# WINNING OUR CLIENTS' FREEDOM

## Using the Bail Reform Act to Get Our People Out of Jail

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## The Bail Reform Act's Central Question:

Are there any release conditions that the Court can impose to "reasonably assure" the client's APPEARANCE at future court proceedings, as required, and the SAFETY of the community?

If YES, the Bail Reform Act REQUIRES release on those conditions.

Conditions must be the "least restrictive" necessary to "reasonably assure" appearance and safety.

# TAKEAWAYS

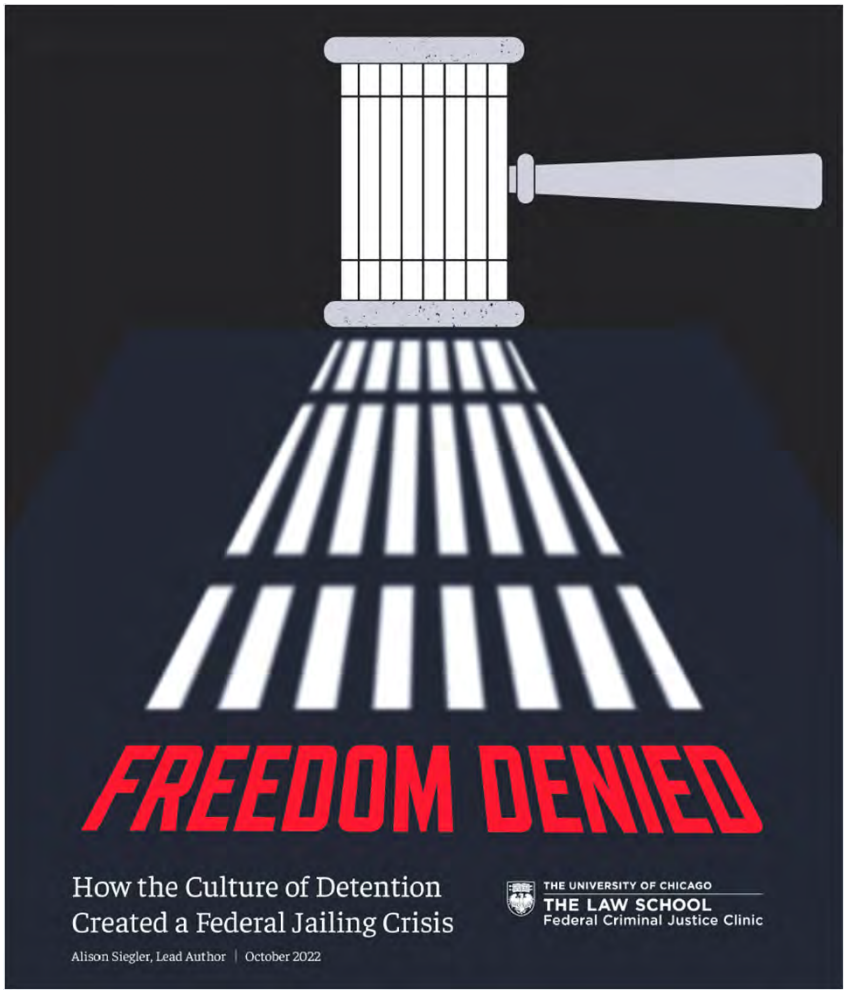
1. Initial Appearance: If no valid 3142(f) factor is present, your client must be released. No detention. No detention hearing.

2. Do Not Consent to Detention or Waive Release.

3. Object to Financial Conditions that your client can't meet.

4. Detention Hearings and Presumption Cases: Always present evidence to rebut the presumption at Step 1 and hold government to its burden at Step 2.

# The Federal Bail Crisis: THE STATS



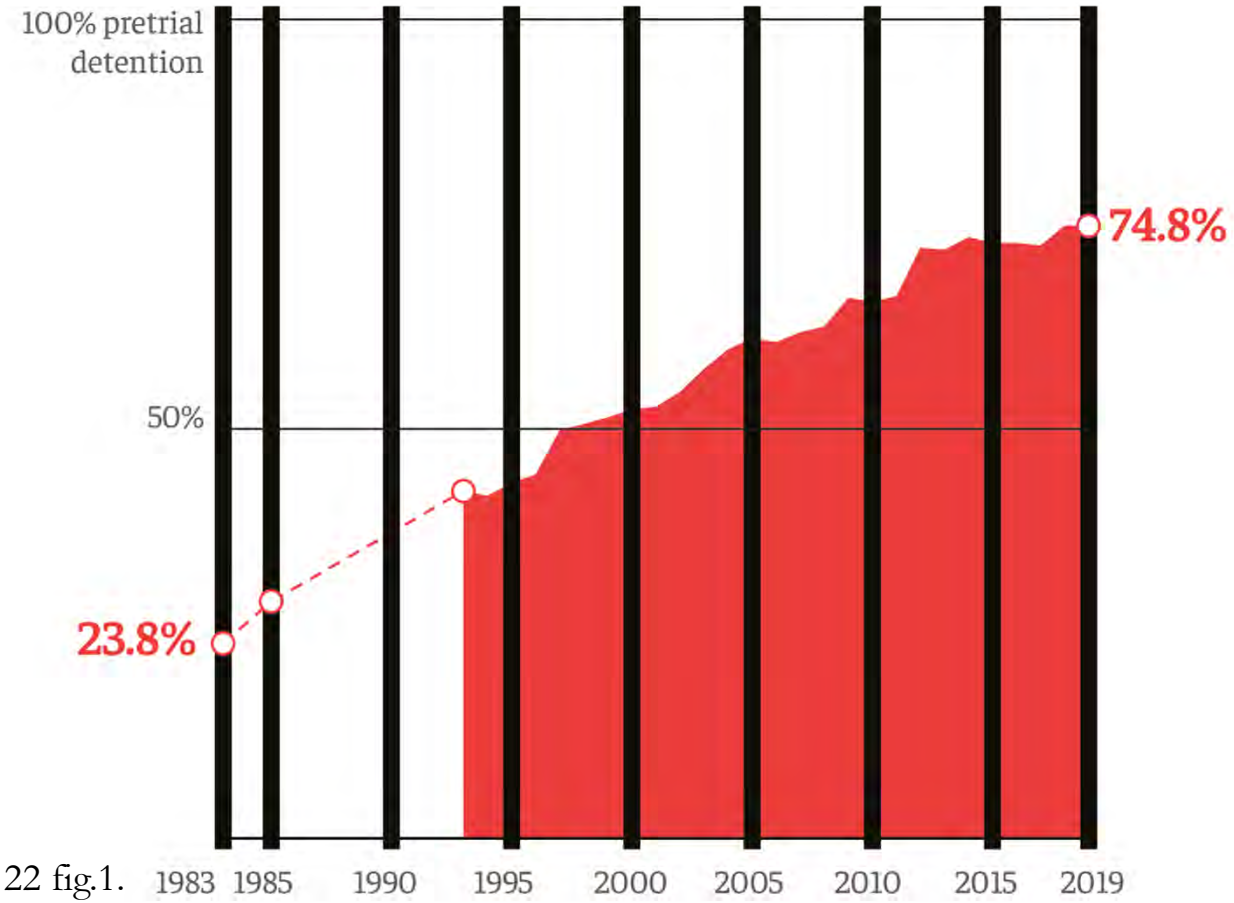

Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* (2022), https://freedomdenied.law.uchicago.edu/report.

