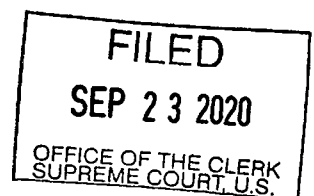


No. 20-5913

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Bradley M. Cox — PETITIONER
(Your Name)



vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bradley Cox
(Your Name)

911 W Peacekeepers Way
(Address)

Decatur, IN 46733
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- A. Are the lower courts using the provisions of the Bail Reform Act in a way contrary to the constitutional right to bail?
1. When the rebuttable presumption of detention exists, how much or what quality of evidence is sufficient to rebut it?
 2. Is the presumption of innocence being honored in determining detention?
 - a. What balance can be struck between the circumstances and weight of the evidence for the pending charges and the presumption of innocence?
 - b. How should different factors and reasons for detention be influenced by the presumption of innocence?
 3. Are the 18 USC 3142(a) factors being considered correctly?
 - a. How are the factors to be weighed: for/against detention or in relation to risks of nonappearance and dangerousness?
 4. Are release conditions being correctly considered in order to mitigate the risks of flight and dangerousness?
 - a. When presented with specific conditions, should the court be required to explain how those conditions fail to reasonably assure the person's appearance and community safety?
 - b. Can the court assume a person will violate release conditions when there is no history of violating conditions while previously on pretrial release?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- U.S. v. Bradley M. Cox, No. 1:18-CR-83, U.S. District Court for the Northern District of Indiana. Judgment entered June 18, 2020.
- U.S. v. Bradley M. Cox, No. 20-1248, U.S. Court of Appeals for the Seventh Circuit. Judgment entered March 2, 2020.
- U.S. v. Bradley M. Cox, No. 20-2085, U.S. Court of Appeals for the Seventh Circuit. Judgment entered August 6, 2020.

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APPENDIX G	Appellant's Reply to Appellee's Response to Motion for Pretrial Release (Appendix F)
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TABLE OF AUTHORITIES CITED

CASES

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. _____

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 6, 2020.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 USCS 3142. See Appendix H.

U.S. Const. Amd. VIII (1791). "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

I was originally arrested on September 6, 2018. I have been incarcerated pending trial for over 2 years. I am pro se and have attempted numerous times to be granted pretrial release as detailed in Appendix B at 1-5 and Appendix E at 1-2. My prior bail history includes being on pretrial release for two separate state cases out of two different counties simultaneously for over a year with no failures to appear and no violations of release conditions. One of the cases was a violation of probation (stemming from the charges filed in the other case) and the release conditions included continuing all of the probation conditions. Following that single violation of any type of supervision in my history, I successfully fulfilled all pretrial release obligations, successfully completed the remaining 2 years of my original probation term, and was released early from probation for the other case. I have two Bachelor's degrees, own a house with a mortgage, was working full time, and have 4 children under the age of 8 who all lived with me full or part-time. Despite presenting all this at the detention hearing the Magistrate ruled that I did not rebut the presumption of detention which exists in my case. The Magistrate used crimes I was previously charged with but never convicted of to justify detention. The Magistrate also used against me the fact I was on probation when the charge allegedly occurred, even though I was released from it prior to my arrest and there is no pending violation. The ~~detention~~ detention order and additional findings are at Appendix C. My appointed attorney (incorrectly) told me there was nothing we could do so I did not pursue pretrial release until over a year later when I went pro se. After filing a number of pretrial release-related motions which were denied for various reasons I filed a motion to revoke the detention order which resulted in the Opinion and Order denying release located at Appendix B. I then appealed to the Seventh Circuit Court of Appeals which issued the summary judgment at Appendix A. My motion, the government's responses, and my reply filed with the Court of Appeals are available at Appendices E, F, and G respectively.

Reasons for Granting the Petition

Following the enactment of the Bail Reform Act, the Supreme Court stated that "[in] our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, at 755 (1987).

Referencing this statement from *Salerno* 33 years later, the Seventh Circuit noted that "jurisdictions across the country" are revising pretrial detention policies to "better enforce the norm and police the exceptions more carefully." *Williams v. Dart* at 2. (7th Cir. 2020).

The fact that it has taken over 30 years for this to begin and the disregard for the right to bail shown by many U.S. district courts indicate that a ruling by the Supreme Court on specific questions relating to pretrial release and 18 USC 3142 is sorely needed.

Regarding the rebuttable presumption, many circuits have slightly different standards but a baseline for rebuttal is missing. If a

Reasons for Granting the Petition (Cont.)

person can have a perfect history of appearing and following release conditions while previously on bond (such as in my case) but still be found not to have rebutted the presumption then in practice the standard for rebutting the presumption is so high as to make it virtually impossible to rebut. Having no baseline or standard for what constitutes rebuttal also allows a disparity between the lower courts where the same quality or types of evidence produce different results. There are many examples in other district courts of much less evidence than was presented in my case being deemed sufficient to rebut the presumption. Setting a standard for what will rebut the presumption is the first step in reaffirming the right to bail across the country and once again making liberty the norm where it is deserved.

