

MOTION FOR PRETRIAL RELEASE

**[For cases where the presumption in 18 U.S.C. § 3142(e)(2) applies]**

Defendant, \_\_\_\_\_, moves this Court to release (him/her) pending trial. There are conditions or a combination of conditions that “will reasonably assure” his/her “appearance” and “the safety of any other person and the community.” 18 U.S.C. § 3142(e). The grounds supporting this motion are:

[In numbered paragraphs list the positive circumstances and maybe address any negative ones, i.e., ties to the community, employment history, limited criminal history (if you’re fortunate or extensive otherwise), past record of appearing in court, medical problems, family’s need for his or her assistance, the availability of electronic monitoring (in some cases), etc.]

WHEREFORE, because this evidence will meet the burden of production in this “presumption” case, because the Court can be reasonably assured Mr./Ms. \_\_\_\_\_ will appear for Court, and reasonably assured of the safety of other persons and the community,

he/she requests the Court to deny the government's motion for pretrial detention and release him/her under appropriate conditions.

### MEMORANDUM

“In our society liberty is the norm, and detention prior to trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). In the Bail Reform Act of 1984, Congress implemented that norm by providing for detention only if the Court finds “that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any person and the community.” 18 U.S.C. § 3142(e)(2).

“The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes.” *United States v. Salerno*, 481 U.S. at 487. Mr./Ms. \_\_\_\_\_ recognizes that, “[s]ubject to rebuttal,” “it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” 18 U.S.C. § 3142(e)(3). The defendant's burden, though, is only that of production of

“evidence to suggest that he is either not dangerous or not likely to flee if turned loose on bail.” *United States v. Hurtado*, 779 F.2d 1467 (11th Cir. 1985). *See also United States v. Stricklin*, 932 F.2d 1353, 1354 (10th Cir. 1991) (“The defendant’s burden of production is not heavy, but some evidence must be produced.”) If the defendant meets his burden of production, the presumption remains as “evidence to be considered along with other evidence listed in the [Bail Reform] Act as indicative of flight or danger to the community.” *United States v. Quartermaine*, 913 F.2d 910, 916 (11th Cir. 1990). The presumption, however, “does not shift the burden of persuasion concerning risk of flight and dangerousness.” *United States v. King*, 849 F.2d 485, 488 (11th Cir. 1988).<sup>1</sup>

**[Might limit the next two paragraphs to cases where the defendant is arguably “low risk.”]**

In September of 2017, the United States Judicial Conference’s Committee on Criminal Law reported its analysis of a report commissioned by the Courts’ Administrative Office “to assess the impact

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<sup>1</sup> *See also* Judge Frank’s decision in *United States v. Downs*, 406 F.Supp.3d 1314, 1317-1318 (N.D. Fla. 2019) (noting the defendant’s burden of production is “relatively light,” that is only the burden of production, and that the burden of persuasion remains with the government).

of [the] presumption on the detention of low-risk defendants.” (JCUS-Sep 2017, p. 10).<sup>2</sup> “[T]he Committee concluded that the § 3142(e) presumption was unnecessarily increasing detention rates of low-risk defendants, particularly in drug trafficking cases.” *Id.* In response, the Judicial Conference “agreed to seek legislation amending the presumption . . . to limit its application.” *Id.* Specifically, it sought legislation limiting the application in controlled substance cases to those who had “previously been convicted of two or more offenses described in section (f)(1) [of § 3142], or two or more state or local offenses that would have been offenses described in (f)(1).” *Id.* at 11.

Years have passed, and the legislation has yet to be produced. Still where the defendant has met his burden of production and the presumption remains a factor, the Committee’s finding about the presumption’s role in the unnecessary detention of low-risk defendant’s deserves consideration.

The same is true of the statistics showing pretrial supervision has proven effective in ensuring those federal defendants released appear in

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<sup>2</sup> The citation is to the September 12, 2017, “Report of the Proceedings of the Judicial Conference of the United States.” It is available at: [https://www.uscourts.gov/sites/default/files/17-sep\\_final\\_0.pdf](https://www.uscourts.gov/sites/default/files/17-sep_final_0.pdf)

court as scheduled and in safeguarding individuals and the community. The success suggests Courts should give more weight to *Salerno's* admonition that “detention prior to trial is the carefully limited exception.”