## *Freedom Denied* Findings

- Judges regularly violate the Bail Reform Act.
- Instead of following the law, judges' decisions are driven by habit and courtroom custom.
- Those customs drive up jailing rates and exacerbate racial disparities.

# The Culture of Detention

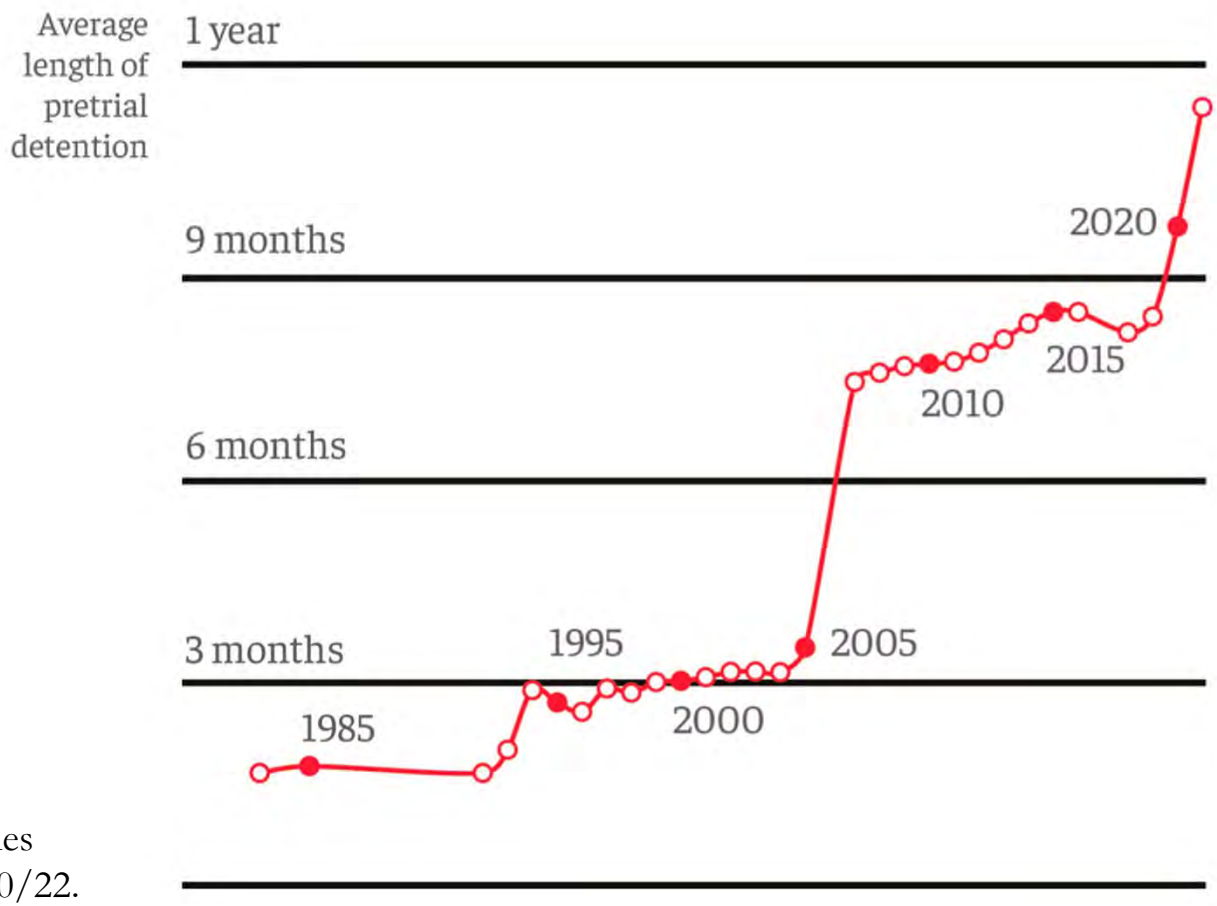
**Figure 1: Federal Pretrial Detention Rates Have Skyrocketed Since the BRA Was Enacted (1983–2019).**




Source: *Freedom Denied* at 22 fig.1.

National Average Time in Jail:
**One Year**
(2022 data: 362 days)

**Figure 2: The Average Length of Federal Pretrial Detention Has Ballooned Since the BRA Was Enacted (1983–2021).**




Sources: *Freedom Denied* at 23 fig.2 (citing AO Tables H-9A, 9/30 for 1983-2021); AO Table H-9A 9/30/22.

