No. 23-

IN THE

Supreme Court of the United States

CORY JERMAINE WHITE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Bail Reform Act, 18 U.S.C. § 3142, must a judicial finding of serious flight risk, §3142(f)(2)(A), precede imposition of release conditions listed in § 3142(c)?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption on the cover of this document.

RELATED PROCEEDINGS

- *United States v. Cory Jermaine White*, No. 24-929 (9th Cir. filed Feb. 21, 2024)
- *United States v. Cory Jermaine White*, No. 2:23-cr-1749-PHX-MTL-3 (D. Ariz. filed Dec. 12, 2023)
- *United States v. Cory Jermaine White*, No. 2:18-cr-316-PHX-JJT (D. Ariz. filed Feb. 28, 2018)

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PETITION FOR A WRIT OF CERTIORARI

Cory White respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case that allowed a district court to deviate from the procedure described in the Bail Reform Act of 1984 for imposing conditions of pretrial release. The Ninth Circuit routinely blesses such deviations, and this Court's intervention will correct that court's oft-repeated error.

PROCEEDINGS BELOW

The court of appeals's order affirming the district court's order of release with conditions is unreported, but included in the appendix at page 1a. The district court's oral order modifying the release conditions imposed by the magistrate judge is included in the appendix at page 3a. The magistrate judge's oral order imposing release conditions is included in the appendix at page 11a.

STATEMENT OF JURISDICTION

The court of appeals affirmed the district court's release order on March 28, 2024. (App. 1a) This petition is timely. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are reproduced in the appendix at page 20a.

STATEMENT

1. In 2018, as a result of preindictment negotiations with the U.S. Attorney's Office in Arizona, Mr. White was charged by information with one count of conspiracy to commit mail theft, in violation of 18 U.S.C. §§ 371 and 1708. At his initial appearance in that matter on March 8, 2018, a magistrate judge ordered him released on personal recognizance subject to certain conditions. Nothing in the record of that case suggests that Mr. White ever violated the release conditions or failed to appear in court as required. He was allowed to remain at liberty pending sentencing. He was ultimately sentenced to a year and a day in prison, followed by three years of supervised release, a sentence that the government recommended. He was permitted to and in fact did self-surrender for serving this sentence. Mr. White was released from this sentence on July 10, 2019, and successfully completed his term of supervised release on July 9, 2022.

2. On December 12, 2023, a grand jury in the District of Arizona indicted Mr. White and six codefendants on a total of 15 counts involving fraud and money laundering.

Mr. White is specifically accused of two counts—one count of conspiracy to commit wire and bank fraud, in violation of 18 U.S.C. § 1349, and one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). A warrant issued for Mr. White's arrest, which the FBI executed on Friday, January 5, 2024.

At Mr. White's initial appearance the following Monday, January 8, the court appointed an assistant federal public defender to represent Mr. White. The government sought detention. Mr. White contended that a detention hearing was unauthorized because the government could not show that Mr. White posed a *serious* risk of flight. (App. 13a) *See* 18 U.S.C. § 3142(f)(2)(A). He pointed out that a number of family members had attended the hearing, and that he had lived in the Phoenix area for over five years. (App. 14a) He pointed out that he had complied with pretrial release orders in a prior case in the District of Arizona. (App. 14a) For these reasons, he contended that he did not pose a *serious* risk of flight, and a detention hearing was not allowed. (App. 14a) The government countered, without pointing to any evidence, that Mr. White had "limited ties to Arizona, and he is a risk of flight." (App. 15a)

The magistrate judge disagreed with the government. "Mr. White's been present for, it appears, at least five—five years. And there's also no question that he has strong family support." (App. 15a) The magistrate judge thus granted Mr. White pretrial release, although on conditions beyond those set forth in 18 U.S.C. § 3142(b). These conditions included appearing in court as required; not committing another federal, state, or local crime; not leaving the District of Arizona without permission; and surrendering his passport. (App. 17a) The magistrate judge imposed no conditions of electronic monitoring or home detention.

3. The government moved to revoke the release order and have Mr. White detained pending trial. Mr. White repeated his contention that he should be released because he did not pose a serious risk of flight. The district court held a hearing on the government's motion. Several of Mr. White's family members attended this hearing also.

At the outset, the government agreed with Mr. White that the question of *serious* flight risk was a prerequisite to holding a detention hearing. It characterized the detention issue as a "close case," yet contended that it could show that Mr. White was a "serious flight risk." It complained that "it took us a month to find defendant after the indictment," which in its view showed "an ability to obfuscate his location to hide and make it difficult for the government to find him." The government alluded to the fact that another codefendant was connected to a gang in Chicago. When pressed by the district judge, however, the government conceded that there was no evidence "that Mr. White has relatives or friends who, if he wanted to leave the state of Arizona, that he could take refuge somewhere else." The government's only response to this query was to point out that Mr. White "has traveled internationally," but the only evidence of such travel was brief trips that had taken place before the indictment was handed down. Defense counsel countered that Mr. White had attended the hearing despite knowing of the serious potential sentence that the charges against him carried.