For the 12-month period ending March 31, 2022, every defendant released in North Florida made it to court. Ex. 1.<sup>3</sup> Of the 319 defendants released, only 11 were rearrested, eight for a felony offense and three for a misdemeanor. The eight arrests represent 3 percent of those released.

The North Florida statistics are consistent with those from around the country. Nationwide, of the 61,964 defendants released in the year ending March 31, 2022, 843 violated their release by failing to appear—

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<sup>3</sup> Exhibit 1 is Table H-15, “U.S. District Courts ---- Pretrial Services Violations Summary Report For the 12-Month Period Ending March 31, 2022.” Rather than footnote each reference to the facts found in the report, Mr./Ms. \_\_\_\_ notes here that, unless otherwise stated, the information presented in the memorandum regarding detention, violations, or the absence of violations comes from Table H-15.

18 U.S.C. § 3154(9) requires Pretrial Services to “monitor and evaluate bail activities” and to provide the judiciary with “periodic reports to assist in the improvement of the bail process.” The result is a series of charts with relevant information. Table H-15 is available only on the J-NET, the federal judiciary’s intranet page. The JNET also includes the information in the “Pretrial Dashboard for Judges,” access to which is apparently limited to judges.

1.3 percent. Only 2 percent were rearrested. Of those, less than half were arrested for felonies.<sup>4</sup>

Pretrial supervision succeeds in districts with both the lowest and the highest rates of pretrial release. Not surprisingly, districts on the border of Mexico have some of the highest detention rates, but the ten districts that detain the highest percentage of defendants range from Oklahoma Eastern that released only 16.3 percent of defendants to the District of Wyoming that released 25.6 percent. Ex. 2.<sup>5</sup> Collectively, the ten districts released 21.6 percent of defendants. Of those released, 2 % failed to appear and 1% were rearrested.

The percentages from the ten districts with the lowest detention rates range from the 59.4 percent released in California Northern to the

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<sup>4</sup> Most defendants who come before federal courts are arrested for non-violent offenses, which would, in itself, seem to lessen the need for pretrial detention. According to a recent Bureau of Justice Statistics report, less than 2 percent of federal arrests were for violent crime. See Mark Motivans. *Federal Justice Statistics, 2020* at 3 (Table 2) (May 2022), available at: <https://bjs.ojp.gov/content/pub/pdf/fjs20.pdf>.

<sup>5</sup> Exhibit 2 lists the ten districts with the highest detention rates. The statistics are drawn from Table 15, attached as Exhibit 1.

51.6 percent released in the District of Maine. Ex. 3.<sup>6</sup> Collectively, they released 53 percent. The failure to appear rate was less than 1 percent, and the rearrest rate was 2%.

The 319 defendants released in North Florida in the year ending on March 31, 2022, represented 41 percent of the defendants that came before the Court. It is consistent with the percentage over the previous five years, which ranged from 39% in 2019 to 46% in 2020. Ex. 4.<sup>7</sup> It exceeds the 2022 national average of 34.9%. Of the 1,691 defendants released in 2017 through 2022, only 4 failed to appear—.2 percent. Fifty-one were rearrested—3 percent.

Despite the universally low rates of failure to appear and rearrests, as noted in the *Guide to Judiciary Policy*, “[t]he pretrial detention rate has substantially increased since the 1982 passage of the Pretrial Services Act.” Vol. 8, Part B, Chapt. 1, § 150. The same passage observes

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<sup>6</sup> Exhibit 3 lists the ten districts with the lowest detention rates. The statistics are drawn from Table 15, attached as Exhibit 1.

<sup>7</sup> Exhibit 4 is a chart summarizing the pretrial release statistics for the Northern District of Florida. It is drawn from the Table 15 of the six Pretrial Services Reports issued in March of 2017, 2018, 2019, 2020, 2021, and 2022. The 2022 report is attached as Exhibit 1. The earlier reports are only available on the JNET.

that “given the rising costs of pretrial detention,” the option of pretrial release with appropriate conditions “provide[s] a significant opportunity to ensure cost-effective service to the public” and that “by imposing conditions of release and alternatives to detention, judicial officers are able to promote the responsible use of public funding to protect the rights of defendants and to reasonably ensure the appearance of the defendant and the safety of the community as required.” As one study concluded, “[i]n light of the costs and finite nature of the resource, it makes sense to reserve jail space for those from the pretrial population who cannot manage (or be managed) in the community while they await trial.” Alexander Holsinger and Kristi Holsinger, *Analyzing Bond Supervision Survey Data, The Effects of Pretrial Detention on Self-Reported Outcomes*, FEDERAL PROBATION JOURNAL, at 43 (Sept. 2018).<sup>8</sup>

Given the success of federal pretrial release here in North Florida and the rest of the country and the lack of any additional success in high-detention-rate districts, the suggestion is that, overall, a greater number of defendants can “manage (or be managed) in the community.”