# Almost Everyone on Bond
# Appears & Does Not Reoffend

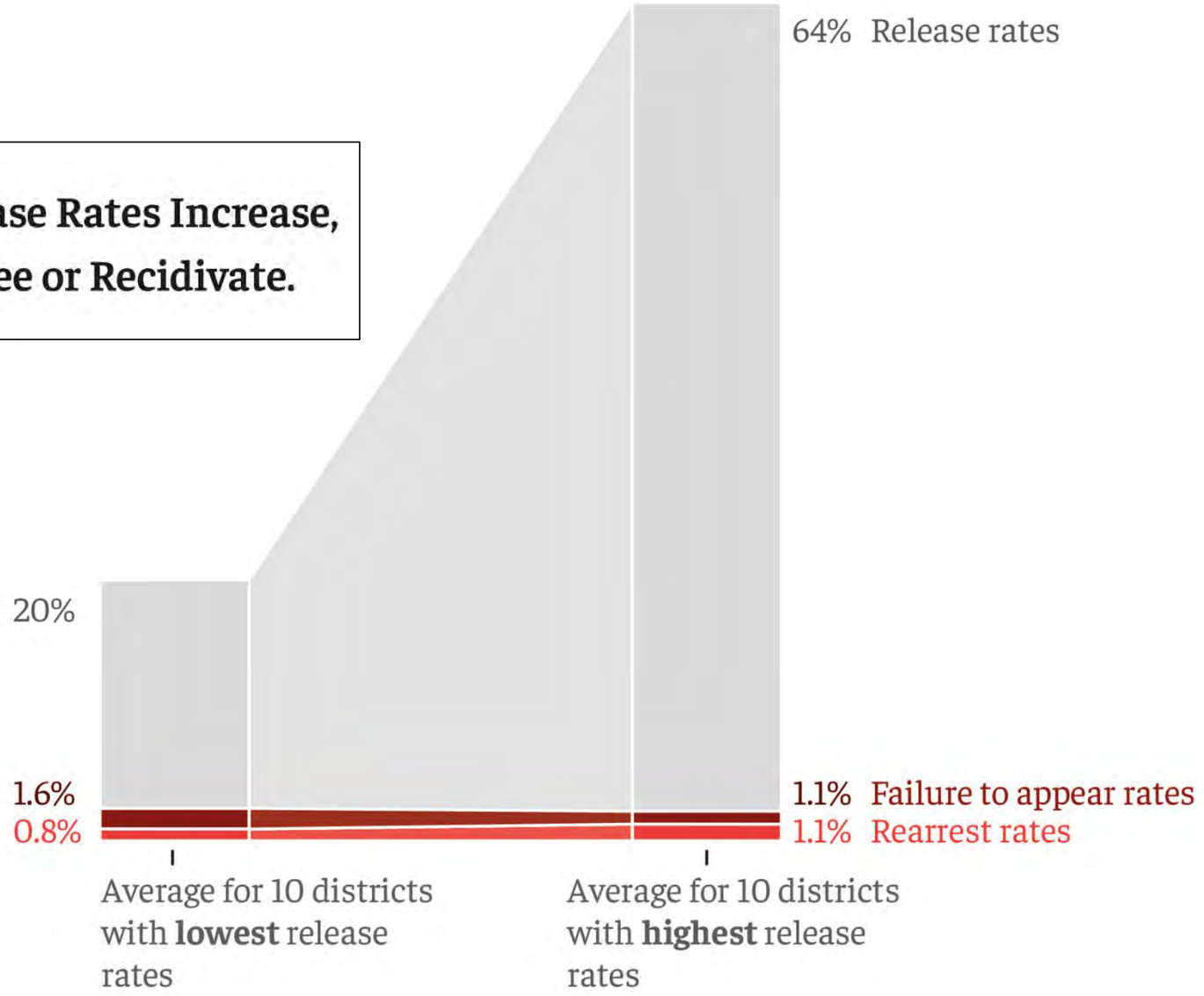
## Federal clients released on bond

- **99%** appear for court as required
- **98%** are not arrested while on bond

Sources: AO Table H-15 (9/30/19, 9/30/20, 9/30/21, 6/30/22).

Statement by Rep. David Trone (D-MD), FY 2022 Budget Proposal Request for DOJ, before the House Subcommittee on Commerce, Justice, Science, and Related Agencies, May 4, 2021, https://appropriations.house.gov/events/hearings/fiscal-year-2022-budget-request-for-the-department-of-justice.

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



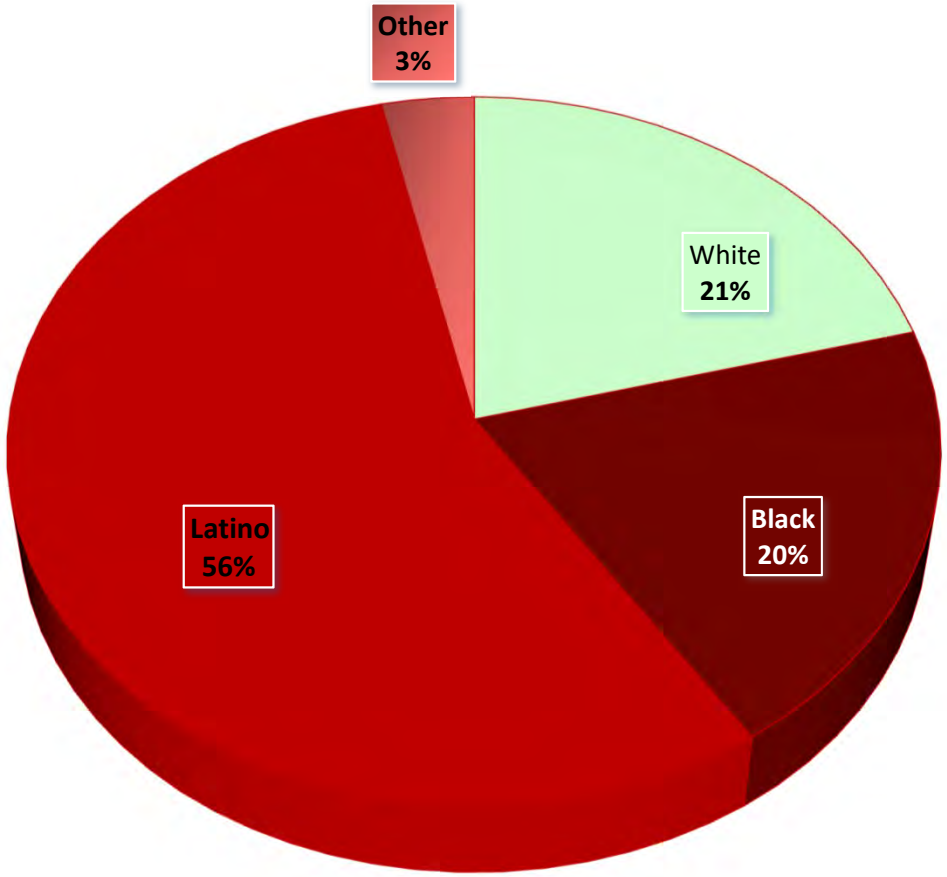

Source: *Freedom Denied* at 25 fig.4.

# Almost Everyone on Bond
# Appears & Does Not Reoffend!

- This data proves that when release rates increase, crime and flight do not.
  - The 2 measures the BRA cares about most!
- We have a responsibility to tell our judges about these stats.
  - In Template Motions in Materials.

# Racial Disparities
# in Federal Pretrial Detention

# Racial Disparities in Federal Charging




**Nearly 80%** of those charged with federal crimes are people of color.

DOJ, *Federal Justice Statistics, 2015-2016*, at 1, Figure 1 (2019), https://www.bjs.gov/content/pub/pdf/fjs1516.pdf.

