the defense attorney does not object, and the judge neither questions the prosecutor nor adheres to the statutory requirements, sometimes jailing people unlawfully.’” *Spirea*, 2024 WL 4903759 at *3 n.3 (citing *United States v. Subil*, 2023 WL 3866709, at *4 (W.D. Wash. June 7, 2023) (quoting Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 29 (2022))).
 - **Result:** Affirmed prior detention order because of risk of nonappearance under 18 U.S.C. §§ 3142(e), (f)(2), and (g).

- The Initial Appearance § 3142(f) legal standard is of constitutional importance and requires a real hearing at which the government must make a factual showing:
 - [United States v. Subil](#), 2023 WL 3866709, at *4 (W.D. Wash. June 7, 2023) (“The § 3142(f) categories are not mere incantations that will conjure a hearing upon their simple utterance. The Act requires that the Government make a factual showing to justify why it should be given a shot at detention. . . . Indeed, the Supreme Court’s holding that detention imposed by the Act is regulatory, not punitive—and therefore constitutional—is premised in part on the Act’s careful limits on when a detention hearing is available.”).
- In any case for which automatic detention at the Initial Appearance is not authorized under § 3142(f)(1), the government bears the burden of establishing “serious risk” of flight under § 3142(f)(2)(A) or “serious risk” of obstruction under § 3142(f)(2)(B). (See discussion of serious risk of flight standard below).
 - [United States v. White](#), 2021 WL 2155441, at *7 (M.D. Tenn. May 27, 2021) (discussing the “serious risk of flight” standard; 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”).
- It is unlawful to detain a defendant as a danger to the community at Initial Appearance:
 - Federal Judicial Center’s [THE BAIL REFORM ACT OF 1984](#) (4th ed. 2022):
 - “‘Danger to the community’ or a general allegation of dangerousness. . . [,] which is a factor to be considered during a detention hearing, is not a factor under section 3142(f) that authorizes a detention hearing to be held in the first place.” *Id.* at 20-21.
 - [United States v. Morgan](#), No. 14-CR-10043, 2014 WL 3375028 (C.D. Ill. July 9, 2014) (concluding that financial dangerousness is not a legitimate ground for detention at the Initial Appearance and denying the government’s detention request in an access device fraud case).
 - [United States v. Gloster](#), 969 F. Supp. 92, 94 (D.D.C. 1997) (If none of the factors in § 3142(f) is met, “then no matter how dangerous or antisocial a defendant may be, Congress has concluded that such a defendant must be released, either on personal recognizance or on the least restrictive condition[s]” of release that will reasonably assure appearance and safety.).

The court may not hold a Detention Hearing (or detain the defendant at all) unless the government establishes a § 3142(f) factor or the Court determines § 3142(f)(2) is satisfied.

- [THE BENCHBOOK](#) (2026):
 - A government motion for detention under (f)(2) must be supported by specific, not generic, evidence:
 - “For factors under subsection (2), the motion must allege that the risk presented by this particular defendant is ‘serious’ and be supported by specific evidence of the risk involved. It is not sufficient to claim an ordinary risk that the defendant, or defendants in general who are charged with a similar offense or offenses, will flee, potentially obstruct justice, or harm a prospective witness or juror.” *Id.* at 14 (citing *Bail Reform Act*, 4th ed. at 20).

- [Subil](#), 2023 WL 3866709, at *4:
 - “[P]erhaps it is the case that ‘in common practice, if the Government files a motion for detention under 18 U.S.C. § 3142(f)(2)(A) based on alleged serious risk of flight, the Government gets its detention hearing, with no questions asked about the appropriateness of holding the detention hearing.’ *United States v. White*, No. C21-4070, 2021 WL 2155441, at *6 (M.D. Tenn. May 27, 2021). . . . A recent study of federal pretrial detention identifies just such a ‘problematic feedback loop’: ‘[T]he prosecutor requests pretrial detention for reasons not authorized by the law, the defense attorney does not object, and the judge neither questions the prosecutor nor adheres to the statutory requirements, sometimes jailing people unlawfully.’ Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 29 (2022), <https://perma.cc/D4CG-XWEB>. **But such practices cannot amend the text of the Act, which carefully limits the circumstances under which a detention hearing may take place.** Under the Act, the Government must proffer information that demonstrates a case is eligible for a detention hearing under § 3142(f). Courts must make a finding, by preponderance of the evidence, that a § 3142(f) category is present. And defense counsel must be vigilant in ensuring that these requirements are followed.” (emphasis added).
- [United States v. Molina-Orantes](#), 798 F. Supp. 3d 1204, 1210 (D. Or. 2025) (“It is now well settled in the Ninth Circuit that the Government may not seek a defendant’s pretrial detention *unless* the (f)(1) or (f)(2) criteria are satisfied.”) (emphasis added) (citation omitted).
 - “A recent study of federal pretrial detention identifies ... a ‘problematic feedback loop’: ‘[T]he prosecutor requests pretrial detention for reasons not authorized by the law, the defense attorney does not object, and the judge neither questions the prosecutor nor adheres to the statutory requirements, sometimes jailing people unlawfully.’” *Molina-Orantes*, 798 F. Supp. 3d at 1211 n.2 (citing *United States v. Subil*, 2023 WL 3866709, at *4 (W.D. Wash. June 7, 2023) (quoting Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 29 (2022))).
 - **Result:** Affirming release order because no § 3142(f) factor authorized detention.
- [United States v. Butland](#), 2025 WL 2597763 (D. Mass. Sep. 8, 2025)
 - “First, the court may not hold a detention hearing *unless* one of the conditions authorizing a hearing under 18 U.S.C. § 3142(f) exists. Section 3142(f) thus ‘serves an important gate-keeping function by preventing even the opportunity to seek detention in all but a certain, narrow subset of cases.’” *Id.* at *1 (quoting [United States v. Subil](#), 2023 WL 3866709, at *4 (W.D. Wash. June 7, 2023)).
 - Further, “[i]f none of the § 3142(f) conditions apply, the government has not satisfied its initial burden, and the defendant *must* be released.” *Id.* (emphasis added) (citation omitted).
 - “The § 3142(g) factors guide this Court’s determination of whether any condition or combination of conditions can reasonably assure a defendant’s appearance and the safety of others. They are not, as the Government would have it, factors that the Government can recite to conjure a detention hearing.”
 - **Result:** Finding no serious risk of flight under § 3142(f)(2)(A) but affirming pretrial detention because § 3142(f)(1)(E) was satisfied in gun case.
- [United States v. Covarubias-Carranza](#), 2025 WL 2265746, at *1 (E.D. Cal. Aug. 7, 2025) (“Under the Bail Reform Act, a detention hearing may *only* be held if either of the prongs of 18 U.S.C. § 3142(f) are satisfied.”) (emphasis added).

- **Result:** Affirming release order because no § 3142(f) factor authorized detention.
- [*United States v. Mackey*](#), 791 F. Supp. 3d 908, 911 (C.D. Ill. 2025) (“If the government fails to establish that a defendant is either charged with an offense falling within (f)(1) or that the case involves what is set forth in (f)(2), a defendant may not be detained—*full stop*.”) (emphasis added) (citation omitted).
 - “If, and only if, the government meets its threshold showing required by (f)(1) or (f)(2), then a defendant ‘shall be detained’ if the court grants a continuance of the detention hearing.” *Id.* (quoting 18 U.S.C. § 3142(f)).
 - “The Court initially noted that ‘danger to the community’ is not a basis for the government to request a detention hearing, and, as it relates to flight, the government must make an initial showing that the case involves a ‘serious’ risk that such person will flee or threaten a witness.” *Id.* at 909 (quoting 18 U.S.C. § 3142(f)(2)) (emphasis added).
 - **Result:** Affirming release order because neither § 3142(f)(2) factor authorized detention.
- [*United States v. Romero-Martinez*](#), 2024 WL 965150, at *3 (D. Conn. March 6, 2024) (“The Bail Reform Act prescribes certain gateway criteria that must be satisfied as a *threshold matter* before a court may order pre-trial detention.”) (emphasis added) (citation omitted).
 - **Result:** Reversing detention order because no § 3142(f) factor authorized detention.

The government must make a preponderance of the evidence showing to obtain a Detention Hearing in § 3142(f)(2) cases.

- In any case for which automatic detention at the Initial Appearance is not authorized under § 3142(f)(1), the government bears the burden of establishing “serious risk” of flight under § 3142(f)(2)(A) or “serious risk” of obstruction under § 3142(f)(2)(B) by a preponderance of the evidence. (See discussion of serious risk of flight standard below).
- [*United States v. White*](#), 2021 WL 2155441, at *7 (M.D. Tenn. May 27, 2021) (discussing the “serious risk of flight” standard; 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”).
- [*United States v. Ibarra*](#), 2025 WL 27474, at *2 (D. Me. Jan. 3, 2025) (“The Government must prove that no conditions can assure the defendant's appearance by a preponderance of the evidence”).
- [*United States v. Subil*](#), 2023 WL 3866709, at *2 (W.D. Wash. June 7, 2023) (“A defendant is eligible for a hearing only if the Government shows, by a preponderance of the evidence, that the case falls into one of the categories listed in 18 U.S.C. § 3142(f)”).
- [*United States v. Butland*](#), 2025 WL 2597763, at *4 (D. Mass. Sep. 8, 2025) (“At [defendant’s] initial appearance, counsel for the Government asserted that it need only surpass a ‘low threshold’ and an ‘ever-so-slight hump’ to obtain a detention hearing under 18 U.S.C. § 3142(f)(2)(A). Not so. The Government must instead prove by a preponderance of the evidence that a defendant poses a serious risk of flight to obtain a detention hearing under 18 U.S.C. § 3142(f)(2)(A).”) (citation omitted).
- [*United States v. Mackey*](#), 791 F. Supp. 3d 908, 912 (C.D. Ill. 2025) (“In fact, the case law . . . suggests 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.”).
- [*United States v. Perez-Hernandez*](#), --- F.Supp.3d ----, 2025 WL 3620298, at *5 (S.D. Cal Oct. 3, 2025) (“To meet this burden, the Government ‘must present concrete information’ specific to the defendant, not ‘mere conclusory allegations,’ to demonstrate that they are a serious risk of

flight.”) (quoting [United States v. Figueroa-Alvarez](#), 681 F. Supp. 3d 1131, 1138 (D. Idaho 2023)).

It is unlawful to detain a person as a danger to the community at Initial Appearance or to hold a Detention Hearing on the ground of danger/financial danger.

- Prohibition on detention for “financial danger” at initial appearance: [United States v. Gunn](#), 2019 U.S. Dist. LEXIS 210792, at *10 (D. Or. Dec. 6, 2019) (“[T]he Court concludes that the Bail Reform Act does not authorize pretrial detention on the ground of danger for a defendant charged only with an unenumerated offense, even if the court holds a detention hearing based on the government’s allegations that the defendant also presents a serious risk of flight or obstruction.”)
- [United States v. Spirea](#), 2024 WL 4903759, at *3 (D. Or. Nov. 27, 2024) (“It is now well settled in the Ninth Circuit that the Government may not seek a defendant’s pretrial detention unless the (f)(1) or (f)(2) criteria are satisfied, despite the defendant’s dangerousness.”) (collecting cases).
- [United States v. Morgan](#), No. 14-CR-10043, 2014 WL 3375028 (C.D. Ill. July 9, 2014) (concluding that financial dangerousness is not a legitimate ground for detention at the Initial Appearance and denying the government’s detention request in an access device fraud case).
- [United States v. Gloster](#), 969 F. Supp. 92, 94 (D.D.C. 1997) (If none of the factors in § 3142(f) is met, “then no matter how dangerous or antisocial a defendant may be, Congress has concluded that such a defendant must be released, either on personal recognizance or on the least restrictive condition[s]” of release that will reasonably assure appearance and safety.).
- [United States v. Romero-Martinez](#), 2024 WL 965150, at *4 (D. Conn. March 6, 2024) (“The government insists that [the defendant] is a danger to the community. Danger to the community, however, is not one of the gateway criteria for detention under § 3142(f). And the Second Circuit has made clear that “[t]he 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).”) (quoting [United States v. Dillard](#), 214 F.3d 88, 96 (2d Cir. 2000)).
 - “A defendant who is not eligible must be released, notwithstanding dangerousness.” *Id.* (quoting [United States v. Dillard](#), 214 F.3d 88, 96 (2d Cir. 2000)).
- [United States v. Perez-Hernandez](#), --- F.Supp.3d ----, 2025 WL 3620298, at *3 (S.D. Cal Oct. 3, 2025) (“By holding that dangerousness alone cannot authorize detention under the Bail Reform Act, the *Twine* Court confirmed that § 3142(f) is a separate analysis from § 3142(g); and in the absence of a § 3142(f) factor, detention is not authorized, even if the defendant may well pose a danger to the community under § 3142(g).”) (citing [United States v. Twine](#), 344 F.3d 987, 987 (9th Cir. 2003)).
- [United States v. Covarubias-Carranza](#), 2025 WL 2265746, at *1 (E.D. Cal. Aug. 7, 2025) (collecting cases establishing that “an individual must be released” absent a § 3142(f) factor and that “[t]his is true whether the defendant is otherwise dangerous”).

“Serious risk of flight” under § 3142(f)(2)(A) is a higher standard than ordinary risk of flight or the risk of “non-appearance” under § 3142(e)(1).

- Summary: Various cases hold that the “serious risk” of flight standard that applies at the Initial Appearance Hearing under § 3142(f)(2)(A) differs both from any ordinary risk of flight and from the risk of non-appearance standard that applies at the Detention Hearing under § 3142(e).