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<sup>8</sup> Available at: <https://www.uscourts.gov/federal-probation-journal/2018/09/analyzing-bond-supervision-survey-data-effects-pretrial-detention>



That factor is apart from the impact of pretrial incarceration on those who come before the courts. “Even a short stay in jail may have a disrupting effect on the lives of individuals regarding their employment, housing, custody of minor children, and a host of other factors.”<sup>9</sup> The study, which relied on self-reported outcomes, showed job loss or change from 17 percent to those spending less than three days in jail to 59.1 percent to those held longer.<sup>10</sup> Thirty-two percent of those held in jail for three days or less and 44.2 percent held longer reported worsening of “their financial footing.”<sup>11</sup>

The success of pretrial release in securing the presence of defendants in court and in ensuring the safety of individuals and the community, show that detention rates, across the board, exceed what is necessary to achieve the goals of the Bail Reform Act. Given that and given Mr./Ms. \_\_\_\_\_’s circumstances—[restate the favorable grounds], Mr./Ms. \_\_\_\_\_ requests the Court to deny the government’s motion for detention and grant him pretrial release.

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<sup>9</sup> *Id.* at 39.

<sup>10</sup> *Id.* at 41.

<sup>11</sup> *Id.* at 42.



**Table H-15.****U.S. District Courts ---- Pretrial Services Violations Summary Report  
For the 12-Month Period Ending March 31, 2022**

Circuit and District	Total Cases Open	Cases In Release Status	Pct.	Cases with Violations	Pct.	Rearrest Violations			FTA Violations	Technical Violations	Reports to Court
						Felony	Misde-meanor	Other			
TOTAL	177,619	61,964	34.9	10,739	17.3	570	636	76	843	9,850	17,257
1ST	6,695	2,714	40.5	362	13.3	23	25	0	18	324	555
ME	576	297	51.6	62	20.9	0	11	0	1	59	101
MA	1,836	896	48.8	110	12.3	13	7	0	12	88	163
NH	588	286	48.6	46	16.1	3	5	0	0	39	65
RI	506	233	46.0	45	19.3	6	1	0	1	43	64
PR	3,189	1,002	31.4	99	9.9	1	1	0	4	95	162
2ND	11,660	5,712	49.0	817	14.3	64	84	9	90	700	1,349
CT	1,223	627	51.3	139	22.2	16	17	2	7	115	251
NY,N	1,044	401	38.4	78	19.5	1	4	0	40	73	128
NY,E	3,487	1,772	50.8	249	14.1	14	23	0	8	227	450
NY,S	4,224	2,066	48.9	177	8.6	23	33	6	26	119	251
NY,W	1,344	701	52.2	133	19.0	9	4	0	9	125	194
VT	338	145	42.9	41	28.3	1	3	1	0	41	75
3RD	10,032	4,622	46.1	648	14.0	77	66	14	35	602	1,066
DE	262	73	27.9	3	4.1	0	1	0	0	1	3
NJ	3,999	2,072	51.8	180	8.7	38	24	1	13	170	224
PA,E	1,907	722	37.9	120	16.6	6	4	1	9	118	282
PA,M	1,470	527	35.9	74	14.0	4	7	8	4	63	98
PA,W	2,124	1,100	51.8	265	24.1	28	28	4	8	247	453
VI	270	128	47.4	6	4.7	1	2	0	1	3	6
4TH	11,883	4,545	38.2	770	16.9	36	66	6	49	684	1,121
MD	1,674	752	44.9	98	13.0	2	1	0	7	97	148
NC,E	2,300	762	33.1	130	17.1	11	30	5	2	100	188
NC,M	783	227	29.0	49	21.6	1	2	0	7	44	62
NC,W	1,315	277	21.1	41	14.8	5	2	1	3	33	44
SC	1,853	751	40.5	100	13.3	6	6	0	10	86	149
VA,E	1,840	840	45.7	72	8.6	3	10	0	7	59	84
VA,W	696	286	41.1	45	15.7	4	3	0	6	39	54
WV,N	833	426	51.1	168	39.4	2	9	0	5	163	294
WV,S	589	224	38.0	67	29.9	2	3	0	2	63	98
5TH	38,908	8,797	22.6	1,243	14.1	58	54	5	163	1,142	1,455
LA,E	922	393	42.6	22	5.6	0	1	0	2	21	22
LA,M	291	133	45.7	16	12.0	0	2	0	0	15	22
LA,W	804	237	29.5	9	3.8	1	0	0	0	7	9
MS,N	357	138	38.7	29	21.0	2	3	0	0	25	42
MS,S	900	258	28.7	7	2.7	1	0	0	1	5	9
TX,N	2,945	926	31.4	120	13.0	10	10	1	8	100	145
TX,E	2,664	655	24.6	57	8.7	2	3	0	2	55	68
TX,S	16,899	3,303	19.5	377	11.4	29	20	1	91	328	414
TX,W	13,126	2,754	21.0	606	22.0	13	15	3	59	586	724