# *Freedom Denied* Findings: Racial Disparities

**People of color were significantly more likely:**

- To be illegally jailed at the Initial Appearance;
- To be jailed without a lawyer at the Initial Appearance;
- To be detained in presumption cases; and
- To be jailed unlawfully on financial conditions they could not meet.

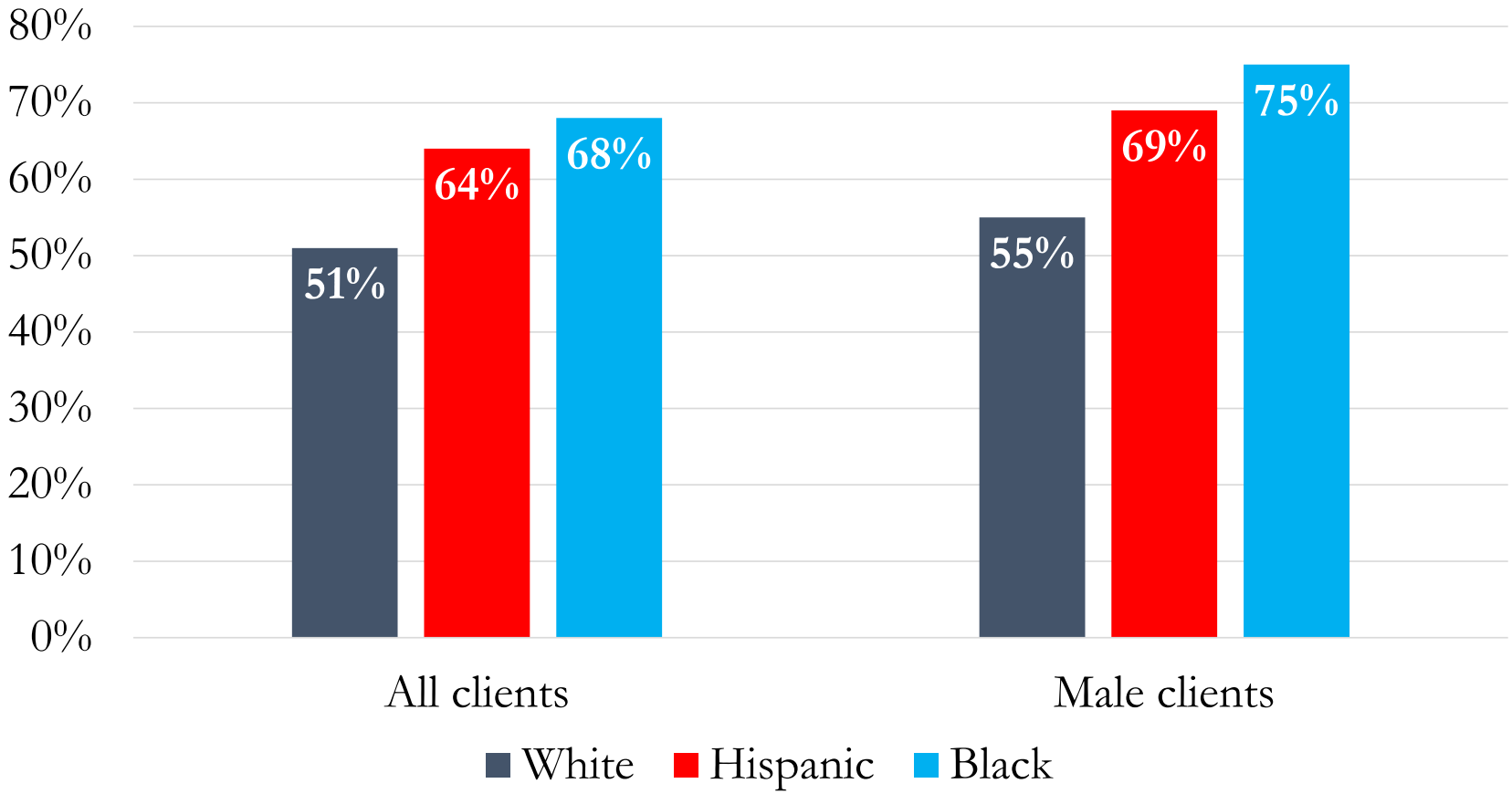
# Racial Disparities in Federal Pretrial Detention

A black male client is **20 percentage points** more likely to be detained than a white male client.

A latino male client is almost **15 percentage points** more likely to be detained than a white male client.

Stephanie Holmes Didwania, *Discretion and Disparity in Federal Detention*, 115 NW. U. L. REV. 1261, 1291 & Figure 1 (2021), https://scholarlycommons.law.northwestern.edu/nulr/vol115/iss5/1/

# Federal Pretrial Detention Rates by Race:
## Male clients of color detained at higher rates




Source: Stephanie Holmes Didwania, *Discretion and Disparity in Federal Detention*, 115 NW. U. L. REV. 1261, 1291 (Figure 1).

# To Address Racial Disparities…

**Redouble our efforts to get clients released on bond**

# BRA Presumption of Release

- BRA § 3142(b): "shall order . . . release" on personal recognizance.
- "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).

## Gov't & Judges Violate the Bail Reform Act

- We must stop these violations and remind everyone that the BRA is the law: binds judges, prosecutors, everyone else.
- If we advocate forcefully, we can ensure compliance with the law and ameliorate race disparities.
- We must remind everyone of what the Act says—if we don't, no one will.

# INTERRUPT AND CHANGE THE CULTURE OF DETENTION

# ROADMAP

1. The law that applies at Initial Appearance, the common violations of that law, and action steps for that hearing.
2. Action steps for Detention Hearings.
3. Action steps for Detention Hearings when a presumption of detention applies.
4. Concrete advice for conducting initial client interviews that will enable us to meet the Bail Reform Act's legal standards.
5. Questions.

# Initial Appearance Hearing

## Initial Appearance Hearing: Problem

- Widespread misconception that the government is entitled to a Detention Hearing every time it requests one.ne.
- Government requests detention at IA on grounds not authorized in the Bail Reform Act.
- Result: Clients detained illegally

## Initial Appearance Hearing: Problem

**"The government is moving for detention because the defendant is a danger to the community and a risk of flight…"**

# Initial Appearance Hearing: Problem

**Danger to the community:**

**NOT a basis for a Detention Hearing**

**Ordinary risk of flight:**

**NOT a basis for a Detention Hearing**

## Illegal to Detain As Danger or Ordinary Risk of Flight

1. Plain language of Bail Reform Act, 18 U.S.C. § 3142(f)

2. US v. Salerno, 481 U.S. 739, 747 (1987)

3. Courts of Appeal caselaw

**Illegal to Hold Detention Hearing without "F" Factor**

All 3 sources agree:

A judge can only detain client & hold a Detention Hearing if one of

**7 factors in § 3142(f)**

is present.