- [United States v. Storme](#), 83 F.4th 1078 (7th Cir. 2023) (**KEY recent case defining flight**)
 - “[T]he plain import of the term “flight” connotes **an intentional act by a defendant to evade criminal prosecution by leaving the jurisdiction**. See *United States v. Ailon-Ailon*, 875 F.3d 1334, 1337 (10th Cir. 2017) (concluding that immigration removal does not qualify as flight because flight must involve an element of volition). That explains why magistrate and district judges routinely impose travel restrictions and require defendants to surrender passports—all to mitigate the risk of flight. Common definitions of flight support this conclusion. See *Flee*, WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY (1984) (“To run away”); *Flee*, AMERICAN HERITAGE DICTIONARY (2d Coll. Ed. 1982) (“To run away from or as from danger”).” *Id.* at 1083 (emphasis added).
- [United States v. White](#), 2021 WL 2155441 (M.D. Tenn. May 27, 2021)
 - **Summary**: At the Initial Appearance hearing, a case involves a “serious risk” of flight rather than a risk of non-appearance or a non-serious flight risk if it “involves a *serious* risk that the defendant *intentionally* will avoid court proceedings.” *Id.* at *7.
 - **Whether a prior failure to appear renders someone a “serious risk” of flight is a fact-intensive inquiry**:
 - “There are many possible reasons for a criminal defendant’s non-appearance, and Defendant has proffered one that is both exculpatory and not so far-fetched: that he was unaware that the court appearance was scheduled. It does not appear that the Government has shown that Defendant actually received notice or has otherwise debunked this explanation. Ultimately, the Court cannot conclude that his non-appearance was intentional. The Court finds. . . that it is more probative that Defendant has appeared in court in in his Oklahoma case at least three occasions. This, coupled with the absence of any indication of any failure to appear in the Oklahoma case, indicates that he would not fail to appear as required in this case—let alone intentionally fail to appear.” *Id.* at *14.
 - **Avoiding being caught in the heat of the moment** is not the same as being “inclined to jump bail and live as a fugitive.” *Id.* at *13.
 - **Being on pretrial release** at the time of the instant crime “goes more to whether [the defendant] would comply with conditions of release necessary to mitigate his risk of non-appearance and danger to others and the community, and less to whether he poses a risk of fleeing, *i.e.*, intentionally not showing up for court.” *Id.* at *13.
 - **Community ties anywhere in US weigh against finding serious risk of flight**. *Id.* at *14 (“[C]ommunity ties *anywhere* in the United States support Defendant’s position here because, to the extent that a defendant has community ties *somewhere* in this country, the defendant is less likely to choose the path of a fugitive reflected by a decision intentionally not to appear in court in a federal criminal case wherever it is pending.”)
- [United States v. Figueroa-Alvarez](#), 2023 WL 4315592 (D. Idaho July 3, 2023)
 - The court agrees with the reasoning in *White*, holding that “risk of flight is distinguishable from, and more narrow than, risk of non-appearance.” *Id.* at *5 (citing *White*, 2021 WL 2155441 at *8).
 - “[A] ‘serious risk of flight’ under § 3142(f)(2)(A) is a **great risk**—beyond average—that the defendant will **intentionally and actively** move within or outside the jurisdiction to avoid court proceedings or supervision.” *Id.* (emphasis added).

- “The Government must demonstrate serious risk of flight by a preponderance of the evidence” and “the Government must present ‘concrete information’ not ‘mere conclusory allegations.’” *Id.* (citation omitted).
- There must be an “individualized assessment” of serious risk of flight. *Id.* at *13.
- In discussing whether, and to what extent, factors for assessing risk of nonappearance at the Detention Hearing apply to assessing serious risk of flight at the Initial Appearance hearing, the court categorizes the factors as follows: “(i) incentives to flee; (ii) ability to flee; (iii) ties to the jurisdiction and the United States; and (iv) reliability and trustworthiness of the defendant.” *Id.* at *7.
- [*United States v. Molina-Orantes*](#), 798 F. Supp. 3d 1204, 1213–14 (D. Or. 2025)
 - Agreeing with the “well-reasoned” definition of “serious risk of flight” from *Figueroa-Alvarez* and *White*, noting that it must be “a great risk—beyond average—that the defendant will intentionally and actively move within or outside the jurisdiction to avoid court proceedings or supervision.” (quoting [*Figueroa-Alvarez*](#), 2023 WL 4315592, at *5 (D. Idaho July 3, 2023)).
- [*United States v. Gibson*](#), 384 F. Supp. 3d 955, 965 (N.D. Ind. 2019) (“While Congress chose to use “serious risk of flight” in subsection (f)(2)(A) to describe this limited scenario under which a defendant will face a detention hearing, Congress settled on very different language when describing the analysis courts must undertake once a detention hearing goes forward.”)
- [*United States v. Ailon-Ailon*](#), 875 F.3d 1334 (10th Cir. 2017)
 - At the Initial Appearance hearing, “[t]he government bears the burden of proving a defendant is a flight risk by a preponderance of the evidence.” *Id.* at 1337 (emphasis added).
 - The chance that a person might be subject to involuntary removal does not render them a “serious risk” of flight under § 3142(f)(2)(A): “[A] risk of involuntary removal does not establish a ‘serious risk that [the defendant] will flee’ upon which pretrial detention may be based.” *Id.*
- [*United States v. Rodriguez-Rodriguez*](#), 2025 WL 1651221, at *2 (D. Minn. June 11, 2025)
 - The requirement of finding a “serious risk that such person will flee,” 18 U.S.C. § 3142(f)(2)(A), is a higher standard than the “lack of reasonable assurance that a defendant will appear,” 18 U.S.C. § 3142(e), standard found elsewhere in the Bail Reform Act. *Id.*
 - “Not only are the two statutory provisions directed toward different objectives—one measuring whether the United States can have a hearing at all, the other whether a defendant should be detained—but they use different statutory language to express different standards.” *Id.*
 - “While the underlying burden of proof is a preponderance of the evidence in both cases, in one situation the United States must demonstrate to a preponderance a serious risk of flight, and a serious risk of flight is a more demanding showing than a reasonable assurance.” *Id.*
 - Conflating the two standards “overlooks the different statutory language of the two relevant sections of the Bail Reform Act” and “collapses the decision whether to hold a hearing into the decision whether to detain—a result that cannot be reconciled with the Congressional intent in the Bail Reform Act to favor release over pretrial detention.” *Id.*
 - **Result:** Finding no § 3142(f) factor authorized detention. (However, defendant remained in Immigration and Customs Enforcement custody.)

- [*United States v. Sanchez-Varela*](#), 2025 WL 2821564, at *2 (W.D. Va. Oct. 3, 2025)
 - Even if the government is able to put forth facts that “suggest a possibility of flight” a detention hearing is only authorized if the government can show “‘a serious risk that [defendant] will flee.’” (quoting 18 U.S.C. § 3142(f)(2)(A)).
 - **Result:** Affirming release order because no § 3142(f) factor authorized detention.
- [*United States v. Ambrocio-Perez*](#), 2025 WL 2256309, at *3 (D. Mass. Aug. 7, 2025)
 - Because of the particular language of § 3142(f), requiring a “serious” risk of flight, “courts have concluded that ‘Section 3142(f)(2)(A) requires more of the government than Section 3142(g)’s ‘risk of nonappearance’ showing that is more often addressed in detention hearings.’”
- [*United States v. Mejias-Mejias*](#), 771 F. Supp. 3d 688, 691 (D. Md. 2025)
 - The court concluded, based on analysis from other district courts, that “serious risk of flight” in § 3142(f)(2)(A) “requires more of the government than Section 3142(g)’s ‘risk of nonappearance’ showing that is more often addressed in detention hearings. That is, the government must show flight rather than mere nonappearance in court, as well as that the risk not only exists but is a serious one.” (citing [*United States v. Rodriguez-Fuentes*](#), 2025 WL 711955, at *2 (E.D. Ky. March 5, 2025)).
 - **Result:** Releasing defendant after determining no § 3142(f) factor authorized detention.
- [*United States v. Gonzalez*](#), 780 F. Supp. 3d 574, 580 (E.D. Pa. 2025)
 - “[E]vidence suggesting that a defendant ‘poses a general risk of nonappearance does not necessarily support a finding that the case involves a serious risk of flight under subsection (f), a risk that would contemplate a voluntary action by a defendant to flee.’” (quoting [*United States v. Cobix-Espinoza*](#), 655 F. Supp. 3d 584, 589 (E.D. Ky. 2023)).

The fact that a person is facing a long sentence does not render them a “serious risk” of flight under § 3142(f)(2)(A) because long sentences are the norm in federal cases.

- [*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. Friedman*](#), 837 F.2d 48, 50 (2d Cir. 1988): “In other cases concerning risk of flight, we have required more than evidence of the commission of a serious crime and the fact of a potentially long sentence to support a finding of risk of flight.”
- [*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).
- [*United States v. Runsdorf*](#), 2022 WL 303548, at *4 (S.D. Fla. Jan. 24, 2022): 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.”
- [*United States v. Romero-Martinez*](#), 2024 WL 965150, at *5 (D. Conn. March 6, 2024) (“Still, as the Second Circuit has observed, ‘we have required more than evidence of the commission of a serious crime and the fact of a potentially long sentence to support a finding of risk of flight.’”) (quoting [*United States v. Friedman*](#), 837 F.2d 48, 50 (2d Cir. 1988) (per curiam)).

- [*United States v. Abrego*](#), 787 F. Supp. 3d 830, 854 (M.D. Tenn. 2025) (“The severity of a potential sentence is not a determinative consideration in whether § 3142(f)(2)(A) applies to permit a detention hearing. In the context of ‘serious risk of flight,’ ‘federal 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.’”)
 - “By extension, a ‘serious risk of flight’ requires something more, some extraordinary potential outcome.” *Id.*
 - **Result:** Releasing defendant after determining no § 3142(f) factor authorized detention.
- [Article on Flight Risk](#): Lauryn P. Gouldin, *Defining Flight Risk*, 85 U. Chi. L. Rev. 677, 725 (2017).

If the government seeks a continuance between the Initial Appearance and the Detention Hearing, the Court cannot automatically grant that request; rather, the government must meet a legal standard to obtain a continuance.

- [*United States v. McLean*](#), -- F. Supp. 3d --, 2024 WL 4259570 (D.D.C. 2024) (rejecting the government’s argument that a continuance between Initial Appearance and Detention Hearing is “automatic,” and applying a “balance of hardships” standard).
 - Critiquing “the explosion in pretrial detention” in the federal system, *id.* at *1 n.1: “Between 1983—the year before Congress enacted the Bail Reform Act—and 2019, federal pretrial incarceration rates skyrocketed from less than 24% to 75%. See Alison Siegler et al., *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis*, Univ. Chi. L. Sch. Fed. Crim. Just. Clinic 1, 20–22 (Oct. 2022) In the same timeframe, the average length of pretrial detention increased from less than two months to a year. See *id.* at 23.”

Initial Appearance Hearing: Federal law requires representation by counsel at all Initial Appearance Hearings

- ***Right to Counsel at Initial Appearance*, Jud. Conf. of the U.S., Comm. on Def. Servs. (Mar. 19, 2024) (attached)**: Directive from the Judicial Conference of the United States mandating appointment of counsel and active representation by counsel during Initial Appearance Hearings (attached):
 - “Courts that do not currently ensure that every defendant has **active representation by counsel during the initial appearance** must comply with the governing statute and rules.”
- [THE BENCHBOOK](#) (2026):
 - “If counsel has not been assigned by the magistrate judge before the defendant’s first court appearance, assignment of counsel should be the first item of business before the judge. **Defendants must have the opportunity to be represented by counsel throughout the entire initial appearance hearing, including during any discussion of pretrial detention or release**, unless they waive that right. See also section 1.01: Initial Appearance, supra, at I.A, Appointment of Counsel, and Appendix B.” *Id.* at 25 (citing Judicial Conference’s Right to Counsel at Initial Appearance Memorandum).

- FJC’s [THE BAIL REFORM ACT OF 1984](#) (4th ed. 2022):
 - “[D]efendants should have counsel *from the start of the initial appearance*, well before a detention hearing occurs.” *Id.* at 44 (emphasis added).
 - Defendants need counsel to vindicate their rights under the § 3142(f) legal standard at Initial Appearance: “The procedures and issues involved in pretrial detention or release are complex, as is the decision whether a detention hearing is even warranted. It is important to ensure that defendants are provided the opportunity to consult with an attorney at the earliest stage of criminal proceedings, before any decisions, or even discussions, regarding release or detention occur.” *Id.* at 44.
- [18 U.S.C. § 3006A\(c\)](#): “A person for whom counsel is appointed *shall* be represented at *every stage of the proceedings from his initial appearance* before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings.” (emphasis added).
- [Fed. R. Crim. P. 44\(a\)](#): “A defendant *who is unable to obtain counsel* is entitled to have counsel appointed to represent the defendant at *every stage of the proceeding from initial appearance* through appeal, unless the defendant waives this right.” (emphasis added).
 - “The right to assignment of counsel is not limited to those financially unable to obtain counsel.” Fed. R. Crim. P. 44(a) advisory committee’s note to 1966 amendment.
 - “The phrase ‘from his initial appearance before the commissioner or court’ is intended to require the assignment of counsel *as promptly as possible* after it appears that the defendant is unable to obtain counsel.” *Id.* (emphasis added).
- [Fed. R. Crim P. 5\(d\)\(2\)](#): “The judge must allow the defendant reasonable opportunity to consult with counsel” at the Initial Appearance.

IV. Detention Hearing Law

A. The Presumption of Detention and AO Opposition

- THE BENCHBOOK (2026):
 - The burden of proof remains on the government and never shifts to the defendant:
 - “All the circuits to decide the issue agree that the burden of proof (or ‘burden of persuasion’) in presumption cases remains on the government to show that there are no conditions of release that will reasonably assure safety and appearance.” *Id.* at 49.
 - “In presumption cases, therefore, the burden of persuasion *always* remains on the government to prove, under § 3142(e)(1), that no condition or combination of conditions will reasonably assure the appearance of the person as required (by a preponderance of the evidence), and the safety of any other person and the community (by clear and convincing evidence).” *Id.* at 49.
 - Step 1: Rebutting the presumption
 - The rebuttal burden is extremely low:
 - “The burden is ‘not heavy, but some evidence must be produced.’” *United States v. Stricklin*, 932 F.2d 1353, 1355 (10th Cir. 1991). *Id.* at 50.
 - “The case law does not say that a defendant must produce ‘sufficient’ evidence, or a particular quantum of evidence, in order to rebut a presumption for detention. Nor does a defendant have to prove that the presumption does not, or should not, apply to their case. A defendant must only produce ‘some’ or ‘any’ relevant mitigating evidence, ‘some credible evidence contrary to the statutory presumption,’ to consider the presumption rebutted.” *Id.* at 50.
 - In determining whether the presumption has been rebutted, the court must look at all available information—not just what the defendant produces:
 - “The court is not limited to information that the defendant produces. If there is mitigating information that rebuts the presumption in the record, in the pretrial services report, presented at the hearing, or from some other source that is relevant to the presumption, the court should consider it.” *Id.* at 50.
 - Step 2: At a Detention Hearing, the legal standard for detention in presumption case is the same as in a non-presumption case:
 - Legal Standard: The court must weigh the rebutted or unrebutted presumption “along with the required factors in § 3142(g) ‘in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community’” under § 3142(e)(1). *Id.* at 52.
 - “Under the statute and legislative history, therefore, it is not appropriate for a court to find, for example, that detention is warranted because the defendant ‘failed to rebut the presumption,’ or did not present ‘sufficient evidence to rebut the presumption.’ To do so would impermissibly shift the burden of persuasion to the defendant. A defendant never has to prove that there *are* any conditions of release that will reasonably assure appearance and safety—instead, the government always must prove that there *are not* any such conditions.” *Id.* at 52.