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						Felony	Misde-meanor	Other			
6TH	13,156	5,207	39.6	925	17.8	44	50	2	63	866	1,541
KY,E	1,050	289	27.5	27	9.3	1	0	0	3	26	28
KY,W	816	345	42.3	47	13.6	5	6	0	2	42	81
MI,E	2,484	1,286	51.8	277	21.5	5	3	0	7	267	523
MI,W	605	209	34.5	44	21.1	2	5	0	4	39	66
OH,N	2,392	1,014	42.4	90	8.9	4	7	0	37	78	111
OH,S	1,867	934	50.0	172	18.4	0	0	1	1	168	281
TN,E	1,740	378	21.7	36	9.5	4	4	0	1	32	36
TN,M	931	330	35.4	94	28.5	18	16	0	2	83	159
TN,W	1,271	422	33.2	138	32.7	5	9	1	6	131	256
7TH	8,146	3,306	40.6	715	21.6	30	37	12	49	681	1,417
IL,N	3,097	1,483	47.9	311	21.0	13	22	5	10	297	730
IL,C	816	227	27.8	43	18.9	1	0	0	8	40	69
IL,S	690	299	43.3	77	25.8	3	3	4	2	76	133
IN,N	941	303	32.2	37	12.2	2	4	0	4	32	48
IN,S	1,375	455	33.1	114	25.1	1	0	0	5	113	189
WI,E	881	440	49.9	111	25.2	9	8	3	5	103	202
WI,W	346	99	28.6	22	22.2	1	0	0	15	20	46
8TH	14,353	4,809	33.5	1,429	29.7	106	101	17	68	1,334	3,123
AR,E	2,034	882	43.4	289	32.8	30	20	1	30	261	516
AR,W	568	142	25.0	13	9.2	1	0	0	0	12	17
IA,N	724	216	29.8	73	33.8	2	4	0	7	67	106
IA,S	1,146	233	20.3	72	30.9	2	6	2	2	67	106
MN	942	403	42.8	87	21.6	9	11	1	4	82	121
MO,E	3,153	923	29.3	443	48.0	27	4	11	9	430	1,571
MO,W	2,467	665	27.0	169	25.4	19	20	1	4	160	315
NE	1,198	459	38.3	70	15.3	6	9	0	2	66	90
ND	930	413	44.4	71	17.2	3	1	0	1	61	75
SD	1,191	473	39.7	142	30.0	7	26	1	9	128	206
9TH	37,318	13,554	36.3	2,533	18.7	67	84	7	212	2,334	3,885
AK	488	190	38.9	56	29.5	0	1	0	1	55	90
AZ	9,980	2,312	23.2	576	24.9	16	15	3	22	547	754
CA,N	1,935	1,150	59.4	197	17.1	0	0	0	6	196	339
CA,E	2,025	731	36.1	55	7.5	2	4	0	6	47	57
CA,C	6,422	2,319	36.1	308	13.3	22	23	3	41	275	503
CA,S	9,189	3,451	37.6	734	21.3	16	24	0	104	641	1,121
HI	566	310	54.8	27	8.7	0	1	0	1	27	42
ID	701	232	33.1	47	20.3	0	4	0	7	39	77
MT	724	308	42.5	74	24.0	4	4	1	0	66	78
NV	1,504	548	36.4	76	13.9	0	1	0	5	67	100
OR	1,538	875	56.9	213	24.3	4	1	0	4	211	368
WA,E	746	310	41.6	64	20.6	2	2	0	5	61	152
WA,W	1,368	720	52.6	88	12.2	1	3	0	7	84	167
GUAM	95	68	71.6	15	22.1	0	1	0	3	15	29
NM,I	37	30	81.1	3	10.0	0	0	0	0	3	8