## Illegal to Hold Detention Hearing without "F" Factor

**STATUTE: § 3142(f)**

"The judicial officer shall hold a [detention] hearing" only "in a case that involves" one of the 7 factors.

# Initial Appearance Law: 7 "F" Factors

- § 3142(f)(1): Case specific
  - Crimes of violence (e.g., bank robbery)
  - Offense with max of life or death
  - Drugs
  - Guns (924(c), 922(g)), Minor victim, Terrorism
  - Recent recidivists (very rare)
- § 3142(f)(2): Subjective
  - "serious risk" of flight (SROF)
  - "serious risk" threat to witness/juror (obstruction)
- NOT DANGER TO THE COMMUNITY!

# (F)(1) Factor: Types of Cases

| **No (F)(1) Factor*** | **Yes (F)(1) Factor** |
|---|---|
| - Fraud/Financial crime | -Crimes of violence |
| - Postal theft/bank theft/ID theft | -Drugs |
| - Alien smuggling | -Guns: 924(c), 922(g) |
| - Illegal reentry | -Minor victim |
| - Money laundering | -Terrorism |

* NO DETENTION HEARING unless SERIOUS risk of flight or obstruction: 3142(f)(2)

# Initial Appearance Hearing:
# Illegal to Detain Client Without "F" Factor

- If case is not covered by (f)(1)…
- Only possible legal basis for detention is (f)(2): **"Serious risk that such person will flee" or obstruct**
- Government must present EVIDENCE that our client poses a "serious" risk rather than ordinary risk.
  - Basic statutory construction argument: the word "serious" must be doing some work.
  - POE standard applies: *U.S. v. Friedman*, 837 F.2d 48, 49 (2nd Cir. 1988).

# Initial Appearance Hearing:
# Illegal to Detain Client Without "F" Factor

## 8 Courts of Appeals Agree; None Disagree

- 1st Circuit: *United States v. Ploof*, 851 F.2d 7, 11 (1st Cir. 1988)
- 2nd Circuit: *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988)
- 3rd Circuit: *United States v. Himler*, 797 F.2d 156, 160 (3d Cir. 1986)
- 5th Circuit: *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992)
- 6th Circuit: *United States v. Hardon*, 149 F.2d 1185 (6th Cir. 1998).
- 8th Circuit: *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985) (en banc)
- 9th Circuit: *United States v. Twine*, 344 F.3d 987, 987 (9th Cir. 2003)
- DC Circuit: *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999)

# Illegal to Detain Client as Danger at Initial Appearance

## Courts of Appeals agree

## DANGER TO THE COMMUNITY

- Is not one of the (f) factors, and
- Is not a legitimate basis for detention at Initial Appearance.
- *U.S. v. Dillard*, 214 F.3d 88, 96 (2nd Cir. 2000) ("A defendant who is not eligible [for detention under 3142(f)] must be released, notwithstanding dangerousness.").

# INITIAL APPEARANCE HEARING

**No "F" Factor**

**=>**

**No Detention Hearing**

**=>**

**IMMEDIATE RELEASE**

# Illegal to Hold Detention Hearing without "F" Factor

- **Remind judges that it is ILLEGAL to hold a Detention Hearing or detain our client in jail when no F Factor applies.**
- Our client must be released immediately
  - Personal recognizance/unsecured bond: § 3142(b); OR
  - Release on conditions: § 3142(c)

# ACTION STEPS: Initial Appearance

1) **Ask Gov't what (f) factor applies**

2) **If no (f)(1) factor, OBJECT to Detention Hearing as illegal & request immediate release**
   - Object if Govt Claims Ordinary Risk of Flight
   - Object if Govt Claims Danger to Community

# Detention Hearing

# **Problem:** Waiver of Detention Hearing

## NATIONALLY

## The defense bar waives or submits to detention in 40% of all cases

SOURCE FOR 40%: BUREAU OF JUST. STATS., PRETRIAL RELEASE AND MISCONDUCT IN FEDERAL DISTRICT COURTS, FISCAL YEARS 2011–2018, at 2 & Table 1 (2022).

# GENERAL RULE:
# DON'T WAIVE
# DETENTION HEARINGS

# ACTION STEPS FOR WINNING RELEASE

# Detention Hearing

# DH ACTION STEP 1:
# Remind Judges of First Principles

## Presumption of release on personal recognizance!

- **BRA Text: "SHALL ORDER. . . RELEASE."**
  - § 3142(b)-(c).
- Legislative History: BRA was intended to authorize detention for a **small** category of people: highly dangerous or high risk of absconding.
  - "There is a **small** but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community . . . . It is with respect to this **limited group of offenders** that the courts must be given the power to deny release pending trial." *The Comprehensive Crime Control Act of 1983*, S. REP. NO. 98-225, at 6–7 (1983).

# DH ACTION STEP 1:
# Remind Judges of First Principles

- We don't have to *guarantee* appearance/safety of community.
  - **The statutory question is whether there are conditions of release that will *reasonably assure* appearance/safety.**

# DH ACTION STEP 1:
# Remind Judge of First Principles

- Judge must consider all possible conditions of release
- And must impose "least restrictive" conditions under § 3142(c)(1)(B)

# DH ACTION STEP 1:
## Remind Judge of First Principles

- Emphasize gov't bears burden of proving risk of flight by at least preponderance
- And dangerousness by clear & convincing evidence. § 3142(f).

# DH ACTION STEP 2:
## Structure Argument Around § 3142(g) Factors

The law requires the judge to consider these factors in determining if our client poses a danger or flight risk that can't be mitigated by ANY conditions.

# DH ACTION STEP 2:
# Structure Argument Around § 3142(g) Factors

- Nature and circumstances of offense
- History & characteristics, including
  - Family ties
  - Employment ties
  - Length of time in the community
  - History of drug/alcohol abuse
  - Physical/mental condition
  - Criminal History
  - On parole, probation, supervision, bond
  - Record concerning appearance in court
- Weight of evidence: Least important factor

# DH ACTION STEP 3:
# Conditions of Release

- **The law requires judge to consider ALL conditions of release**
  - **And to impose "least restrictive" conditions under § 3142(c)(1)(B)**
- Present facts to show there are conditions of release that will "reasonably assure" appearance/safety.
- Present a creative package of conditions tailored to our client
  - Third-party custodian
  - Maintain/get employment
  - Maintain/start education
  - Curfew
  - Refrain from excessive alcohol/all drugs
  - Undergo psych treatment
  - Restrictions on travel/living/EM/GPS

## DH ACTION STEP 4:
## Ensure Client is not Jailed for Poverty

- Rule: "The judicial officer may not impose a financial condition that results in the pretrial detention of the person." 3142(c)(2).
- **Any time the judge asks you for a solvent surety to support a secured or unsecured bond, that violates the law.**
- Data shows that financial requirements for bond fall more heavily on clients of color given uneven distributions of wealth and homeownership.