While the lower courts frequently acknowledge the presumption of innocence when ruling on detention, seldom is it

Reasons for Granting the Petition, (Cont.)

accorded any real weight when considering the 3142(g) factors. In particular, a balance needs to be struck between the circumstances and weight of the evidence for the alleged charges and the presumption of innocence. In my case very little physical evidence was presented and no testimony was offered, yet the Magistrate determined that the weight of the evidence against me was strong based off of the government's proffered opinion of its strength. Many lower courts justify detention using the purported weight of the evidence, effectively detaining individuals because they are likely to be found guilty rather than because they actually present risks of flight or danger. This shows blatant disdain for the presumption of innocence. Further, a person's right to bail still functions even if the person is likely to be found guilty as long as that person is not likely to flee or be a danger if released. Similarly, holding the nature of pending charges

Reasons for Granting the Petition (Cont.)

against a person must ^{be} somewhat limited, otherwise prosecutors will simply (continue to) overcharge defendants until detention is achieved. Another factor used as grounds for my detention was uncharged allegations proffered by the government. This creates a disparity with other courts, such as a different Northern District of Indiana court where "the Court place[d] no weight on the uncharged conduct and [did] not rely upon it for purposes of [the] analysis." *United States v. Carrington* at 15 (N.D. Ind. 2020). Past charges which a person was never convicted of should also not be used to justify detention as there is no legal basis for a court to believe the alleged conduct actually occurred. Another factor which needs to be somewhat limited is if a person was on some form of supervision when the pending charges occurred because assuming a violation occurred is akin to assuming guilt for the pending charges. All of these reasons for detention

Reasons for Granting the Petition (Cont.)

involve some aspect of the presumption of innocence being ignored in their usage. Some of these reasons need rebalancing and others need elimination in order to reaffirm the presumption of innocence's importance in bail determination, see 18 USCS 3142(j).

Another major issue present in the lower courts is the incorrect application of the factors listed in 18 USCS 3142(g). The lower courts continually place the factors on a scale weighing either for detention or for release. (e.g. "the weight of the evidence supports detention." *United States v. McGibney* at 8 (N.D. Ind. 2020)). This method of considering the factors finds no support in the statute and I would argue it is the foremost reason the majority of federal defendants are denied bail. The correct application of the 3142(g) factors is how they relate to assuring the person's appearance as required and the safety of the community. In practice, the weight of the evidence (or any other factor) can only

Reasons for Granting the Petition (Cont.)

"Support detention" if it indicates that a person is likely to flee or be a danger if granted pretrial release. Just because charges are considered serious, or the weight of the evidence is strong, or a person has an extensive criminal history, doesn't mean a person will flee or be a danger if released. This is especially true when a person has a perfect history of appearing as required and following release conditions in the past. The for/against method also fails to accurately consider the positive 3142(g) factors. For example, a person's strong familial connections may be incentive enough to appear and not be a danger, outweighing the negative factors present. Weighing the 3142(g) factors quantitatively for or against detention falls far short of the language and intent of the Bail Reform Act, which requires a qualitative analysis based on reasonably assuring a person's appearance and community safety.

The ultimate question determining detention

10.

Reasons for Granting the Petition (Cont.)

It is whether there are conditions of release which can reasonably assure a person's appearance and the safety of the community. Unfortunately, many lower courts are paying no service to considering conditions without explaining how specific conditions would be ineffective. This seems to be because the courts are (in some cases arbitrarily) assuming that a person will violate any imposed conditions. The courts are failing to differentiate between the primary question of whether conditions exist which if followed would reasonably assure appearance and community safety, and the secondary question of whether the specific person is likely to follow the imposed conditions which would otherwise be sufficient. My pending charges all involve the internet, so one of the conditions I proposed was no internet access at my home and limited monitored access to be approved by Probation Services. This condition should adequately mitigate my supposed dangerousness but the court refused any consideration of conditions as if it assumed I would violate

Reasons for Granting the Petition (Cont.)

them anyway, despite my history of following release conditions while on pretrial release. Similarly, the court ruled I am a flight risk despite my history of appearing as required, stating that my history "is no guarantee of how [I] will behave," Appendix B at 9. Besides incorrectly expecting a guarantee instead of reasonable assurance, the court again disregards consideration of any conditions. "If there is a condition or combination of conditions that will reasonably ensure that [a person] will not attempt to flee... that would assure his appearance," *United States v. Gibson*, 384 F. Supp. 3d 955, at 965 (N.D. Ind. 2019). In *Gibson*, which was out of a different district court than my case, the defendant was found to be a serious flight risk based on a history of multiple nonappearances but was still granted release with conditions meant to mitigate that risk; see *Id.* at 964-970. The lower courts' failure to adequately consider conditions of release is another major factor contributing to the high

REASONS FOR GRANTING THE PETITION (Cont.)

rate of detention contrary to the purpose and intent of the Bail Reform Act which "authorize[d] the detention prior to trial of arrestees... [who] pose a threat... which no condition of release can dispel." Salerno 481 U.S. at 755. Current detention practices are still far from the intended "careful delineation of the circumstances under which detention will be permitted." *Id.* at 751.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bradley M. Cox

Date: 9/23/2020