- “Similarly, it would be improper to state that detention is warranted because the evidence does not support a finding that the defendant is not a danger to the community or will not fail to appear. *The defendant does not have the burden of proving that they are not a danger and not a risk to flee or fail to appear.*” *Id.*
 - The weight to give a “rebutted presumption” in the detention analysis:
 - “In deciding how much weight to give the rebutted presumption, some courts have held it is useful to compare how closely the defendant resembles the types of offenders that Congress was concerned about when it created the presumptions—those who are charged with ‘a seriously dangerous offense’ who have already committed a similar serious crime while on release, ‘major drug traffickers’ who are charged with ‘a grave drug offense,’ or those charged with ‘serious and dangerous federal offenses,’ such as using a firearm to commit a felony. The less the defendant resembles such offenders, the less weight the presumption should be given.” *See* Senate Report, *supra* note 1, at 19–20 (describing the types of cases that warrant a presumption for detention); *see United States v. Jessup*, 757 F.2d 378, 387 (1st Cir. 1985).” *Id.* at 51.
 - Even an unrebutted presumption is not alone sufficient to detain:
 - “If a presumption is not rebutted, detention cannot be based solely on the presumption. Nothing in the statute or the legislative history negates the requirement for the government to prove under § 3142(e)(1) that no conditions of release will reasonably assure appearance and safety, or the requirement that the court consider the factors set out in § 3142(g) in deciding between release and detention.” p. 51
- [*United States v. Hir*](#), 517 F.3d 1081, 1086 (9th Cir. 2008): “Although the presumption shifts a burden of production to the defendant, the burden of persuasion remains with the government. . . . The presumption is not erased when a defendant proffers evidence to rebut it; rather the presumption ‘remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g).’” (quoting *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986)).
- [*United States v. Wilks*](#), 15 F.4th 842, 846–47 (7th Cir. 2021): Clarifying the § 3142(e)(3) presumption of detention statute.
 - First, “the burden of persuasion always rests with the government.” *Id.* at 846–47.
 - Second, the presumption is meant to be easy to rebut: the defense bears “a light burden of production” to rebut the presumption. *Id.*
 - Third, even “an *unrebutted* presumption is not, by itself, an adequate reason to order detention. Rather, the presumption is considered together with the factors listed in § 3142(g).” *Id.* (emphasis added) (citation omitted).
- [*United States v. Dominguez*](#), 783 F.2d 702, 707 (7th Cir. 1986) (“[T]he burden of production” to rebut the presumption “is not a heavy one to meet.”). *See also United States v. Stricklin*, 932 F.2d 1353, 1354-55 (10th Cir. 1991) (“The defendant’s burden of production is not heavy, but some evidence must be produced.”)
- [*United States v. Jackson*](#), 845 F.2d 1262, 1266 (5th Cir. 1988) (holding that an arrestee’s ties to the community definitively rebut the presumption of detention: “Where the defendant has presented considerable evidence of his longstanding ties to the locality in which he faces trial, as

did [this defendant], the presumption contained in § 3142(e) has been rebutted”); *id.* (concluding that if the presumption alone could justify detention, “there would be no need for Congress to have specified ‘the weight of the evidence against the person’ as a separate factor for the court to consider.”).

- [*United States v. Fry*](#), 2021 WL 304558, at *5 (D. Or. 2021) (applying the presumption, finding it rebutted, and weighing it alongside the § 3142(g) factors to conclude that release is appropriate)
 - “If a defendant proffers evidence to rebut the presumption in favor detention, a court can then consider four factors in determining whether the pretrial detention standard is met: (1) the nature and circumstances of the offense charged, including whether the offense is a federal crime of terrorism; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including the person's character, physical and mental condition, family and community ties, employment, financial resources, past criminal conduct, and history relating to drug or alcohol abuse; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. The presumption is not erased when a defendant proffers evidence to rebut it. Instead, the presumption ‘remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g).’” *Id.* (quoting *Hir*, 517 F.3d at 1086).
- Amaryllis Austin, [*The Presumption for Detention Statute’s Relationship to Release Rates*](#), 81 FED. PROB. 52 (2017); *see also* Amaryllis Austin, [*The Presumption for Detention Statute’s Relationship to Release Rates Revisited: A Replication and Extension*](#), 88 FED. PROB. 2 (2024):
 - The presumption applies to nearly half of all federal cases and “has contributed to a massive increase in the federal pretrial detention rate, with all of the social and economic costs associated with high rates of incarceration.” *Id.* at 61. Yet this study’s “results lead to the conclusion that the presumption was a poorly defined attempt to identify high-risk defendants based primarily on their charge, relying on the belief that a defendant’s charge was a good proxy for that defendant’s risk.” *Id.* at 60.
 - In practice, the presumption “has become an almost de facto detention order for almost half of all federal cases,” *id.* at 61, and over-detains low risk defendants.
 - The drug/gun presumption over-detains “the lowest risk defendants,” *id.* at 58, those in PTR A Category 1, *id.* at 57 (“[W]ere it not for the existence of the presumption, these defendants might be released at higher rates.”).
 - PTR A Category 1, no presumption: released 94% of the time.
 - PTR A Category 1, presumption case: released 68% of the time.
 - The presumption does not accurately predict bond violations:
 - “The presumption has failed to correctly identify defendants who are most likely to be rearrested for any offense, rearrested for a violent offense, [or] fail to appear.” *Id.* at 60.
 - “[H]igh risk presumption cases were found to pose no greater risk (or in some cases, less risk) than high-risk non-presumption cases of being rearrested for any offense, being rearrested for a violent offense, failing to appear, or being revoked for technical violations.” *Id.* at 58.
 - Pretrial/Probation Officers and the Presumption: Data shows Pretrial Officers improperly let the presumption impact their release recommendations (“[T]he recommendations for presumption and non-presumption cases were compared, controlling for risk,” and the results showed that Pretrial Officers were considering the presumption, in violation of

- their rules.). *Id.* at 56. Example: For defendants in PTRR Category 1, Pretrial recommended release in 93% of non-presumption cases and 68% of presumption cases.
- [Judicial Conference Recommendation](#) Re: Presumptions of Detention (Sept. 12, 2017): Recommends amending 18 U.S.C. § 3142(e) to limit the presumption of detention in drug cases to people with very serious criminal records.
 - [Judicial Conference Recommendation](#) Re: Presumptions of Detention During COVID (Apr. 28, 2020): As in 2017, the Judicial Conference recommended limiting the presumption:
 - “The [AO] study reveals that a sizeable segment of low-risk defendants falls into the category of drug traffickers subject to the presumption of detention. The study concluded that these defendants are detained at a high rate, even when their criminal histories and other applicable risk factors indicate that they pose a low risk of either reoffending or absconding while on pretrial release, and arguably should be released for pretrial supervision. Legal, policy, and budgetary factors—including the presumption of innocence and the relative costs of incarceration versus pretrial supervision—support reducing unnecessary pretrial detention.”

B. Detention Hearing: General Issues

- **Legal Standard:** At the Detention Hearing, the government has the burden of showing that “no condition or combination of conditions will reasonably assure” the defendant’s appearance and the safety of the community. § 3142(e)(1). The question is not whether the defendant poses a flight risk or danger in an absolute sense.
- **Dangerousness at the Detention Hearing:** [United States v. Lewis](#), 2023 WL 4351244 (7th Cir. July 5, 2023)
 - “First, although the pretrial detention decision may incorporate some consideration of the accused’s guilt, a pretrial detention decision should not effectively prejudge the merits.” *Id.* at *1. The likelihood of being found guilty is “relevant to the pretrial detention decision only to the extent that [a defendant’s] charged conduct demonstrates that he poses a future risk to the community.” *Id.*
 - “Second, the pretrial detention decision must be based on an assessment of the risk that Lewis poses to the community in the future, not simply the riskiness of his alleged offense.” *Id.* The judge must engage in an individualized assessment of this particular defendant’s future dangerousness and “whether his release would endanger the community,” rather than focusing on the danger of the charged conduct.
 - “Third, dangerousness alone is an insufficient basis for pretrial detention. For if that danger can be reasonably mitigated by release conditions, then pretrial release is required. . . . The judge must consider whether any of Lewis's proposed conditions would mitigate concerns about the danger Lewis might pose.” *Id.* at *2 (emphasis added).
- **Danger to the community and nonappearance at the Detention Hearing:** [United States v. Storme](#), 83 F.4th 1078 (7th Cir. 2023)
 - **Summary:** Court discusses detention standard in relation to suicidal ideation but also provides broader discussion of what nonappearance means, as well as the revocation standard under § 3148.

- First COA to hold no pretrial detention for suicide risk: Holds that “suicide risk alone” does not constitute either a risk of flight/nonappearance or a danger to another person or the community. *Id.* at 1083.
 - “In the bail context, *nonappearance* refers to an attempt to avoid submitting to a court’s jurisdiction, not to death.” *Id.* at 1083 (emphasis added).
- BRA legal standards and due process: Emphasizes how important it is for courts to comply with the legal standards and procedural safeguards in the BRA:
 - “Process matters with detention decisions precisely because it protects the liberty interest of persons presumed innocent under the Constitution.” *Id.* at 1085.
 - “[S]ound process often matters most in pressure-packed, consequential decisions. Recognizing those moments and taking care to adhere to the requirements prescribed by rule or statute will ensure the protections of the parties’ rights and interests and maximize the chances of clean transcripts containing clear findings and leaving no doubt everyone enjoyed a full and fair opportunity to convey their positions.” *Id.* at 1086.
- § 3148: In depth discussion concluding that an order revoking pretrial release “must satisfy the two-part standard Congress delineated in § 3148(b).” *Id.* at 1081 (citing *United States v. Wilks*, 15 F.4th 842, 848 (7th Cir. 2021)).
- **Courts must consider possible conditions of release when assessing detention and risk of nonappearance:**
 - *United States v. Mobley*, 720 Fed. Appx. 441, 445 (10th Cir. 2017): Where the lower court failed to consider conditions such as electronic monitoring, turning in passports, and an affirmative defense for the alleged offense, the court of appeals “remand[ed] for the district court to issue findings of fact and to explain the reasoning behind the detention decision or, alternatively, to order Mobley’s pretrial release subject to appropriate conditions.”
 - *United States v. Gibson*, 384 F. Supp. 3d 955, 965 (N.D. Ind. 2019): Courts must make a finding about “whether the government has met its burden to show that there is no condition or combination of conditions that will ‘reasonably assure the appearance of the person as required.’”
 - “If there is a condition or combination of conditions that will reasonably ensure that Gibson will not *attempt* to flee, then the government has not met its burden, as that would assure his appearance. Given the text of the Bail Reform Act, however, the analysis cannot end there. Instead, courts must look at what conditions might reasonably assure the Court that, even if Gibson seeks to flee, he will ultimately fail. See H. Rep. No. 1030, 98th Cong., 2d Sess. 15 (1984), reprinted in 1984 U.S.C.C.A.N., 3182, 3198 (acknowledging feasibility of conditions even “where there is a substantial risk of flight”). For that reason, courts routinely look to whether a defendant is capable of successfully fleeing the jurisdiction before discounting the availability of monitoring systems. . . . When courts find that a defendant cannot successfully flee, they often fashion conditions on release unless no conditions of release are needed.” *Id.* at 965–66.

- **Limitations on considering danger at the Detention Hearing:**

- One court of appeals and several district courts have held that if a defendant was detained as a serious risk of flight under § 3142(f)(2) at the Initial Appearance hearing, the judge is legally prohibited from considering whether they pose a danger to the community at the Detention Hearing. At that hearing, the court can only consider whether to detain on non-appearance grounds; it cannot expand the inquiry and detain for dangerousness.
- [*United States v. Himler*](#), 797 F.2d 156, 160 (3d Cir. 1986) (holding that since flight risk was the basis for holding the Detention Hearing, “the statute does not authorize the detention of the defendant based on danger to the community. . .”). The Third Circuit is the only court of appeals that has addressed this issue.
- [*United States v. Ploof*](#), 851 F.2d 7, 11 (1st Cir. 1988): Following *Himler*, agreeing with the defense, and ordering pretrial release: “Insofar as in the present case there is no longer any contention that any of the subsection (f)(1) conditions were met, pretrial detention solely on the ground of dangerousness to another person or to the community is not authorized,” even at the Detention Hearing.
 - “Defendant argues that preventive detention on the ground of dangerousness to the community is not statutorily authorized in the circumstances of this case. In short, defendant’s argument is that preventive detention cannot be ordered whenever a defendant could reasonably be perceived as a danger to another person or to the community. To put the matter starkly, even if defendant is indeed a clear danger to the girlfriend’s husband in what, defendant says, is an unrelated domestic relations matter, that does not warrant detention on the present charges. Rather, release can be denied on dangerousness grounds alone only when a person is charged with one of the crimes enumerated in 18 U.S.C. § 3142(f)(1)(A) through (D).” *Id.* at 9.
- [*United States v. Gibson*](#), 384 F. Supp. 3d 955, 960–65 (N.D. Ind. 2019): Analyzing all of the cases on this issue at length and following *Himler* and other cases over a contrary district court case (*United States v. Holmes*, 438 F. Supp. 2d 1340 (S.D. Fla. 2005)).
 - “Any reading of the Bail Reform Act 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. Because of this potential constitutional issue and because the *Himler* interpretation is another plain language interpretation of the Bail Reform Act that involves no such constitutional issue, the Court will not follow the *Holmes* interpretation.”
- [*United States v. Chavez-Rivas*](#), 536 F. Supp. 2d 962, 968 (E.D. Wis. 2008) (“I conclude that detention as a danger [at the Detention Hearing] is permitted only in cases covered by § 3142(f)(1).”); *id.* (“*Salerno* supports the notion that Congress intended to limit detention based on danger to cases where there is probable cause to believe that the defendant committed a particularly serious crime”).
- *But see* [*United States v. Spirea*](#), 2024 WL 4903759, at *31 (D. Or. Nov. 27, 2024) (adopting the *Holmes* interpretation over *Himler* and holding that detention “may be based on the defendant’s risk of nonappearance or danger to the community regardless of whether the detention hearing gate was opened by (f)(1) or (f)(2).”)