# DETENTION HEARING ACTION STEPS (all cases)

1) Remind judge § 3142(b) contains a presumption of release on personal recognizance.
2) Remind judge they're required to consider *all* possible conditions of release before detaining our client, and to impose the "*least restrictive*" conditions.
3) Remind judge gov't bears burden of proving risk of flight by preponderance and dangerousness by clear & convincing evidence.
4) Remind judge the statutory Q is whether there are conditions of release that will "*reasonably assure*" appearance and safety.
5) Present facts to show there *are* conditions of release that will "*reasonably assure*" appearance/safety.
6) Ensure that our clients are not detained simply because they are poor.
7) Structure argument around § 3142(g) factors.

# Presumption of Detention: § 3142(e)(3)

Drugs, 924(c), Minor Victim, Terrorism

# PRESUMPTION ACTION STEP 1
## Prevent Judges From Misapplying Presumption

**Presumption Applies at DH**

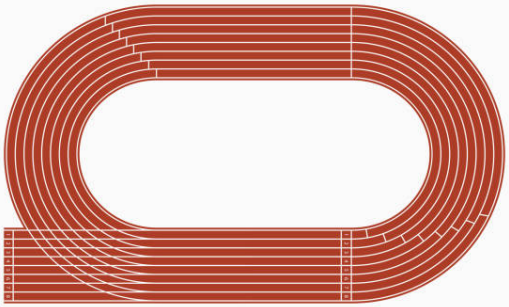
- **(A) Drugs**
- **(B) § 924(c) Gun**
- **(C) Terrorism**
- **(D) Kidnapping**
- **(E) Minor victim**
- **These are the only offenses in § 3142(e)(3)(A)-(E)**

**Presumption DOES NOT Apply**

- **Crime of Violence**
- **§ 922(g) Gun**
- **Illegal Reentry**
- **Fraud & Money Laundering**
- **Any offense not in § 3142(e)(3)(A)-(E)**
- **Uncharged conduct**
  - *See United States v. Persico*, 376 F. App'x 155, 156 (2d Cir. 2010).

# PRESUMPTION ACTION STEP 2

- Ensure judges are applying the right legal standard in presumption cases
- Caselaw lays out a two-step legal standard; insist judges follow



# Two-Step Standard for Presumption Cases

## STEP 1: Rebutting the Presumption

- Judge must make a finding about rebuttal.
- We have to remind judges how easy it is to rebut the presumption, and we need to argue that our evidence definitively rebuts it.

# Step 1: BRA Presumption is Easy to Rebut

- **Defense just needs to produce "some evidence" related to the § 3142(g) factors.** *Jessup*, 757 F.2d 378, 384, 389 (1st Cir. 1985).
- **Evidence of the client's family ties, employment history, or any "evidence of economic and social stability."** *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).
  - "evidence of [defendant's] marital, family and employment status": married/partner; minor children
  - "ties to and role in the community"
  - "clean criminal record"; minimal criminal history
  - Lack of drug history, lack of mental health history, and anything else in § 3142(g)
- **Ties to the community definitively rebut the presumption.**
  - *See United States v. Jackson*, 845 F.2d 1262, 1266 (5th Cir. 1988) ("Where the defendant has presented considerable evidence of his longstanding ties to the locality in which he faces trial . . . the presumption . . . has been rebutted.").

# Step 1: BRA Presumption is Easy to Rebut

## Defense bears "a *light burden* of production" to rebut the presumption

- *United States v. Wilks*, 15 F.4th 842, 846 (7th Cir. 2021) (emphasis added).
- *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986) ("The burden of production is not a heavy one to meet.").
- *United States v. Jessup*, 757 F.2d 378, 380–84 (1st Cir. 1985) (to meet the burden of production required for rebuttal, the defendant need only produce "**some evidence**" under § 3142(g)).
- *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010) (same).
- *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985) (same).
- *United States v. Alatishe*, 768 F.2d 364, 371 (D.C. Cir. 1985) (same).
- *United States v. Abad,* 350 F.3d 793, 797 (8th Cir. 2003) (defendant "bears a limited burden of production—not a burden of persuasion—to rebut that presumption by coming forward with evidence [that] he does not pose a danger to the community or a risk of flight").

# Step 1: BRA Presumption is Easy to Rebut

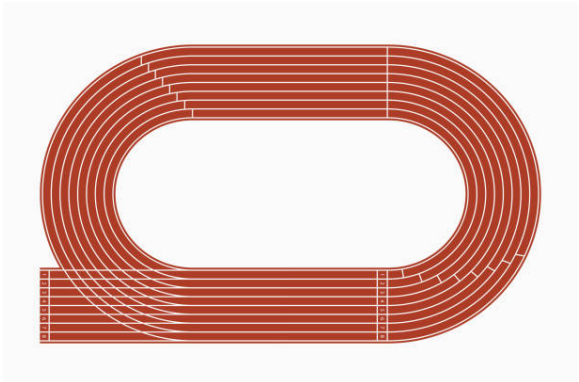
**The court should find the presumption rebutted in every case where there's a contested detention hearing and we present at least *some* mitigating evidence!**

# Two-Step Standard for Presumption Cases

## STEP 2: Post-Rebuttal Analysis

**Regardless of whether we meet the low bar to rebut the presumption under Step 1, under Step 2 the judge must weigh all of the § 3142(g) factors along with the rebutted or unrebutted presumption.**

**The government always bears the burden of persuasion: no conditions will reasonably assure appearance and safety.**



# Step 2: Post-Rebuttal Analysis

## Once presumption is rebutted under Step 1, it carries little weight

- "[T]he presumption is just one factor among many." *Jessup*, 757 F.2d at 384.
- It "does not disappear," but must be weighed against all of our good evidence under § 3142(g).
- "[T]he burden of persuasion always rests with the government."
  - *Wilks*, 15 F.4th at 846–47.
- During any Detention Hearing, there is a "heightened standard of proof under which the fact finder must 'give the benefit of the doubt to the defendant.'"
  - *United States v. Munchel*, 991 F.3d 1273, 1289 (D.C. Cir. 2021).