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						Felony	Misde-meanor	Other			
10TH	11,719	3,677	31.4	649	17.7	16	23	1	64	609	861
CO	1,246	402	32.3	57	14.2	1	2	0	31	50	82
KS	1,125	438	38.9	87	19.9	5	2	0	6	82	118
NM	4,343	1,137	26.2	178	15.7	0	1	0	6	174	201
OK,N	1,190	378	31.8	77	20.4	0	0	0	11	69	120
OK,E	695	113	16.3	15	13.3	2	0	0	1	12	15
OK,W	1,302	584	44.9	117	20.0	2	2	1	5	115	175
UT	1,486	540	36.3	108	20.0	5	16	0	2	99	139
WY	332	85	25.6	10	11.8	1	0	0	2	8	11
11TH	13,749	5,021	36.5	648	12.9	49	46	3	32	574	884
AL,N	950	379	39.9	63	16.6	3	5	0	1	57	96
AL,M	349	199	57.0	29	14.6	4	1	0	7	21	37
AL,S	608	198	32.6	22	11.1	2	1	2	1	18	29
FL,N	779	319	40.9	60	18.8	8	3	0	0	56	91
FL,M	3,036	900	29.6	112	12.4	12	12	0	0	99	147
FL,S	3,818	1,346	35.3	158	11.7	3	3	1	7	148	204
GA,N	2,183	861	39.4	73	8.5	6	11	0	9	56	99
GA,M	1,089	450	41.3	79	17.6	9	2	0	4	73	103
GA,S	937	369	39.4	52	14.1	2	8	0	3	46	78

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

## TEN DISTRICTS WITH THE LOWEST RATES OF PRETRIAL RELEASE

CIRCUIT/DISTRICT	CASES	RELEASED	PERCENTAGE	FTA	REARRESTED
10th Circuit Oklahoma Eastern	695	113	16.3	1	2
5th Circuit Texas Southern	16,899	3,303	19.5	91	50
8th Circuit Iowa Southern	1,146	233	20.3	2	10
5th Circuit Texas Western	13,126	2,754	21	59	31
4th Circuit North Carolina Western	1,315	277	21.1	3	8
6th Circuit Tennessee Eastern	1,740	378	21.7	1	8
9th Circuit Arizona	9,980	2,312	23.2	22	34
5th Circuit Texas Eastern	2,644	655	24.6	2	5
8th Circuit Arkansas	568	142	25	0	1
10th Circuit Wyoming	332	85	25.6	2	1
Totals	48,445	10,252	21.2%	183 (2%)	150 (1%)

## TEN DISTRICTS WITH THE HIGHEST RATES OF PRETRIAL RELEASE\*

CIRCUIT/DISTRICT	CASES	RELEASED	PERCENTAGE	FTA	REARRESTED
9th Circuit California Northern	1,935	1,150	59.4	6	0
11th Circuit Alabama Middle	349	199	57	7	5
9th Circuit Oregon	1,538	875	56.9	4	5
9th Circuit Hawaii	566	310	54.8	1	1
9th Circuit Washington Western	1,368	720	52.6	7	4
2nd Circuit New York Western	1,344	701	52.2	9	13
3rd Circuit New Jersey	3,999	2,072	51.8	13	63
3rd Circuit Pennsylvania Western	2,124	1,100	51.8	8	60
6th Circuit Michigan Eastern	2,484	1,286	51.8	7	8
1st Circuit Maine	576	297	51.6	1	11
TOTALS	16,283	8,710	53%	63 (.7%)	170 (2%)

Excludes Guam and the Northern Mariana Islands because of the small sample size. Between the two of them they had 132 cases. They had release rates of 71.6 and 81.1, respectively.

NORTHERN DISTRICT OF FLORIDA PRETRIAL RELEASE  
 STATISTICS 2017-2022

YEAR	CASES	RELEASED	PERCENTAGE	FTA	REARRESTED
2022	779	319	41	0	11
2021	683	306	45	2	14
2020	784	321	41	1	9
2019	665	265	40	0	7
2018	606	255	42	0	6
2017	558	225	40	1	4
	4,075	1,691	41 %	4 (.2%)	51 (3%)