V. Non-Citizen Cases: Issues Across Initial Appearance & Detention Hearing

- **At the Initial Appearance hearing in an immigration-related case, the only statutory basis for holding a Detention Hearing is serious risk of flight under § 3142(f)(2)(A). But the law is clear: an ICE detainer is not evidence of serious risk of flight—because any flight must be voluntary.**
 - *United States v. Ailon-Ailon*, 875 F.3d 1334, 1338 (10th Cir. 2017) (“[A] risk of involuntary removal does not establish a serious risk that [the defendant] will flee.”)
 - *United States v. Santos-Flores*, 794 F.3d 1088, 1091 (9th Cir. 2015) (“[T]he risk of nonappearance referenced in 18 U.S.C. § 3142 must involve an element of volition.”)
 - *United States v. Molina-Orantes*, 798 F. Supp. 3d 1204, 1210 (D. Or. 2025) (“Importantly, the Ninth Circuit has instructed that courts shall ‘not consider the prospect of the [undocumented] defendant’s immigration detention or involuntary deportation if released from criminal custody.’”) (quoting *United States v. Santos-Flores*, 794 F.3d 1088, 1092 (9th Cir. 2015)).
 - *United States v. Perez-Hernandez*, --- F.Supp.3d ----, 2025 WL 3620298, at *6 (S.D. Cal Oct. 3, 2025) (“As an initial matter, the Court disagrees with the Government’s proposition that [defendant’s] prior unauthorized entries into the country . . . equate to generalized lawlessness and an inability to abide by court orders.”).
 - “Nor is it persuaded by the contention that [defendant’s] previous willingness to live under the radar undocumented foretells a willingness and ability to abscond prior to trial, because the attendant motivations and consequences are significantly different.” *Id.*
 - “Finally, the Government’s assertion that undocumented status—and the violation of immigration laws that such lack of status entails—equates to a higher risk of flight or re-arrest is not borne out in the data.” *Id.*
 - (READ ENTIRE CASE FOR ADDITIONAL RELEASE ARGUMENTS)
 - *United States v. Villatoro-Ventura*, 330 F. Supp. 3d 1118, 1135 (N.D. Iowa 2018) (“A risk of involuntary removal does not, by itself, establish ‘a serious risk that such person will flee,’ such that the Government may seek pre-trial detention pursuant to § 3142(f)(2)(A).”)
 - *United States v. Figueroa-Alvarez*, 2023 WL 4315592, at *6 (D. Idaho July 3, 2023) (“Alien defendants who illegally enter this country, or illegally re-enter this country after removal, do so for many reasons: to flee political persecution in their home country, to flee drug-related violence in their home country, to pursue greater economic opportunity in this country, and to follow friends or family members who already live in this country, just to name a few. But they share a common trait: they voluntarily chose to come to this country and stay here. Presuming that they are any more likely than non-alien defendants to leave this country or the jurisdiction to avoid prosecution—just because they came here from another country—is misplaced. Critically, this presumption is not supported by empirical proof. . . . [A]lien defendants granted pretrial release were less likely to fail to appear or violate conditions of release than non-alien defendants.”).
 - *United States v. Marroquin-Ramirez*, 778 F. Supp. 3d 498, 504 (N.D.N.Y. 2025) (“The Court writes to clarify that considering an immigration detainer would be improper. As distinct from a defendant’s connections to a foreign country, likelihood of deportation,

fear of deportation, previous deportations, or other similar factors, an immigration detainer’s appropriate role in deciding whether to order a detention hearing, or to order detention, is as follows: none.”) (citation omitted).

- **Result:** Reversing release order after finding defendant posed a serious risk of flight under § 3142(f)(2)(A).
- *United States v. Ibarra*, 2025 WL 27474, at *3 (D. Me. Jan. 3, 2025) (“Moreover, the fact that ICE may involuntarily remove a defendant does not establish their eligibility for pretrial detention as a serious flight risk under section 3142(f)(2)(A).”) (citing *United States v. Ailon-Ailon*, 875 F.3d 1334, 1337 (10th Cir. 2017)).
- *United States v. Rodriguez-Rodriguez*, 2025 WL 1651221, at *3 (D. Minn. June 11, 2025) (“Someone who will only leave the United States if forcibly removed by the United States government cannot be considered to be a risk of flight from the United States.”).
 - Nor is the fact of illegal reentry a sufficient basis for a detention hearing, because “if Congress agreed with the prosecution, Congress could have straightforwardly added Illegal Reentry to the list of crimes found at 18 U.S.C. § 3142(f)(1).” *Id.* at *4.
- *United States v. Sanchez*, 2025 WL 2101964, at *4 (M.D. Pa. July 25, 2025) (“In seeking to vacate the pretrial detention order, [defendant] argues that he cannot ‘flee’ within the meaning of § 3142(f)(2)(A) with an ICE detainer lodged against him because the plain meaning of ‘flight’ as used in the BRA requires voluntary conduct on his part. The Court agrees on this issue.”).
 - “If a defendant subject to an ICE detainer is required to remain detained pending trial or sentencing, solely because of that detainer, Congress's meticulously crafted detention framework under 18 U.S.C. §3142 would, in effect, be overridden. In such a scenario, critical factors like community safety, risk of flight, or any individualized court assessment would be cast aside, entirely subsumed by the executive prerogative.” *Id.* at *5.
 - “Moreover, this amounts to a circular logic whereby one component of the executive branch creates the circumstances—via an ICE Detainer—that justify detention by another component of the executive branch—the U.S. Attorney—thus undermining any meaningful judicial inquiry.” *Id.*
 - “As such, an ICE detainer, without more, does not constitute evidence of a defendant's intent to flee. It merely signals the potential for removal by the executive, not a voluntary act of evasion by the individual. Deportation, unlike flight, is not within the defendant's control and cannot, standing alone, satisfy the standard under §3142(f)(2)(A). To hold otherwise would convert administrative enforcement into a presumption of detention, undermining the individualized assessment the Bail Reform Act demands. For that reason, the Government's reliance solely on an ICE detainer as a basis for finding risk of flight is counter intuitive.” *Id.*
- *United States v. Gonzalez*, 780 F. Supp. 3d 574, 587 (E.D. Pa. 2025) (“Here, the plain meaning of ‘flight’ contemplates volitional conduct where an individual chooses to ‘run away’ from, ‘escape,’ or ‘evade’ a person, situation, or location.”).
 - “In sum, the possibility of [defendant’s] imminent, involuntary removal from the United States cannot constitute ‘flight’ under a plain reading of 18 U.S.C.

- § 3142(f)(2)(A), as she would not be leaving the jurisdiction of her own accord, but rather be removed from it by ICE.” *Id.* at 579.
- “Therefore, the fact that Congress did not include illegal reentry in either section suggests that removable aliens, as a category of defendants, do not presumptively pose a serious risk of flight.” *Id.* at 581 (citation omitted).
- [*United States v. Mejias-Mejias*](#), 771 F. Supp. 3d 688, 692 (D. Md. 2025) (“The third overarching question concerns the government’s contention that the existence of an ICE detainer is dispositive. The Court disagrees. Instead, the Court is persuaded by the analysis of other courts who found that the Bail Reform Act considers flight as an act of volition; non-appearance caused by the action of another entity—including a different government agency—does not suggest that the accused chose to flee and not appear in court.”) (citation omitted).
 - [*United States v. Jimenez*](#), 2025 WL 1551529, at *3 (S.D.W. Va. May 30, 2025) (“As noted *supra*, ICE lodged a detainer against this Defendant, and, according to the Government, upon his release, he will be immediately transferred to the custody of ICE, and likely immediately deported. Though this could be an issue to the extent that the Defendant may not appear before the Court for future hearings, this is not the product of the Defendant’s own volition, but due to the action of another government agency.”).
 - “In short, this is not the ‘serious risk that such person will flee’ envisioned under Section 3142(f)(2)(A).” *Id.* (citation omitted).
 - [*United States v. Reymundo*](#), 792 F. Supp. 3d 612, 622–23 (D. Md. 2025) (“I am also persuaded . . . that considering a defendant’s immigration detainer when assessing a defendant’s ability to flee tends to render consideration of other factors identified in the BRA ‘superfluous’ and therefore runs counter to the sort of ‘individualized evaluation’ the BRA requires.”) (quoting *United States v. Diaz-Hernandez*, 943 F.3d 1196, 1199 (9th Cir. 2019)).
 - “If an immigration detainer could be relied upon as an assurance that a defendant cannot flee and will appear for future criminal proceedings, then there would be no point in examining a defendant’s ‘history and characteristics’ or ‘the nature and circumstances of the offense charged,’ as the BRA expressly requires.” *Id.* (quoting 18 U.S.C. § 3143(g)(3)).
 - **Result:** Reversing release order after finding defendant posed a serious risk of flight under § 3142(f)(2)(A).
 - [*United States v. Pavon-Andino*](#), 2025 WL 446143, at *2 (D. Colo. Feb. 10, 2025) (“Third, this Court found, and the government did not dispute, that the defendant’s charge itself, combined with his pending deportation hold, does not equate to a serious risk of flight.”).
 - “Considering that the overall failure to appear rate nationwide hovers between 1.1%-1.6%, this is significant.” *Pavon-Andino*, 2025 WL 446143 at *3 (citing Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* (2022)).
 - **Result:** Releasing defendant after determining no § 3142(f) factor authorized detention.
 - [*United States v. Romero-Martinez*](#), 2024 WL 965150, at *6 (D. Conn. March 6, 2024) (“Nor can I presume that simply because of his status as an undocumented non-citizen [defendant] is more likely to flee than other defendants who face criminal charges.”).

- “Finally, the Government's assertion that undocumented status—and the violation of immigration laws that such lack of status entails—equates to a higher risk of flight or re-arrest is not borne out in the data.” *Id.*
 - DOJ data shows undocumented individuals have an even lower rate of non-appearance than U.S. citizens: U.S. citizens fail to appear 0.9% of the time whereas undocumented individuals fail to appear 0.5% of the time. U.S. Dept. of Justice Bureau of Justice Statistics, *Pretrial Release and Misconduct in Federal District Courts, Fiscal Years 2011–2018*, at 11 tbl.9 (Mar. 2022), <https://bjs.ojp.gov/content/pub/pdf/prmfdfcy1118.pdf>.
 - Compared to US citizens, undocumented defendants are also more likely to comply with other conditions of release, less like to be rearrested for a new offense, and less likely to have their bond revoked. *Id.*
- **Therefore, a judge cannot deny bond to a removable person based on immigration status or the existence of an ICE detainer.**
 - [*United States v. Sanchez-Rivas*](#), 752 F. App'x 601, 604 (10th Cir. 2018) (defendant “cannot be detained solely because he is a removable alien.”)
 - [*United States v. Santos-Flores*](#), 794 F.3d 1088, 1091 (9th Cir. 2015) (“We conclude that the district court erred in relying on the existence of an ICE detainer and the probability of Santos–Flores's immigration detention and removal from the United States to find that no condition or combination of conditions will reasonably assure Santos–Flores's appearance pursuant to 18 U.S.C. § 3142(e).”).
 - [*United States v. Chavez-Rivas*](#), 536 F. Supp. 2d 962, 968 (E.D. Wis. 2008)
 - “[D]efendant’s status as a deportable alien does not mandate detention. Rather, he must ‘be treated in accordance with the other provisions of [§ 3142], notwithstanding the applicability of other provisions of law governing release pending . . . deportation or exclusion proceedings.’ § 3142(d). Thus, it would be improper to consider only defendant’s immigration status, to the exclusion of the § 3142(g) factors, as the government suggests.” *Id.*
 - Assessing Risk of Non-appearance at Detention Hearing: Family and community ties are signs in favor of appearance, and previously returning after being deported also is a sign in favor of appearance and release, because “it appears that defendant may have broken the law in order to return to his family, the same remedy he seeks in his bail request.” *Id.* at 969. The court granted release despite other circumstances, which included the strong evidence against the defendant, the fact that he was facing a significant prison sentence followed by deportation, limited employment history, drug use, and prior record, explaining: “Ultimately, § 3142 ‘does not seek ironclad guarantees, and the requirement that the conditions of release “reasonably assure” a defendant’s appearance cannot be read to require guarantees against flight.’” *Id.* (citation omitted).
 - [*United States v. Barrera-Omana*](#), 638 F. Supp. 2d 1108, 1111 (D. Minn. 2009) (mere presence of an ICE detainer does not override § 3142(g)).
- The Government expressly has the power under federal law to ensure that a deportable person remains in the country for a criminal proceeding anyway, so in addition to the above case law, the government’s claims that an ICE detainer ensures deportation are unfounded, unless the

Executive *chooses* to deport the defendant.

- *See United States v. Ramos-Lopez*, 2023 U.S. Dist. LEXIS 166209, at *4 (N.D. Iowa Sep. 19, 2023) (discussing 8 C.F.R. § 215.3, which “addresses the very circumstance presented by [defendant]’s case—an alien subject to deportation who also is a party to a pending criminal case in federal court”).
- If a judge orders a defendant released from pretrial detention pursuant to the BRA, the person must be released immediately; the government cannot prolong criminal pretrial detention based on the presence of an ICE detainer in violation of the judge’s Release Order. *United States v. Valdez-Hurtado*, 2022 WL 16573567, at *4 (N.D. Ill. Nov. 1, 2022).
 - An ICE detainer does not give USMS “the power to keep someone under arrest who would otherwise not be in the USMS’s custody at all,” so USMS cannot prolong criminal pretrial detention to give ICE time to arrive for a transfer of custody. *Id.* at *8.
 - Neither an ICE detainer request nor DHS regulation 8 C.F.R. § 287.7(d), can be the basis for failing to follow the judge’s release order: “the DHS regulation, the weight of judicial authority, and even ICE’s own positions and statements do not support such a reading.” *Id.* at *4.
 - ICE detainers are *requests*, not commands, *id.* at *7, unlike judicial release orders pursuant to the BRA. *Id.* at *7, 13; *see also Galarza v. Szalczyk*, 745 F.3d 634, 636 (3d Cir. 2014) (“[I]mmigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal.”).
 - The BRA and the INA operate separately from each other: the BRA cannot be subordinated to the INA. *Valdez-Hurtado* at *5.
- While courts have held that the Government can choose to deport a person after they are ordered released, they cannot “use ICE detention to evade the court’s release order.” *See United States v. Ramos-Lopez*, 2023 U.S. Dist. LEXIS 166209, at *6–7 (N.D. Iowa Sep. 19, 2023).

