

## BAIL

### [PTS Recommends Detention?]

#### Presumption

18 U.S.C. § 3142(c) & (f)

Rebuttable Presumption for detention:

- [i] drug crimes; [ii] § 924(c) violations; and
- [iii] previously convicted of a crime of violence

#### Strength of Case

confession, taped recordings, statements  
pre-conviction: § 3142(g)  
post-conviction: § 3143

#### § 3142(g) Factors

1. Nature and circumstances of offense charge:  
crime of violence / drugs / mandatory minimums
2. Weight of evidence
3. History and characteristics of defendant
  - (A) character; physical/mental condition; family/community ties; employment; financial resources; substance abuse; criminal history; past court appearances
  - (B) at time of offense/arrest, defendant connected to criminal justice system -- parole/SR, trial, sentencing
4. Nature/seriousness of danger to person or community

#### Risk of Flight "preponderance"

- use of alias
- lack of ties to community
- citizenship
- SSNs / DOBs
- bench warrants -- check returns
- mandatory minimums if applicable / rough guidelines calculation

#### Danger to Community "clear and convincing"

- prior convictions
- violence / drugs
- use of weapons
- instant offense
- economic danger to community
- vulnerable victim -- child, elderly, handicap

## PRESENTMENT / BAIL / DETENTION

Rule 5, Rule 9, Rule 32.1 (VOSR)

Presented w/in 24 hours (on 3-day wkend, ask supervisor); Booked by Marshals, interviewed by Pre-Trial, Lawyer appointed/retained

- Options:** Release on personal recognizance; Bond (if no reasonable condition)
- §3143 Conditions:** Travel restrictions, drug testing, live w/mom, etc; Can't set financial conditions that result in pre-trial detention
- Bail Arguments** §3142(g) (1) (4) factors
- At hearing §3142(a) (1)** "Danger to Community" - on Gov't's motion; career offender, crime of violence (e.g. gun possession, escape, sex crimes involving minors).  
"Risk of Flight" - Gov't not necessarily entitled to hearing; but prob could argue both flight & danger
- Rebuttable presumptions for detention:** Drug Crimes; §924(c) violation; Prev crime of violence conv
- Standard of proof:** Safety burden is "clear and convincing"  
Flight burden is "preponderance"
- Presumptively, det. is appropriate for:** Guns, Drugs, Prior convictions showing little regard for court instructions; Aliens subject to deportation; Can't identify D; D on probation.
- Appeal:** If bail ordered, gov't disagrees, go to Part I Judge; request a stay at hearing pending Part I Judge. If not same day, get tape of hearing transcribed (Joel Blum). Part I Judge reviews de novo. Make bail argument again.
- §3142 Case:** If arrested in different district and gets bail (but you want detention), go to Part I Judge here; ask other AUSA to get a stay. Or get a stay from Part I Judge here pending removal to this district
- Challenged circo:** Can't appeal DCT's decision, but can re-open issue if new evidence, or D lost suppression motion, etc. Changed circo can be proximity to trial.
- Rebuttal of bail:** §3148. Seek bench warrant. Hearing held to determine if probable cause that D committed crime, or clear & convincing evidence that D viol'd term or condition. Judge must determine that D unlikely to abide by cond's or no reas'ble cond. will assure D's presence. Rebuttable presumption for detention where committed crime.
- At post-plea:** Burden shifts as to both flight & danger.  
§3145: if exceptional reasons D kept out on bail for drug or violence case which otherwise would require remand-Cooperation may be exceptional reason; D's personal probs not exceptional reason
- At post-appeal:** Should be remanded after sent unless potential for reversal
- Signor questions:** Don't let counsel or rep be there; co-signors knowledge of D's involvement in crime relevant to moral suasion & finan responsibility; If signor may become witness, don't approve; Can ask ?'s about crime b/c can't co-sign & be a witness or doesn't have moral suasion

# BAIL: 18 U.S.C. § 3142(g)

In light of the 3142(g) factors, the Government submits that [the presumption is overcome / the defendant cannot overcome the presumption], and accordingly that detention is warranted. In particular, we submit that [a preponderance of the evidence demonstrates that the defendant is a flight risk / that clear and convincing evidence demonstrates that the defendant is a danger to the community].

**(1): NATURE & CIRCUMSTANCES  
OF CHARGED OFFENSE**

(Violence; Terrorism; Minor Victim;  
Controlled Substance; Firearm; Explosive)

**(2): WEIGHT OF EVIDENCE**

**(3): HISTORY AND CHARACTERISTICS  
OF THE DEFENDANT**

(A): Character;  
Physical/Mental Condition;  
Family Ties;  
Financial Condition;  
Length of Residence;  
Community Ties;  
Past Conduct;  
Drug/Alcohol History;  
Criminal History;  
History of Appearances at Court.

(B): At time of offense, under federal or  
state supervision (pre- or post-trial)

**(4): DANGER TO ANY PERSON  
OR THE COMMUNITY**

## ARGUMENTS

Standard under 18 U.S.C. § 3142(e): If no condition or combination of conditions will reasonably assure appearance of defendant as required and safety of any other person or the community, defendant should be detained before trial.

Rebuttable presumption under 18 U.S.C. § 3142(e): in drug cases with 10 yr. max., or 924(c) cases, certain cases involving minors – it's presumed that no condition or combo of conditions will assure appearance and safety; it's up to defense counsel to rebut

### A. Risk of Flight

1. Strength of case (likelihood of conviction) – confession, tapes, wiretaps, undercover deals
  2. Potential penalties:
    - a. emphasize mandatory minimums, high guidelines
    - b. collateral consequences of arrest/conviction (e.g. deportation)
  3. Outstanding bench warrants or prior bench warrants
  4. False info to PTS (or info not corroborated)
  5. Conflict of PTS info w/ info to arresting agents, marshals
  6. Aliases, multiple DOBs, SSNs, addresses from rap sheet (emphasize ability to hide identity and location)
  7. Lack of community ties
    - family intact?
    - short period of residence in city
    - lack of employment/brief employment
  8. Ties to other communities
    - alien status
    - relatives/associates elsewhere
    - regular travel
  9. Assets giving ability to flee
  10. Ability to make/obtain documents to flee (e.g. passport)
  11. Other:
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**B. Dangerousness:**

1. Nature of Offense (e.g., violence, threats, drug dealing)
2. Criminal History
  - crimes of violence
  - past drug dealing
  - crimes while on bail
  - crimes while on probation
3. Currently under supervision (or on bail)
4. Tested positive for drugs by PTS
5. Drug use or addiction w/o employment (reflects need to commit crimes to support habit)
6. Threats to witnesses
7. Other: \_\_\_\_\_

**B. DEFENDANT'S RESPONSE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. REPLY:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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