# Step 2: Post-Rebuttal Analysis

**Once presumption is rebutted under Step 1, the judge can only lock up our client if the government has carried its ultimate burden of proof at Step 2.**

- "When the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community… a court may disable the arrestee from executing that threat." *Salerno*, 481 U.S. at 751.

# Two Step Standard for Presumption Cases

**Even if presumption is NOT rebutted at Step 1, that fact alone does not authorize detention!**

- Instead, the judge must follow the same Step 2 analysis, considering the unrebutted presumption alongside the § 3142(g) factors.
- "[A]n 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)." *Wilks*, 15 F.4th at 847 (emphasis added) (citation omitted).

# PRESUMPTION ACTION STEPS Summary

1. Ensure the presumption isn't applied to the wrong cases
   - Does not apply to COVs, § 922(g), illegal reentry, etc.
2. Ensure judges are applying the right legal standard:
   - Step 1: Determine whether defense has "rebutted" presumption; and
   - Step 2: Weigh all of the § 3142(g) factors along with the presumption.
3. File written bond motions before detention hearings.
4. Appeal to district court and court of appeals if MJ misapplies presumption of detention
   - Motion to revoke det. order: 18 U.S.C. § 3145(b).
   - Appeal to COA: 18 U.S.C. § 3145(c).

# Initial Client Interviews

(before Initial Appearance & before DH)

# Two Primary Goals of Initial Client Interviews

1. Gather **as much information** as we possibly can so we can convince the judge to release our client.
2. Begin establishing a solid attorney-client relationship.

# Our Client Will Have A TON of Questions For Us

1. They'll ask whether and when they're going to get out.
2. They'll ask us to call their family to explain where they are.
3. They'll probably be worried about their job or their kids.
4. And they'll likely have a lot of questions about the case and the charges.
5. Some clients will want to tell us all about their side of the story and why they shouldn't have been arrested.

# Balance Sensitivity to Client with Your Need to Gather Information Quickly

- Be sensitive.
- Emphasize that what we're trying to get information to get them released.

# General Pointers for Initial Lock-Up Interview

Want interview & representation to be client-centered; establish a good rapport.

But we also need to guide the interview and maintain control.

Cardinal rule: Be honest. If we make a promise, we have to keep it.

# Bond Strategy

## APPROACH BOND LIKE SENTENCING

# Approach Bond Like Sentencing

- Tell our client's story in a compelling way
  - Convey their life and their responsibilities
  - Make the judge feel, at a visceral level, that the world would be better off with our client out in the community than locked in a cage.
- Keep the legal standard front and center.
- Tie the evidence (the facts of our client's case) → to the law (the 3142(g) factors): It's up to us to create that link.

## Tie the Evidence → to the Law

**Every time we discuss the facts of our client's life, we need to emphasize HOW those facts demonstrate that there are conditions that will reasonably assure appearance and safety.**

**3142(g)**

# Link the Evidence to the § 3142(g) Factors

- History & characteristics, including, § 3142(g)(3)(A)
  - Family ties
  - Employment ties
  - Length of time in the community
  - History of drug/alcohol abuse
  - Physical/mental condition
- Criminal History related factors, § 3142(g)(3)(A) & (B)
  - Whether client is on parole, probation, supervision, bond
  - Record concerning appearance in court
- Nature and circumstances of offense, § 3142(g)(1): GOVT'S FACTOR
- Weight of evidence: Least important factor, § 3142(g)(2): GOVT'S FACTOR

## Link the Evidence to the § 3142(g) Factors

- Weight of the evidence is "the least important" factor.
  - *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990)
- Placing too much emphasis on the weight of the evidence creates an impermissible "presumption of guilt."
  - *United States v. Gray*, 651 F. Supp. 432, 436 (W.D. Ark. 1987)

# Link the Evidence to the § 3142(g) Factors
## History & Characteristics

- Our client's history and characteristics under (g)(3)(A) → demonstrate that there are conditions of release that will reasonably assure appearance and safety.
- Gather details about our client's family circumstances and responsibilities.
- Give the judge strong reasons for not locking our client away from their family.
- Show that our client is essential to the lives and well-being of as many people as possible.

# There Are *Many* Questions to Ask About Family (Children)

- We need to talk about our client's involvement with their children and the financial and emotional support they provide.

- We also need to ask about the kids themselves.

3. What is your involvement with your children? Do you support them financially? How do you support them emotionally? [Ask specific questions aimed at eliciting as many details as possible.]
    - Do you get children ready for school, help with homework, feed meals, change diapers, put to bed, etc.

    - What do you do with your children in the evenings/weekends?

    - Have any of your children received certificates from school: good attendance, good conduct, etc.? Who would I talk to for copies of those documents so that I can provide them to the judge?

4. If you support your child/children, is that a part of an official arrangement?
    - If so, please describe the arrangement:

5. Do any of your children have an IEP?
    - If so, provide details about your understanding of your child's diagnosis and any involvement you have in assisting with their treatment/schooling.

# We Must Ask *Many* Questions About Family (Elderly/Disabled)

- Gather details about our client's caretaking responsibilities for **elderly** or **disabled family members**, or others outside family who need assistance.

- Ideally: "**No one else** can take over these responsibilities if our client's locked up."

6. Do any of your children have any mental health issues?
    - If so, please describe; also discuss your involvement in their care/treatment:

7. Do any of your children have physical health problems or special medical needs?
    - If so, please describe; also discuss your involvement in their care/treatment:

8. Do any of your children have any other special needs of which you are aware?
    - If so, please describe; also discuss your involvement in their care/treatment:

9. Do you provide needed assistance to elderly and/or other family members?
    - If so, please describe the assistance you provide:

10. If you were previously taking care of someone, such as a child or another family member, who can take care of that person if you are sent to jail?
    - If you do have such dependents, do they have immediate or urgent needs?

## History & Characteristics, (g)(3)(A)

**Ask client to describe a day in their life…**

**…and then tell the judge that story**

# Gather Names/Contact Information for Family

**(1)** Enables us to make the legal argument that our client's deep connections to the community → mean that there are conditions that will reasonably assure appearance under (g).