VI. Key Federal Pretrial Statistics re: Release and Detention

- Release Rates: [Table H-14](#) (September 30, 2025).
 - National: 28.3%
 - 9th Circuit: 21%
 - D. Oregon: 39.1%
- Release Rates, excluding immigration cases: [Table H-14A](#) (September 30, 2025).
 - National: 38.7%
 - 9th Circuit: 43%
 - D. Oregon: 41%
- AUSA & Pretrial Services Release Recommendations: [Table H-3](#) (September 30, 2025).
 - National:
 - AUSA: 19.8%
 - Pretrial: 28.0%
 - 9th Circuit:
 - AUSA: 20.3%
 - Pretrial: 28.3%
 - D. Oregon:
 - AUSA: 25.0%
 - Pretrial: 48.3%
- Pretrial Services Violations Summary Report: [Table H-15](#) (September 30, 2025) (indicating how rare it is for people to fail to appear or be rearrested while on bond).
 - National:
 - 1.02% fail to appear
 - 1.0% are rearrested for a felony
 - 2.3% are rearrested for a felony/misdemeanor/other
 - 9th Circuit:
 - 1.1% fail to appear
 - 0.4% are rearrested for a felony
 - 0.9% are rearrested for a felony/misdemeanor/other
 - D. Oregon:
 - 1.5% fail to appear
 - 0.8% are rearrested for a felony
 - 2.3% are rearrested for a felony/misdemeanor/other
- Pretrial Services Detention Summary Report: [Table H-9A](#) (September 30, 2025) (showing that the average length of time a person spends in pretrial detention).
 - National: 317 days (10.5 months)
 - 9th Circuit: 278 days (9.2 months)
 - D. Oregon: 320 days (10.5 months)
- All these tables and many more H-tables are available on the J-Net. Some tables are publicly available here (use “search by Table number” box): <https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables>

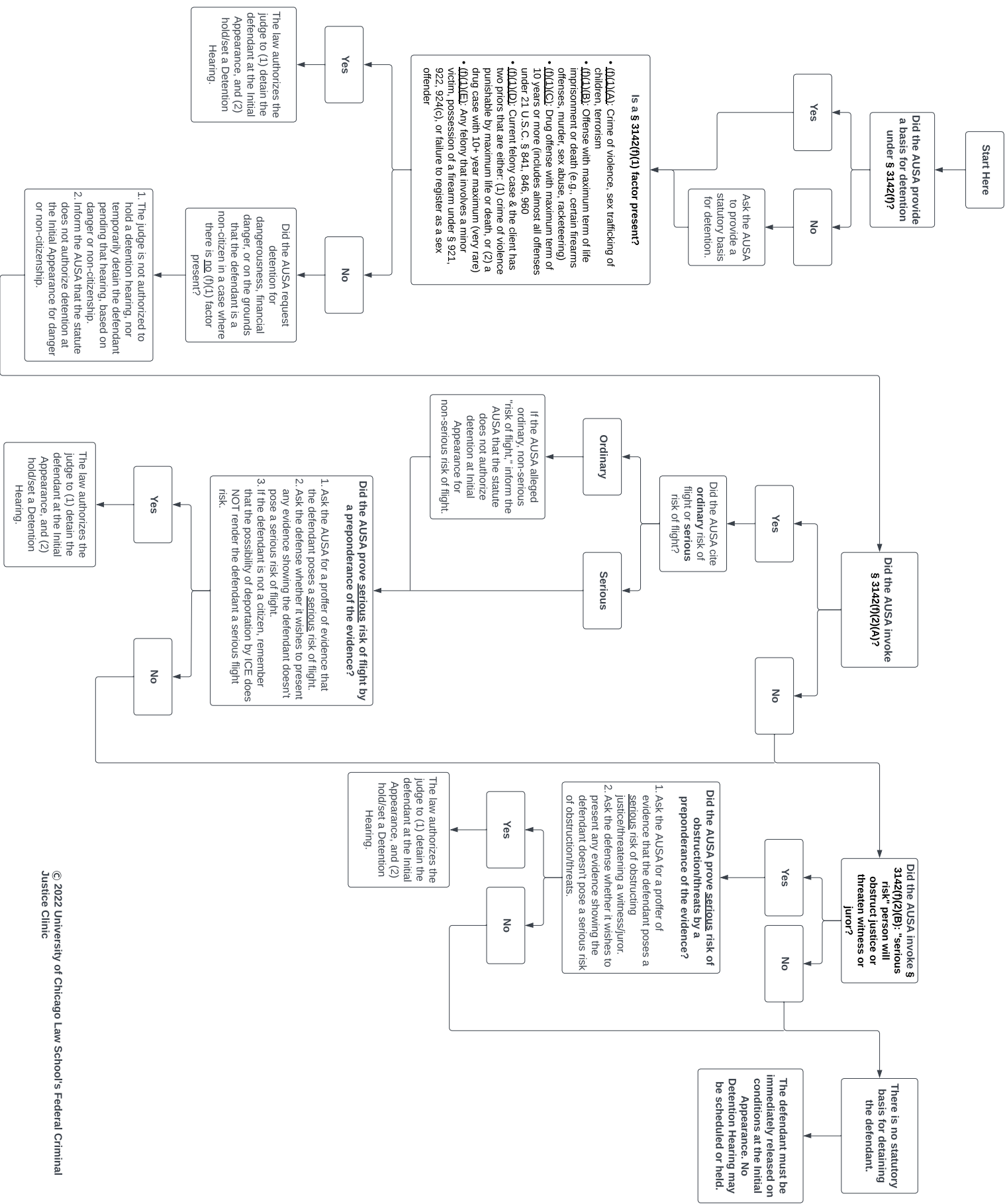
VII. Selected Articles and Studies About Pretrial Detention

- Christine Dozier et al., [*The Impact of the Front End on Federal Sentencing and Beyond: Recidivism and More*](#), 88:1 FEDERAL PROBATION 3, 7 (June 2024) (collecting studies showing federal pretrial detention at the front end leads to longer sentences).
- Alexander Holsinger, Christopher Lowenkamp & Travis Pratt, [*Is Pretrial Detention an Effective Deterrent? An Analysis of Failure to Appear and Rearrest Says No*](#), 87 FEDERAL PROBATION 3 (2023).
- Thomas H. Cohen & William Hicks, Jr., *The Imposition of Pretrial Conditions on Released Federal Defendants: The Overuse of Conditions Without Providing any Measurable Benefits*, Crim. Just. & Behavior (Oct. 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4583323.
- U.S. Dept. of Justice Bureau of Justice Statistics, *Pretrial Release and Misconduct in Federal District Courts, Fiscal Years 2011–2018* (Mar. 2022), <https://bjs.ojp.gov/content/pub/pdf/prmfdcfy1118.pdf>.
- Stephanie Holmes Didwania, [*The Immediate Consequences of Federal Pretrial Detention*](#), 22 AM. L. & ECON. REV. 24 (2020) (finding federal pretrial detention leads to longer sentences).
- Articles about racial disparities in federal pretrial detention: Federal Probation Journal (Dec. 2022), <https://www.uscourts.gov/statistics-reports/publications/federal-probation-journal>.
- Stephanie Holmes Didwania, [*Discretion and Disparity in Federal Detention*](#), 115 NW. U. L. REV. 1261 (2021): Comprehensive data study on race and federal pretrial detention.

Resources on Pretrial Detention
and the Bail Reform Act

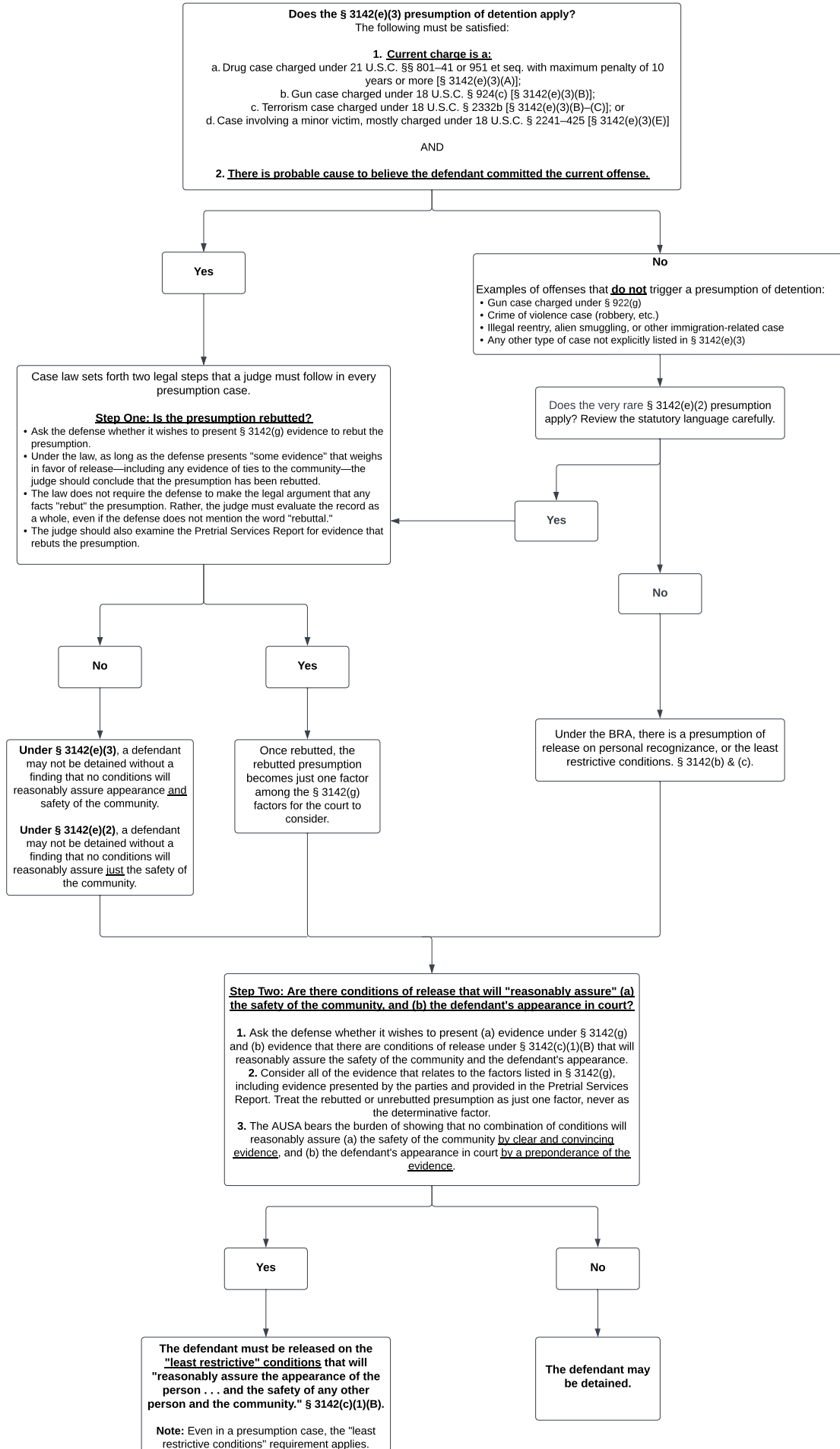
Initial Appearance Hearings Flowchart

INITIAL APPEARANCE FLOWCHART



Flowchart for Detention Hearings in Presumption Cases

Flowchart for Detention Hearings in Presumption Cases



2023 DOJ Policy Directive re:
Pretrial Detention
in Justice Manual

Title 9: Criminal

9-6.000 - Release And Detention Pending Judicial Proceedings



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- [9-6.100](#) Introduction
- [9-6.110](#) Continuances Pending Detention Hearings
- [9-6.200](#) Pretrial Disclosure of Witness Identity

9-6.100 - Introduction

The release and detention of defendants pending judicial proceedings is governed by the Due Process Clause of the Fifth Amendment, the Excessive Bail Clause of the Eighth Amendment, and the Bail Reform Act of 1984. The Bail Reform Act of 1984 provides procedures to detain a dangerous offender, as well as an offender who is likely to flee pending trial or appeal. *See United States v. Salerno*, 481 U.S. 739 (1987).

As with all prosecutorial decisions, a determination as to whether to advocate for detention, or instead to advocate for or agree to a particular set of release conditions, should be case- and defendant-specific. *See* [JM 9-27.110](#). There are many cases in which detention pending trial or a hearing is warranted to protect the public and/or to ensure that the defendant appears as required. Prosecutors should request a detention hearing and seek detention in such cases, as authorized by statute, *see* 18 U.S.C. §§ 3142(e), (f)(1)-(2), and do so vigorously, consistent with the Constitution, the Bail Reform Act, case law, and our obligation to the public. There also are cases in which detention is not warranted. Prosecutors should not seek detention merely

because the Bail Reform Act permits such an argument to be made or presumes that detention, based on the charges, is appropriate (as it does for many drug charges, see 18 U.S.C. § 3142(e) (3)). Nor should prosecutors seek detention based solely on the fact that the alleged violation is of the conditions of post-conviction supervision. Rather, a weighing of all the facts and circumstances, including but not limited to what charges or violations a defendant presently faces, and the strength of the evidence in support of those charges or violations, is required. In all cases, prosecutors should continue to be aware that, where applicable, victims have the right to be reasonably heard at any public proceeding involving release. See 18 U.S.C. § 3771(a)(4); Fed. R. Crim. P. 60(a)(3); see also [Attorney General Guidelines for Victim and Witness Assistance](#).

[updated January 2023]

9-6.110 - Continuances Pending Detention Hearings

The Bail Reform Act authorizes the continuance of detention hearings, during which the defendant shall be detained. See 18 U.S.C. § 3142(f). While prosecutors can and should invoke this provision in certain cases, they should do so only after a consideration of case- and defendant-specific facts and circumstances, including whether detention appears warranted and such a continuance is reasonably necessary. Prosecutors should endeavor, where practicable in light of all facts and circumstances, and consistent with district and judicial procedure and practice, to proceed to a detention hearing reasonably soon after a defendant's arrest, and where feasible and appropriate, be ready to proceed more quickly than the three days permitted in certain cases under the Bail Reform Act. In seeking to schedule a detention hearing, prosecutors must recognize that "a defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding [including] initial appearance," except where "the defendant waives this right." Fed. R. Crim. P. 44(a); see also 18 U.S.C. § 3006A.

[added January 2023]

9-6.200 - Pretrial Disclosure of Witness Identity

Insuring the safety and cooperativeness of prospective witnesses, and safeguarding the judicial process from undue influence, are among the highest priorities of federal prosecutors. See the Victim and Witness Protection Act of 1982, P.L. 97-291, § 2, 96 Stat. 1248-9. The [Attorney General Guidelines for Victim and Witness Assistance](#) provide that prosecutors should keep in mind that the names, addresses, and phone numbers of victims and witnesses are private and should reveal such information to the defense only pursuant to Federal Rule of Procedure 16, any local rules, customs or court orders, or special prosecutorial need.

Therefore, it is the Department's position that pretrial disclosure of a witness' identity or statement should not be made if there is, in the judgment of the prosecutor, any reason to believe that such disclosure would endanger the safety of the witness or any other person, or lead to efforts to obstruct justice. Factors relevant to the possibility of witness intimidation or obstruction of justice include, but are not limited to, the types of charges pending against the defendant, any record or information about the propensity of the defendant or the defendant's confederates to engage in witness intimidation or obstruction of justice, and any threats directed by the defendant or others against the witness. In addition, pretrial disclosure of a witness' identity or statements should not ordinarily be made against the known wishes of any witness.

However, pretrial disclosure of the identity or statements of a government witness may often promote the prompt and just resolution of the case. Such disclosure may enhance the prospects that the defendant will plead guilty or lead to the initiation of plea negotiations; in the event the defendant goes to trial, such disclosure may expedite the conduct of the trial by eliminating the need for a continuance.

Accordingly, with respect to prosecutions in federal court, a prosecutor should give careful consideration, as to each prospective witness, whether absent any indication of potential adverse consequences of the kind mentioned above reason exists to disclose such witness' identity prior to trial. It should be borne in mind that a decision by the prosecutor to disclose pretrial the identity of potential government witnesses may be conditioned upon the defendant's making reciprocal disclosure as to the identity of the potential defense witnesses. Similarly, when appropriate in light of the facts and circumstances of the case, a prosecutor may determine to disclose only the identity, but not the current address or whereabouts of a witness.

Prosecutors should be aware that they have the option of applying for a protective order if discovery of the private information may create a risk of harm to the victim or witness and the prosecutor may seek a temporary restraining order under 18 U.S.C. § 1514 prohibiting harassment of a victim or witness.

In sum, whether or not to disclose the identity of a witness prior to trial is committed to the discretion of the federal prosecutor, and that discretion should be exercised on a case-by-case,

and witness-by-witness basis. Considerations of witness safety and willingness to cooperate, and the integrity of the judicial process are paramount.

[updated November 2022]

[9-5.000 - Issues Related To Discovery, Trials, And Other Proceedings](#)

[9-7.000 - Electronic Surveillance](#)



U.S. Department of Justice

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Washington DC 20530



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Judicial Conference Directive Mandating
Appointment of Counsel at Initial
Appearance Hearings (2024)

**Judicial Conference of the United States
Committee on Defender Services**

Chair
Cathy Seibel


Telephone: (914) 390-4271
Fax: (914) 390-4278

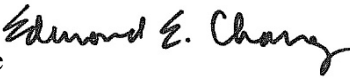
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March 19, 2024

MEMORANDUM

To: Judges, United States District Courts
United States Magistrate Judges
Federal Public/Community Defenders
District Court Executives
Clerks, United States District Courts
Chief Probation Officers
Chief Pretrial Services Officers
Circuit CJA Case-Budgeting Attorneys

From: Honorable Cathy Seibel 
Chair, Defender Services Committee

Honorable Edmond E. Chang 
Chair, Criminal Law Committee

RE: RIGHT TO COUNSEL AT INITIAL APPEARANCE **(INFORMATION)**

In most districts—but not all—criminal defendants have the assistance of counsel from the start of the initial appearance, and their counsel meet with and interview their clients prior to the initial appearance. We write to bring attention to the need for consistency in ensuring that criminal defendants have the assistance of counsel during their initial appearances.

The Criminal Justice Act (CJA), 18 U.S.C. § 3006A, the Federal Rules of Criminal Procedure, and Judicial Conference policy require courts to provide access to counsel for individuals accused of crimes at the earliest opportunity. Section 3006A(c) directs that a “person for whom counsel is appointed shall be represented at every stage of the proceedings from his *initial*

*appearance ... through appeal,” § 3006A(c) (emphasis added), and Criminal Rule 44(a) contains the same instruction, Fed. R. Crim. P. 44(a) (a “defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal”).¹ “A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before the court or U.S. magistrate judge, when formally charged, or when otherwise entitled to counsel under the CJA, whichever occurs earliest.” *Guide to Judiciary Policy (Guide)*, Vol. 7A, Ch. 2, §§ [210.40.10](#), [220.10](#).*

The Department of Justice recently issued a directive to all Assistant United States Attorneys requiring that “prosecutors must recognize that ‘a defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding [including] initial appearance,’ except where ‘the defendant waives this right.’” *Justice Manual* § 9-6.110 (Jan. 2023) (quoting Fed. R. Crim. P. 44 and citing § 3006A(c)).

To enable defense counsel to provide meaningful representation *during* the initial appearance, it is vital that the attorney be permitted to meet and confer with the defendant *before* the initial appearance. This meeting is essential to enable defense counsel to advocate effectively for their client consistent with the legal standard outlined in 18 U.S.C. § 3142(f) of the Bail Reform Act and the needs of the particular case. “It is important to ensure that defendants are provided the opportunity to consult with an attorney at the earliest stage of criminal proceedings, before any decisions, or even discussions, regarding release or detention occur.” Federal Judicial Center, [BAIL REFORM ACT OF 1984](#) (4th ed. 2022) at 44. The Model Plan for Implementation and Administration of the Criminal Justice Act (“*Model CJA Plan*”) permits “representation provided prior to appointment.” *Guide*, Vol. 7A, Ch. 2, [Appx. 2A, § V.D.](#)²

Courts that do not currently ensure that every defendant has active representation by counsel during the initial appearance must comply with the governing statute and rules. Coordination meetings with local stakeholders—including the Federal Public or Community Defender Organization, CJA Panel Attorney District Representative, United States Attorney’s Office, Pretrial Services and Probation Officers, and U.S. Marshals Service—will assist courts in addressing the logistics of ensuring that every defendant has access to counsel before or from the beginning of their initial appearance hearing. In recent years, coordination meetings in various districts have resulted in successfully providing early appointment of counsel. Administrative Office staff are available to provide examples and solutions.

If you have any questions related to the appointment and payment of counsel at initial appearances, please contact the AO’s Defender Services Office, Legal and Policy Division at 202-502-3030.

cc: CJA Panel Attorney District Representatives

¹ Rule 5(d)(2) requires that “the judge must allow the defendant reasonable opportunity to consult with counsel” during the initial appearance.

² The [CJA Form 20](#), which is incorporated into the eVoucher system, allows a court to enter *nunc pro tunc* dates so that CJA panel attorneys can be paid for representational work performed before the appointment order is entered.

**Key Federal Pretrial Statistics re: Release
and Detention**

Table H-14.
U.S. District Courts ---- Pretrial Services Release and Detention
For the 12-Month Period Ending September 30, 2025

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct
TOTAL	74,314	56,598	76.2	17,716	23.8
1st	1,892	1,201	63.5	691	36.5
ME	190	93	48.9	97	51.1
MA	573	356	62.1	217	37.9
NH	119	73	61.3	46	38.7
RI	88	39	44.3	49	55.7
PR	922	640	69.4	282	30.6
2nd	2,390	1,406	58.8	984	41.2
CT	205	85	41.5	120	58.5
NY,N	449	314	69.9	135	30.1
NY,E	495	247	49.9	248	50.1
NY,S	716	431	60.2	285	39.8
NY,W	378	240	63.5	138	36.5
VT	147	89	60.5	58	39.5
3rd	2,267	1,318	58.1	949	41.9
DE	159	123	77.4	36	22.6
NJ	676	307	45.4	369	54.6
PA,E	571	395	69.2	176	30.8
PA,M	345	212	61.4	133	38.6
PA,W	413	239	57.9	174	42.1
VI	103	42	40.8	61	59.2
4th	3,353	1,967	58.7	1,386	41.3
MD	266	96	36.1	170	63.9
NC,E	630	417	66.2	213	33.8
NC,M	227	166	73.1	61	26.9
NC,W	360	257	71.4	103	28.6
SC	486	280	57.6	206	42.4
VA,E	779	425	54.6	354	45.4
VA,W	191	118	61.8	73	38.2
WV,N	229	106	46.3	123	53.7
WV,S	185	102	55.1	83	44.9
5th	21,848	19,498	89.2	2,350	10.8
LA,E	319	204	63.9	115	36.1
LA,M	136	95	69.9	41	30.1
LA,W	250	180	72.0	70	28.0
MS,N	182	110	60.4	72	39.6
MS,S	380	274	72.1	106	27.9
TX,N	755	479	63.4	276	36.6
TX,E	658	474	72.0	184	28.0
TX,S	9,042	8,167	90.3	875	9.7
TX,W	10,126	9,515	94.0	611	6.0

Table H-14.
U.S. District Courts ---- Pretrial Services Release and Detention
For the 12-Month Period Ending September 30, 2025

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct
6th	4,202	2,773	66.0	1,429	34.0
KY,E	412	288	69.9	124	30.1
KY,W	352	238	67.6	114	32.4
MI,E	852	555	65.1	297	34.9
MI,W	219	138	63.0	81	37.0
OH,N	660	380	57.6	280	42.4
OH,S	503	279	55.5	224	44.5
TN,E	559	478	85.5	81	14.5
TN,M	272	198	72.8	74	27.2
TN,W	373	219	58.7	154	41.3
7th	1,927	1,053	54.6	874	45.4
IL,N	537	248	46.2	289	53.8
IL,C	203	121	59.6	82	40.4
IL,S	231	133	57.6	98	42.4
IN,N	305	192	63.0	113	37.0
IN,S	318	223	70.1	95	29.9
WI,E	278	113	40.6	165	59.4
WI,W	55	23	41.8	32	58.2
8th	4,510	2,983	66.1	1,527	33.9
AR,E	355	158	44.5	197	55.5
AR,W	139	29	20.9	110	79.1
IA,N	324	221	68.2	103	31.8
IA,S	311	238	76.5	73	23.5
MN	440	275	62.5	165	37.5
MO,E	932	664	71.2	268	28.8
MO,W	665	493	74.1	172	25.9
NE	395	312	79.0	83	21.0
ND	350	180	51.4	170	48.6
SD	599	413	68.9	186	31.1
9th	20,576	16,132	78.4	4,444	21.6
AK	154	73	47.4	81	52.6
AZ	9,206	8,238	89.5	968	10.5
CA,N	364	167	45.9	197	54.1
CA,E	356	224	62.9	132	37.1
CA,C	1,779	1,015	57.1	764	42.9
CA,S	6,132	5,026	82.0	1,106	18.0
HI	151	74	49.0	77	51.0
ID	298	167	56.0	131	44.0
MT	438	206	47.0	232	53.0
NV	227	117	51.5	110	48.5
OR	529	322	60.9	207	39.1
WA,E	363	236	65.0	127	35.0
WA,W	525	240	45.7	285	54.3
GU	32	11	34.4	21	65.6
NMI	22	16	72.7	6	27.3

Table H-14.
U.S. District Courts ---- Pretrial Services Release and Detention
For the 12-Month Period Ending September 30, 2025

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct
10th	5,810	4,650	80.0	1,160	20.0
CO	440	316	71.8	124	28.2
KS	376	243	64.6	133	35.4
NM	3,152	2,887	91.6	265	8.4
OK,N	500	323	64.6	177	35.4
OK,E	194	138	71.1	56	28.9
OK,W	576	302	52.4	274	47.6
UT	421	328	77.9	93	22.1
WY	151	113	74.8	38	25.2
11th	5,539	3,617	65.3	1,922	34.7
AL,N	404	223	55.2	181	44.8
AL,M	283	185	65.4	98	34.6
AL,S	221	140	63.3	81	36.7
FL,N	372	258	69.4	114	30.6
FL,M	1,769	1,269	71.7	500	28.3
FL,S	1,511	987	65.3	524	34.7
GA,N	461	273	59.2	188	40.8
GA,M	292	163	55.8	129	44.2
GA,S	226	119	52.7	107	47.3

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."

Table H-14A.
U.S. District Courts ---- Pretrial Services Release and Detention, Excluding Immigration Cases
For the 12-Month Period Ending September 30, 2025

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct
TOTAL	44,904	27,537	61.3	17,367	38.7
1st	1,647	982	59.6	665	40.4
ME	163	66	40.5	97	59.5
MA	460	244	53.0	216	47.0
NH	113	67	59.3	46	40.7
RI	83	34	41.0	49	59.0
PR	828	571	69.0	257	31.0
2nd	2,150	1,188	55.3	962	44.7
CT	200	81	40.5	119	59.5
NY,N	342	215	62.9	127	37.1
NY,E	465	224	48.2	241	51.8
NY,S	693	414	59.7	279	40.3
NY,W	318	180	56.6	138	43.4
VT	132	74	56.1	58	43.9
3rd	1,892	1,019	53.9	873	46.1
DE	86	50	58.1	36	41.9
NJ	583	266	45.6	317	54.4
PA,E	478	303	63.4	175	36.6
PA,M	306	173	56.5	133	43.5
PA,W	380	206	54.2	174	45.8
VI	59	21	35.6	38	64.4
4th	3,050	1,682	55.1	1,368	44.9
MD	250	81	32.4	169	67.6
NC,E	600	387	64.5	213	35.5
NC,M	217	156	71.9	61	28.1
NC,W	321	221	68.8	100	31.2
SC	433	228	52.7	205	47.3
VA,E	675	327	48.4	348	51.6
VA,W	159	90	56.6	69	43.4
WV,N	219	97	44.3	122	55.7
WV,S	176	95	54.0	81	46.0
5th	9,055	6,740	74.4	2,315	25.6
LA,E	249	153	61.4	96	38.6
LA,M	106	65	61.3	41	38.7
LA,W	201	131	65.2	70	34.8
MS,N	178	106	59.6	72	40.4
MS,S	281	175	62.3	106	37.7
TX,N	710	436	61.4	274	38.6
TX,E	613	429	70.0	184	30.0
TX,S	3,045	2,181	71.6	864	28.4
TX,W	3,672	3,064	83.4	608	16.6

Table H-14A.