**(2)** Info about potential Third Party Custodians.

**(3)** Helps us find our client if their phone gets cut off.

| RELATIVES/FRIENDS INFORMATION | | | |
|---|---|---|---|
| RELATIONSHIP/ NAME | OCCUPATION | PHONE # | ADDRESS/CITY |
| MOTHER | | | |
| FATHER | | | |
| SISTER/BROTHER | | | |
| SISTER/BROTHER | | | |
| SISTER/BROTHER | | | |
| SISTER/BROTHER | | | |
| **FRIENDS AND FAMILY IN SAME CITY AS CLIENT** | | | |
| RELATIONSHIP | NAME | PHONE # | ADDRESS/CITY |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| **OTHER CONTACTS** | | | |
| RELATIONSHIP | NAME | PHONE # | ADDRESS/CITY |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

# Questions About Employment

- **Link our evidence to the legal standard:**
  - "My client's economic ties to the community → demonstrate that there are conditions of release that will reasonably assure appearance and safety."
- Gather details to make the judge see our client as a responsible and hard-working person.
- If client has a job: Ask if supervisor could attest to work ethnic and responsibility.
- If client doesn't have a job: Talk about their efforts to find employment and how they contribute at home.

| EMPLOYMENT INFORMATION | | |
|---|---|---|
| CURRENTLY EMPLOYED? (Y/N) | IF Y, WHERE DO YOU WORK? | HOW LONG HAVE YOU WORKED THERE? |
| | INCOME (MONTHLY) | EMPLOYER PHONE# |
| | EMPLOYER NAME AND ADDRESS | |
| | MAY I CALL EMPLOYER? | |
| | IF N, HOW LONG UNEMPLOYED? | |
| | CURRENTLY SEARCHING FOR A JOB? | |
| | ANY UPCOMING INTERVIEWS? | IF Y, WHERE? |
| | HOW ARE YOU CURRENTLY SUPPORTING YOURSELF? | |
| PRIOR EMPLOYMENT (MOST RECENT TO EARLIEST) | | |
| JOB 1 NAME | KIND OF WORK/WHAT DID YOU DO? | |
| INCOME FROM JOB | REASON FOR LEAVING | |
| PHONE # | ADDRESS | |
| SUPERVISOR NAME | MAY WE CALL? | |
| JOB 2 NAME | KIND OF WORK/WHAT DID YOU DO? | |
| INCOME FROM JOB | REASON FOR LEAVING | |
| PHONE # | ADDRESS | |
| SUPERVISOR NAME | MAY WE CALL? | |
| JOB 3 NAME | KIND OF WORK/WHAT DID YOU DO? | |
| INCOME FROM JOB | REASON FOR LEAVING | |
| PHONE # | ADDRESS | |

# Questions About Ties to the Community

- Other community ties: church or community activities.
  - A little detail can go a long way.
- Draw the explicit link between the piece of evidence and the legal standard:
  - "My client's commitment to his church and his community → shows that the conditions of release I propose will reasonably assure his appearance."

# Educational Background

- If client finished high school or has a GED, emphasize.
- Even if they didn't, say what school they attended—another tie to the community that will reasonably assure appearance.
- Ask client if they'd be willing to continue schooling → yet another condition to reasonably assure appearance in court.

**EDUCATIONAL BACKGROUND**

1. What is the highest grade-level you completed?
2. If you graduated from high school, what year did you graduate? If you graduated from college, what year did you graduate?
3. If you did not graduate from high school, do you have a GED?
4. Please list the schools you have attended (from most recent to earliest):
   - School One:
   - School Two:
   - School Three:
   - School Four:
5. At the time of your arrest, were you going to school or did you have plans to go to school? If so, would you be able to go back to school if you were released?

# Physical & Mental Health

- Physical Health: Appointments, physical limitations, medications, COVID.
- Mental Health:
  - Be on the lookout for when our client has been diagnosed with mental illness in the past **but isn't currently getting treatment or meds**.
  - Great argument that getting the client into treatment or back on their meds →will "reasonably assure" that they're not a flight risk or a danger.
  - substance-abuse treatment?

**HEALTH INFORMATION**

1. Do you currently suffer from any physical health problems?
   - List the (a) diagnosis and date, (b) your treating physician, and (c) the medication(s) taken:
     - 
     - 
     - 
     - 
     - 
   - Please discuss how these medical conditions have affected your quality of life:
   - Please discuss if you have ever self-medicated these conditions with alcohol or drugs:
   - Have you been able to get the care you need while in custody? If not, describe what has happened in terms of your need for medication or other treatment while in custody.
2. Do you currently suffer from any mental health problems?
   - List the (a) diagnosis, (b) your treating physician, and (c) the medication(s) taken:
     - 
     - 
     - 
     - 
   - Please discuss how these mental health conditions have affected your quality of life:

# Criminal History & Past Failures to Appear

## Look for ways to minimize the seriousness of our client's past conduct

| Criminal History | | | | | | |
|---|---|---|---|---|---|---|
| Charge | Date | Disposition | Bond Amount | Probation/SR? | Attorney | FTA? |
| Charge | Date | Disposition | Bond Amount | Probation/SR? | Attorney | FTA? |
| Charge | Date | Disposition | Bond Amount | Probation/SR? | Attorney | FTA? |
| Charge | Date | Disposition | Bond Amount | Probation/SR? | Attorney | FTA? |
| Charge | Date | Disposition | Bond Amount | Probation/SR? | Attorney | FTA? |

**CRIMINAL HISTORY FOLLOW-UP**

1. Have you ever been arrested outside of your city or state? If so, please describe:

2. For any failures to appear or bond forfeitures, please provide details:

3. Please provide details about any prior successes or failures on bond, probation, supervised release, or parole:

# Criminal History & Past FTAs
# Minimize Seriousness of Past Conduct

→ To demonstrate that there are conditions that will reasonably assure community safety:

- Emphasize how stale priors/how young at time of arrest.
- Probation/low sentence → shows judge didn't consider conduct to be serious.

→ To demonstrate that there are conditions that will reasonably assure appearance:

- Point to lack of any FTAs or of recent FTAs
- Any positive compliance on probation or supervised release → likewise weighs against flight concerns.

# Catch-All Question at End

Is there anything else about you or your family that I haven't asked that it might be important for me to know, or that might help me convince the judge to release you?

# Ending Client Interview

End every client meeting by talking in **concrete terms** about the next steps we'll take, including things the client has asked us to do.

We should do our very best to follow through on **any promises** and be careful not to promise anything we can't deliver!

# Client Interview ->
# Bond Motion + Detention Hearing OA

Write up all of the good facts in a powerful motion, just as we would at sentencing.

File before Detention Hearing

Prepare strong oral argument for Detention Hearing that ties the facts we've gathered to the law.

**FDO** HOTLINE

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