**U.S. District Courts ---- Pretrial Services Release and Detention, Excluding Immigration Cases
For the 12-Month Period Ending September 30, 2025**

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct
6th	3,708	2,283	61.6	1,425	38.4
KY,E	375	251	66.9	124	33.1
KY,W	307	193	62.9	114	37.1
MI,E	626	329	52.6	297	47.4
MI,W	185	107	57.8	78	42.2
OH,N	599	319	53.3	280	46.7
OH,S	458	234	51.1	224	48.9
TN,E	537	456	84.9	81	15.1
TN,M	254	180	70.9	74	29.1
TN,W	367	214	58.3	153	41.7
7th	1,765	900	51.0	865	49.0
IL,N	482	196	40.7	286	59.3
IL,C	192	111	57.8	81	42.2
IL,S	210	112	53.3	98	46.7
IN,N	274	162	59.1	112	40.9
IN,S	288	193	67.0	95	33.0
WI,E	271	107	39.5	164	60.5
WI,W	48	19	39.6	29	60.4
8th	4,090	2,579	63.1	1,511	36.9
AR,E	336	140	41.7	196	58.3
AR,W	136	26	19.1	110	80.9
IA,N	301	198	65.8	103	34.2
IA,S	296	223	75.3	73	24.7
MN	366	205	56.0	161	44.0
MO,E	873	605	69.3	268	30.7
MO,W	618	451	73.0	167	27.0
NE	298	217	72.8	81	27.2
ND	293	127	43.3	166	56.7
SD	573	387	67.5	186	32.5
9th	10,055	5,728	57.0	4,327	43.0
AK	150	71	47.3	79	52.7
AZ	2,297	1,336	58.2	961	41.8
CA,N	358	162	45.3	196	54.7
CA,E	308	182	59.1	126	40.9
CA,C	1,289	588	45.6	701	54.4
CA,S	3,325	2,242	67.4	1,083	32.6
HI	143	66	46.2	77	53.8
ID	258	134	51.9	124	48.1
MT	393	161	41.0	232	59.0
NV	176	66	37.5	110	62.5
OR	497	293	59.0	204	41.0
WA,E	319	196	61.4	123	38.6
WA,W	489	204	41.7	285	58.3
GU	32	11	34.4	21	65.6
NMI	21	16	76.2	5	23.8

Table H-14A.

**U.S. District Courts ---- Pretrial Services Release and Detention, Excluding Immigration Cases
For the 12-Month Period Ending September 30, 2025**

Circuit and District	Cases ¹	Detained and Never Released ²		Released ³	
		Total	Pct.	Total	Pct
10th	3,197	2,053	64.2	1,144	35.8
CO	385	263	68.3	122	31.7
KS	326	195	59.8	131	40.2
NM	892	630	70.6	262	29.4
OK,N	384	209	54.4	175	45.6
OK,E	176	120	68.2	56	31.8
OK,W	499	225	45.1	274	54.9
UT	420	327	77.9	93	22.1
WY	115	84	73.0	31	27.0
11th	4,295	2,383	55.5	1,912	44.5
AL,N	307	128	41.7	179	58.3
AL,M	238	140	58.8	98	41.2
AL,S	176	96	54.5	80	45.5
FL,N	300	187	62.3	113	37.7
FL,M	1,311	815	62.2	496	37.8
FL,S	1,154	632	54.8	522	45.2
GA,N	318	130	40.9	188	59.1
GA,M	272	143	52.6	129	47.4
GA,S	219	112	51.1	107	48.9

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 90days, transfers out, and cases that were later converted to diversion cases during the period.

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

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

**Table H-3.
U.S. District Courts----Pretrial Services Recommendations Made For Initial Pretrial Release
For the 12-Month Period Ending September 30, 2025**

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	81,228	73,815	90.9	53,149	72.0	20,666	28.0	73,477	90.5	58,959	80.2	14,518	19.8
1st	2,018	1,812	89.8	1,013	55.9	799	44.1	1,815	89.9	1,423	78.4	392	21.6
ME	209	184	88.0	71	38.6	113	61.4	184	88.0	108	58.7	76	41.3
MA	627	557	88.8	249	44.7	308	55.3	560	89.3	395	70.5	165	29.5
NH	142	91	64.1	37	40.7	54	59.3	91	64.1	61	67.0	30	33.0
RI	96	84	87.5	29	34.5	55	65.5	84	87.5	66	78.6	18	21.4
PR	944	896	94.9	627	70.0	269	30.0	896	94.9	793	88.5	103	11.5
2nd	2,742	2,503	91.3	1,384	55.3	1,119	44.7	2,519	91.9	1,743	69.2	776	30.8
CT	249	189	75.9	58	30.7	131	69.3	209	83.9	127	60.8	82	39.2
NY,N	471	410	87.0	322	78.5	88	21.5	417	88.5	353	84.7	64	15.3
NY,E	628	588	93.6	267	45.4	321	54.6	587	93.5	367	62.5	220	37.5
NY,S	803	800	99.6	402	50.3	398	49.8	800	99.6	503	62.9	297	37.1
NY,W	423	375	88.7	230	61.3	145	38.7	367	86.8	277	75.5	90	24.5
VT	168	141	83.9	105	74.5	36	25.5	139	82.7	116	83.5	23	16.5
3rd	2,629	2,419	92.0	1,300	53.7	1,119	46.3	2,423	92.2	1,583	65.3	840	34.7
DE	165	160	97.0	124	77.5	36	22.5	162	98.2	125	77.2	37	22.8
NJ	888	823	92.7	314	38.2	509	61.8	823	92.7	469	57.0	354	43.0
PA,E	621	611	98.4	338	55.3	273	44.7	611	98.4	449	73.5	162	26.5
PA,M	402	354	88.1	252	71.2	102	28.8	354	88.1	251	70.9	103	29.1
PA,W	447	380	85.0	213	56.1	167	43.9	383	85.7	238	62.1	145	37.9
VI	106	91	85.8	59	64.8	32	35.2	90	84.9	51	56.7	39	43.3
4th	3,937	3,042	77.3	1,726	56.7	1,316	43.3	3,111	79.0	2,200	70.7	911	29.3
MD	318	286	89.9	120	42.0	166	58.0	282	88.7	151	53.5	131	46.5
NC,E	695	521	75.0	280	53.7	241	46.3	520	74.8	406	78.1	114	21.9
NC,M	257	244	94.9	170	69.7	74	30.3	244	94.9	204	83.6	40	16.4
NC,W	411	393	95.6	267	67.9	126	32.1	393	95.6	301	76.6	92	23.4
SC	652	479	73.5	275	57.4	204	42.6	491	75.3	330	67.2	161	32.8
VA,E	868	557	64.2	273	49.0	284	51.0	623	71.8	427	68.5	196	31.5
VA,W	234	185	79.1	130	70.3	55	29.7	180	76.9	136	75.6	44	24.4
WV,N	286	200	69.9	108	54.0	92	46.0	200	69.9	111	55.5	89	44.5
WV,S	216	177	81.9	103	58.2	74	41.8	178	82.4	134	75.3	44	24.7
5th	22,885	21,311	93.1	18,334	86.0	2,977	14.0	20,880	91.2	18,550	88.8	2,330	11.2
LA,E	342	300	87.7	152	50.7	148	49.3	302	88.3	216	71.5	86	28.5
LA,M	151	135	89.4	78	57.8	57	42.2	135	89.4	109	80.7	26	19.3
LA,W	412	259	62.9	190	73.4	69	26.6	193	46.8	143	74.1	50	25.9
MS,N	225	188	83.6	149	79.3	39	20.7	188	83.6	120	63.8	68	36.2
MS,S	433	359	82.9	277	77.2	82	22.8	359	82.9	278	77.4	81	22.6
TX,N	853	781	91.6	447	57.2	334	42.8	776	91.0	590	76.0	186	24.0
TX,E	839	580	69.1	388	66.9	192	33.1	575	68.5	435	75.7	140	24.3
TX,S	9,394	8,558	91.1	7,624	89.1	934	10.9	8,220	87.5	7,577	92.2	643	7.8
TX,W	10,236	10,151	99.2	9,029	88.9	1,122	11.1	10,132	99.0	9,082	89.6	1,050	10.4

**Table H-3.
U.S. District Courts----Pretrial Services Recommendations Made For Initial Pretrial Release
For the 12-Month Period Ending September 30, 2025**

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.
6th	4,683	4,141	88.4	2,562	61.9	1,579	38.1	4,200	89.7	3,152	75.0	1,048	25.0
KY,E	456	412	90.4	295	71.6	117	28.4	412	90.4	320	77.7	92	22.3
KY,W	404	338	83.7	242	71.6	96	28.4	338	83.7	279	82.5	59	17.5
MI,E	952	922	96.8	498	54.0	424	46.0	920	96.6	659	71.6	261	28.4
MI,W	259	166	64.1	44	26.5	122	73.5	161	62.2	110	68.3	51	31.7
OH,N	751	687	91.5	419	61.0	268	39.0	679	90.4	467	68.8	212	31.2
OH,S	569	529	93.0	181	34.2	348	65.8	532	93.5	326	61.3	206	38.7
TN,E	596	570	95.6	514	90.2	56	9.8	570	95.6	518	90.9	52	9.1
TN,M	291	196	67.4	153	78.1	43	21.9	261	89.7	218	83.5	43	16.5
TN,W	405	321	79.3	216	67.3	105	32.7	327	80.7	255	78.0	72	22.0
7th	2,357	1,987	84.3	1,016	51.1	971	48.9	1,990	84.4	1,305	65.6	685	34.4
IL,N	698	623	89.3	232	37.2	391	62.8	625	89.5	352	56.3	273	43.7
IL,C	216	191	88.4	130	68.1	61	31.9	191	88.4	138	72.3	53	27.7
IL,S	256	196	76.6	112	57.1	84	42.9	200	78.1	151	75.5	49	24.5
IN,N	333	305	91.6	200	65.6	105	34.4	307	92.2	230	74.9	77	25.1
IN,S	403	333	82.6	224	67.3	109	32.7	328	81.4	256	78.0	72	22.0
WI,E	330	281	85.2	95	33.8	186	66.2	281	85.2	149	53.0	132	47.0
WI,W	121	58	47.9	23	39.7	35	60.3	58	47.9	29	50.0	29	50.0
8th	5,192	4,374	84.2	2,769	63.3	1,605	36.7	4,352	83.8	3,407	78.3	945	21.7
AR,E	447	353	79.0	174	49.3	179	50.7	353	79.0	228	64.6	125	35.4
AR,W	255	151	59.2	35	23.2	116	76.8	151	59.2	65	43.0	86	57.0
IA,N	381	322	84.5	204	63.4	118	36.6	321	84.3	261	81.3	60	18.7
IA,S	351	320	91.2	227	70.9	93	29.1	320	91.2	276	86.3	44	13.8
MN	488	462	94.7	277	60.0	185	40.0	459	94.1	346	75.4	113	24.6
MO,E	1,022	940	92.0	607	64.6	333	35.4	943	92.3	713	75.6	230	24.4
MO,W	747	588	78.7	399	67.9	189	32.1	589	78.8	504	85.6	85	14.4
NE	457	417	91.2	340	81.5	77	18.5	414	90.6	361	87.2	53	12.8
ND	406	221	54.4	110	49.8	111	50.2	216	53.2	139	64.4	77	35.6
SD	638	600	94.0	396	66.0	204	34.0	586	91.8	514	87.7	72	12.3

Table H-3.
U.S. District Courts----Pretrial Services Recommendations Made For Initial Pretrial Release
For the 12-Month Period Ending September 30, 2025

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.
9th	21,859	20,929	95.7	15,004	71.7	5,925	28.3	20,832	95.3	16,601	79.7	4,231	20.3
AK	171	149	87.1	68	45.6	81	54.4	119	69.6	84	70.6	35	29.4
AZ	9,396	9,185	97.8	8,127	88.5	1,058	11.5	9,162	97.5	8,431	92.0	731	8.0
CA,N	432	420	97.2	190	45.2	230	54.8	420	97.2	269	64.0	151	36.0
CA,E	437	422	96.6	258	61.1	164	38.9	422	96.6	351	83.2	71	16.8
CA,C	2,148	2,076	96.6	1,151	55.4	925	44.6	2,073	96.5	1,559	75.2	514	24.8
CA,S	6,281	6,016	95.8	3,730	62.0	2,286	38.0	5,989	95.4	4,062	67.8	1,927	32.2
HI	163	158	96.9	70	44.3	88	55.7	158	96.9	127	80.4	31	19.6
ID	338	290	85.8	187	64.5	103	35.5	283	83.7	200	70.7	83	29.3
MT	541	441	81.5	271	61.5	170	38.5	441	81.5	284	64.4	157	35.6
NV	303	283	93.4	111	39.2	172	60.8	276	91.1	176	63.8	100	36.2
OR	572	543	94.9	281	51.7	262	48.3	543	94.9	407	75.0	136	25.0
WA,E	395	309	78.2	227	73.5	82	26.5	308	78.0	280	90.9	28	9.1
WA,W	620	576	92.9	298	51.7	278	48.3	577	93.1	332	57.5	245	42.5
GU	40	40	100.0	22	55.0	18	45.0	40	100.0	22	55.0	18	45.0
NMI	22	21	95.5	13	61.9	8	38.1	21	95.5	17	81.0	4	19.0
10th	6,258	5,720	91.4	4,625	80.9	1,095	19.1	5,694	91.0	4,944	86.8	750	13.2
CO	482	359	74.5	272	75.8	87	24.2	343	71.2	294	85.7	49	14.3
KS	428	377	88.1	255	67.6	122	32.4	375	87.6	287	76.5	88	23.5
NM	3,201	3,152	98.5	2,858	90.7	294	9.3	3,148	98.3	2,962	94.1	186	5.9
OK,N	570	504	88.4	376	74.6	128	25.4	504	88.4	397	78.8	107	21.2
OK,E	281	190	67.6	131	68.9	59	31.1	190	67.6	171	90.0	19	10.0
OK,W	688	603	87.6	329	54.6	274	45.4	603	87.6	348	57.7	255	42.3
UT	441	412	93.4	312	75.7	100	24.3	412	93.4	369	89.6	43	10.4
WY	167	123	73.7	92	74.8	31	25.2	119	71.3	116	97.5	3	2.5
11th	6,668	5,577	83.6	3,416	61.3	2,161	38.7	5,661	84.9	4,051	71.6	1,610	28.4
AL,N	591	385	65.1	219	56.9	166	43.1	389	65.8	250	64.3	139	35.7
AL,M	370	234	63.2	143	61.1	91	38.9	232	62.7	177	76.3	55	23.7
AL,S	289	210	72.7	147	70.0	63	30.0	210	72.7	158	75.2	52	24.8
FL,N	400	379	94.8	263	69.4	116	30.6	374	93.5	285	76.2	89	23.8
FL,M	2,010	1,802	89.7	1,148	63.7	654	36.3	1,802	89.7	1,405	78.0	397	22.0
FL,S	1,692	1,510	89.2	834	55.2	676	44.8	1,634	96.6	1,075	65.8	559	34.2
GA,N	666	561	84.2	346	61.7	215	38.3	533	80.0	374	70.2	159	29.8
GA,M	346	275	79.5	179	65.1	96	34.9	270	78.0	194	71.9	76	28.1
GA,S	304	221	72.7	137	62.0	84	38.0	217	71.4	133	61.3	84	38.7

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.

Table H-15.
U.S. District Courts ---- Pretrial Services Violations Summary Report
For the 12-Month Period Ending September 30, 2025

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	Misdemeanor	Other			
TOTAL	167,626	47,432	28.3	7,533	15.9	477	578	67	483	6,825	12,043
1st	5,673	2,238	39.5	246	11.0	18	12	3	25	216	366
ME	477	220	46.1	46	20.9	2	4	2	1	42	96
MA	1,682	688	40.9	84	12.2	12	3	0	20	64	109
NH	418	160	38.3	27	16.9	0	3	1	0	24	31
RI	405	182	44.9	16	8.8	4	2	0	0	13	20
PR	2,691	988	36.7	73	7.4	0	0	0	4	73	110
2nd	9,220	3,907	42.4	612	15.7	52	66	9	23	532	1,108
CT	917	395	43.1	56	14.2	4	5	3	1	50	96
NY,N	1,059	364	34.4	57	15.7	3	4	0	2	50	83
NY,E	2,864	1,276	44.6	212	16.6	22	19	0	5	186	402
NY,S	2,719	1,190	43.8	176	14.8	9	31	5	11	148	366
NY,W	1,226	496	40.5	63	12.7	4	3	1	1	58	85
VT	435	186	42.8	48	25.8	10	4	0	3	40	76
3rd	8,075	3,354	41.5	435	13.0	50	61	11	15	390	685
DE	340	82	24.1	8	9.8	0	0	0	3	7	9
NJ	3,075	1,602	52.1	115	7.2	20	17	1	4	108	136
PA,E	1,674	490	29.3	68	13.9	2	7	0	2	66	125
PA,M	1,326	468	35.3	83	17.7	11	15	7	4	66	128
PA,W	1,417	596	42.1	146	24.5	17	22	3	2	130	269
VI	243	116	47.7	15	12.9	0	0	0	0	13	18
4th	9,401	3,398	36.1	525	15.5	47	72	7	45	439	760
MD	1,170	582	49.7	93	16.0	12	16	2	8	82	149
NC,E	1,626	457	28.1	80	17.5	8	24	3	2	58	109
NC,M	529	124	23.4	20	16.1	1	4	0	0	16	25
NC,W	1,011	259	25.6	24	9.3	2	0	0	0	22	27
SC	1,566	572	36.5	73	12.8	9	8	0	21	60	102
VA,E	1,639	609	37.2	60	9.9	4	10	0	13	42	71
VA,W	585	217	37.1	30	13.8	7	6	1	0	23	37
WV,N	797	395	49.6	102	25.8	3	4	0	0	98	169
WV,S	478	183	38.3	43	23.5	1	0	1	1	38	71
5th	40,780	6,465	15.9	876	13.5	49	60	4	66	789	1,135
LA,E	958	316	33.0	53	16.8	2	4	0	7	48	92
LA,M	345	89	25.8	19	21.3	2	1	0	0	17	23
LA,W	826	162	19.6	11	6.8	0	0	0	0	11	13
MS,N	466	170	36.5	13	7.6	3	2	0	0	11	20
MS,S	998	265	26.6	19	7.2	1	2	0	0	14	19
TX,N	2,280	701	30.7	64	9.1	4	3	1	4	57	79
TX,E	2,918	667	22.9	81	12.1	4	7	0	3	75	104
TX,S	15,028	2,447	16.3	261	10.7	17	18	0	22	228	325
TX,W	16,961	1,648	9.7	355	21.5	16	23	3	30	328	460
6th	10,816	3,731	34.5	630	16.9	58	65	0	37	574	1,065
KY,E	841	211	25.1	9	4.3	0	0	0	0	9	12
KY,W	936	289	30.9	43	14.9	4	1	0	1	41	59
MI,E	2,216	930	42.0	229	24.6	22	16	0	4	225	452
MI,W	491	162	33.0	45	27.8	1	7	0	1	43	62
OH,N	1,747	704	40.3	96	13.6	6	7	0	14	80	156
OH,S	1,430	592	41.4	103	17.4	10	19	0	10	89	164
TN,E	1,393	228	16.4	16	7.0	2	1	0	1	13	18
TN,M	846	294	34.8	38	12.9	10	6	0	0	34	67
TN,W	916	321	35.0	51	15.9	3	8	0	6	40	75

Table H-15.
U.S. District Courts ---- Pretrial Services Violations Summary Report
For the 12-Month Period Ending September 30, 2025

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	Misdemeanor	Other			
7th	6,646	2,488	37.4	463	18.6	26	41	10	20	421	751
IL,N	2,568	1,110	43.2	193	17.4	12	21	0	8	174	307
IL,C	585	202	34.5	24	11.9	1	4	1	4	19	29
IL,S	606	229	37.8	53	23.1	5	6	1	0	48	101
IN,N	805	268	33.3	39	14.6	2	5	0	5	32	57
IN,S	1,007	225	22.3	40	17.8	0	0	0	0	40	62
WI,E	805	374	46.5	93	24.9	4	4	7	2	89	167
WI,W	270	80	29.6	21	26.3	2	1	1	1	19	28
8th	12,030	3,942	32.8	981	24.9	73	92	14	76	890	2,018
AR,E	1,587	675	42.5	135	20.0	19	16	0	16	106	234
AR,W	502	182	36.3	13	7.1	2	1	0	1	10	15
IA,N	695	174	25.0	42	24.1	0	10	0	2	39	53
IA,S	659	127	19.3	34	26.8	2	5	3	0	28	47
MN	1,207	490	40.6	98	20.0	14	14	0	1	81	155
MO,E	2,407	705	29.3	317	45.0	22	5	8	7	307	1,028
MO,W	1,901	448	23.6	95	21.2	6	12	2	6	86	160
NE	933	283	30.3	48	17.0	4	3	0	0	43	59
ND	1,019	508	49.9	87	17.1	2	1	0	43	78	109
SD	1,120	350	31.3	112	32.0	2	25	1	0	112	158
9th	39,468	10,917	27.7	1,795	16.4	46	56	4	121	1,685	2,811
AK	468	234	50.0	51	21.8	2	0	0	2	48	93
AZ	14,179	2,100	14.8	424	20.2	12	10	0	28	406	591
CA,N	1,641	803	48.9	131	16.3	0	0	0	4	130	269
CA,E	1,686	611	36.2	42	6.9	0	0	0	9	38	46
CA,C	5,827	2,141	36.7	304	14.2	14	23	3	7	277	525
CA,S	8,938	2,310	25.8	380	16.5	4	3	0	35	357	573
HI	427	200	46.8	18	9.0	0	0	0	2	18	21
ID	743	258	34.7	39	15.1	2	2	0	6	32	49
MT	946	423	44.7	70	16.5	4	7	1	1	62	79
NV	913	356	39.0	40	11.2	1	1	0	6	32	46
OR	1,371	598	43.6	149	24.9	5	9	0	9	147	295
WA,E	961	293	30.5	65	22.2	1	0	0	6	62	103
WA,W	1,217	496	40.8	60	12.1	0	1	0	3	55	86
GU	115	79	68.7	19	24.1	1	0	0	3	18	25
NMI	36	15	41.7	3	20.0	0	0	0	0	3	10
10th	11,970	2,823	23.6	489	17.3	18	22	1	19	463	737
CO	1,152	311	27.0	34	10.9	1	1	0	0	32	42
KS	1,088	358	32.9	53	14.8	6	2	0	2	50	69
NM	4,960	680	13.7	85	12.5	3	2	0	2	85	103
OK,N	1,111	359	32.3	102	28.4	3	7	1	3	96	187
OK,E	624	107	17.1	20	18.7	2	1	0	4	17	23
OK,W	1,312	490	37.3	133	27.1	2	6	0	1	131	240
UT	1,356	424	31.3	50	11.8	1	3	0	2	45	62
WY	367	94	25.6	12	12.8	0	0	0	5	7	11
11th	13,547	4,169	30.8	481	11.5	40	31	4	36	426	607
AL,N	1,133	373	32.9	84	22.5	7	1	0	2	79	112
AL,M	628	191	30.4	17	8.9	2	1	0	7	14	22
AL,S	623	186	29.9	19	10.2	2	0	0	7	15	21
FL,N	709	210	29.6	26	12.4	1	2	0	1	24	29
FL,M	3,945	1,084	27.5	108	10.0	9	14	1	6	96	129
FL,S	3,312	1,082	32.7	123	11.4	5	2	3	3	114	158
GA,N	1,798	564	31.4	42	7.4	5	3	0	8	36	60
GA,M	801	270	33.7	25	9.3	4	3	0	2	18	27
GA,S	598	209	34.9	37	17.7	5	5	0	0	30	49

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

Table H-9A.
U.S. District Courts ---- Pretrial Services
Detention Summary: Days, Average and Median
For the 12-Month Period Ending September 30, 2025

Circuit and District	Total Number of Defendants	Total Number of Days Detained	Average Number of Days Detained	Median Number of Days Detained
TOTAL	107,165	34,009,941	317	223
1st	3,138	1,455,899	464	286
ME	254	82,147	323	187
MA	878	330,285	376	259
NH	212	64,802	305	286
RI	177	107,872	609	447
PR	1,617	870,793	538	350
2nd	4,557	2,996,234	658	347
CT	417	226,708	543	391
NY,N	703	270,911	385	197
NY,E	1,155	1,355,498	1,173	615
NY,S	1,243	690,018	555	385
NY,W	737	342,033	464	309
VT	302	111,066	367	271
3rd	3,871	1,974,142	510	354
DE	221	72,961	330	243
NJ	1,062	566,275	533	407
PA,E	953	421,118	441	333
PA,M	768	454,295	591	375
PA,W	735	410,897	559	425
VI	132	48,596	368	171
4th	5,257	1,639,010	312	246
MD	448	209,097	466	399
NC,E	1,068	355,328	332	256
NC,M	303	49,550	163	168
NC,W	636	206,871	325	295
SC	856	280,630	327	259
VA,E	907	222,606	245	174
VA,W	318	95,354	299	229
WV,N	429	144,865	337	246
WV,S	292	74,709	255	195
5th	30,875	7,840,204	254	202
LA,E	595	267,619	449	342
LA,M	234	78,763	336	168
LA,W	558	182,833	327	208
MS,N	237	49,990	210	170
MS,S	688	327,166	475	238
TX,N	1,137	358,961	315	202
TX,E	2,073	1,171,706	565	427
TX,S	11,056	2,139,721	193	119
TX,W	14,297	3,263,445	228	154

Table H-9A.
U.S. District Courts ---- Pretrial Services
Detention Summary: Days, Average and Median
For the 12-Month Period Ending September 30, 2025

Circuit and District	Total Number of Defendants	Total Number of Days Detained	Average Number of Days Detained	Median Number of Days Detained
6th	6,784	2,377,851	351	223
KY,E	628	158,192	251	193
KY,W	650	202,351	311	223
MI,E	1,209	378,719	313	176
MI,W	312	61,121	195	157
OH,N	979	397,798	406	242
OH,S	777	282,741	363	276
TN,E	1,123	468,498	417	277
TN,M	528	239,804	454	319
TN,W	578	188,627	326	217
7th	3,686	2,154,239	584	248
IL,N	1,185	1,135,934	958	506
IL,C	368	189,847	515	361
IL,S	358	104,486	291	234
IN,N	513	218,761	426	232
IN,S	678	311,417	459	322
WI,E	422	160,256	379	248
WI,W	162	33,538	207	182
8th	8,271	2,701,212	327	211
AR,E	827	391,389	473	365
AR,W	288	71,666	248	203
IA,N	546	129,961	238	201
IA,S	546	127,087	232	211
MN	683	202,239	296	212
MO,E	1,696	564,966	333	244
MO,W	1,486	640,013	430	334
NE	665	185,460	278	188
ND	661	204,424	309	215
SD	873	184,007	210	157

Table H-9A.
U.S. District Courts ---- Pretrial Services
Detention Summary: Days, Average and Median
For the 12-Month Period Ending September 30, 2025

Circuit and District	Total Number of Defendants	Total Number of Days Detained	Average Number of Days Detained	Median Number of Days Detained
9th	24,185	6,720,608	278	212
AK	251	96,284	383	293
AZ	11,519	3,241,872	281	42
CA,N	675	469,139	695	358
CA,E	789	425,900	539	381
CA,C	1,799	677,727	376	200
CA,S	5,387	590,178	109	44
HI	254	102,899	405	236
ID	505	176,348	349	212
MT	642	117,244	182	162
NV	321	138,545	431	253
OR	777	249,039	320	235
WA,E	630	221,219	351	233
WA,W	565	175,053	309	194
GU	46	28,884	627	154
NMI	25	10,277	411	90
10th	8,904	2,229,422	250	197
CO	739	246,375	333	231
KS	662	203,795	307	220
NM	4,319	870,026	201	100
OK,N	787	181,967	231	166
OK,E	462	127,047	274	222
OK,W	760	150,722	198	175
UT	918	378,833	412	315
WY	257	70,657	274	136
11th	7,637	1,921,120	252	177
AL,N	713	201,767	282	173
AL,M	428	105,644	246	150
AL,S	428	144,861	338	177
FL,N	413	80,599	195	153
FL,M	2,359	580,256	245	186
FL,S	1,714	319,579	186	141
GA,N	785	280,760	357	188
GA,M	461	129,783	281	246
GA,S	336	77,871	231	206

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