Ultimately the district judge affirmed the magistrate judge's release order, although he modified it to include home detention. He rejected Mr. White's argument that no detention hearing—and thus no release conditions—could be held because Mr. White was not a *serious* risk of flight. (App. 5a) Rather, he found by a preponderance of the evidence that Mr. White was a flight risk "given his ties across the United States, his travel to foreign

countries, [and the fact] that the defendant has been able to conceal his identity." (App. 5a) Adding a "restrictive location monitoring component" to the release conditions, the judge said, "will be an adequate condition or combination of conditions to secure his attendance at trial and to protect the community." (App. 5a)

4. Mr. White appealed the modified release order to the court of appeals. *See* 18 U.S.C. § 3145(c). He again pressed his contention that no detention hearing and no conditions beyond those set forth in § 3142(b) were authorized because the government had not shown that he posed a *serious* risk of flight. The court of appeals rejected this argument. "The district court properly held a hearing upon the government's motion asserting a serious risk that White would flee and seeking to revoke the magistrate judge's release order." (App. 1a (citing 18 U.S.C. § 3142(e), (f))) And the court of appeals ruled that the district judge was permitted to add the home-detention condition at the end of the hearing. (App. 2a)

This timely petition followed.

REASONS FOR GRANTING THE WRIT

"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, 755 (1987). Thirty-seven years ago, this Court upheld the Bail Reform Act of 1984 because the Act "carefully limits the circumstances under which detention may be sought to the most serious of crimes." *Id.* at 747 (citing 18 U.S.C. § 3142(f)). Yet here, the court of appeals discarded the Act's careful limitations, and approved a district court decision that ordered pretrial home detention of a person for whom neither it nor the district court found to present a "serious risk" of flight. *Cf.* 18 U.S.C. § 3142(f)(2)(A). In so doing,

the court of appeals inverted the statutory procedure for making decisions relating to pretrial release and detention, and thus improperly discarded Congress's judgment that only "serious" cases warrant hearings at which pretrial detention is an available outcome. The court of appeals's extreme deviation from statutory procedure calls out for this Court's review. *See* Rule 10(a).

When a person is arrested for an alleged federal crime, he must be brought before a judicial officer "without unnecessary delay." Fed. R. Crim. P. 5(a)(1). At this initial appearance, the judicial officer "must" order, Fed. R. Crim. P. 5(d)(3), that the person be:

- "released on personal recognizance or upon execution of an unsecured appearance bond" subject only to the conditions that the person not commit further crimes and provide any required DNA sample, *see* 18 U.S.C. § 3142(a)(1), (b);
- "released on a condition or combination of conditions" beyond the prohibition on further criminal conduct and providing any required DNA sample, *see* § 3142(a)(2), (c); or
- detained pending trial, *see* § 3142(a)(4), (e).[1]

All three of these options involve a determination by the judicial officer relating to whether release will or will not "reasonably assure" both "the appearance of the person as required" and the "safety of any other person or the community." If the nearly-unconditional release in § 3142(b) will reasonably assure future court appearances

[1] The Act also authorizes temporary detention to allow an investigation into a person's immigration status. 18 U.S.C. § 3142(a)(3), (d). But because Mr. White is a U.S. citizen, this option was not available here.

and the safety of the community, then the judicial officer "shall order" that. If release on any one or more of the additional conditions set forth in § 3142(c) will reasonably assure future court appearances and safety, then the judicial officer instead "shall order" that. Only if no condition or combination of conditions set forth in § 3142(c) will reasonably assure future appearances and safety does the Act require the judicial officer to order pretrial detention. *See* § 3142(e)(1).

1. Reading § 3142(b), (c), and (e) *in pari materia* means that a hearing as authorized by subsection (f) must precede both the decision to detain a person pretrial and the decision to release a person subject to the conditions in subsection (c).

A hearing at which the parties present or proffer evidence relating to the defendant's potential for attendance at future court appearances and danger to the community must precede the decision to detain an individual pending trial. 18 U.S.C. § 3142(e)(1). Such a hearing is only available under the discrete and limited circumstances described in § 3142(f). As a matter of statutory text and structure, such a hearing must also take place before ordering release on one or more of the conditions set forth in § 3142(c).

Because they use nearly identical language regarding the "reasonabl[e] assur[ances]" that the Act requires, the three statutory options with which attending future court appearances and the safety of the community are concerned—the ones set forth in § 3142(b), (c), and (e)—must be read *in pari materia*. *See, e.g.*, *Wachovia Bank v. Schmidt*, 546 U.S. 303, 315–16 (2006) (explaining that "under the *in pari materia* canon of statutory construction, statutes addressing the same subject matter generally should be read as if they were one law") (quoting

Erlenbaugh v. United States, 409 U.S. 239, 243 (1972)).[2] And this is for good reason. In the context of pretrial release and detention decisions, it would be passing strange to require a hearing only if the judicial officer should ultimately conclude that *no* release conditions would reasonably assure future court appearances and safety, but not to require a hearing if the officer should ultimately conclude that *some* such conditions would accomplish that same statutory goal.

The reasonable-assurances decision required by the Act proceeds in two stages—first holding a hearing, if authorized, and then making the findings that authorize pretrial release or require pretrial detention. The Act sets forth burdens of proof and presumptions that govern the second stage of the detention decision, *see* § 3142(e)(2), (3), as well as factors to consider at the second stage, *see* § 3142(g). But if at the first stage no hearing is authorized, the Act requires the judicial officer to order pretrial release subject only to the conditions set forth in § 3142(b): no further criminal conduct and providing any required DNA sample.

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[2] The *in pari materia* canon applies both to different statutes covering closely related subjects, *see Pasquantino v. United States*, 544 U.S. 349, 355 n.2 (2005) (explaining that this Court has "construed identical language in the wire and mail fraud statutes *in pari materia*"), and to different subsections of the same statute, *see Carlsbad Technology, Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 638 (2009) (explaining that this Court has "consistently held that [28 U.S.C.] § 1447(d) must be read *in pari materia* with § 1447(c)").

2. The district court could impose release conditions only if Mr. White presented a "serious risk" that he would "flee."

The first stage of the release-or-detention decision authorizes a reasonable-assurances hearing[3] in seven categories of cases.[4] Five of these categories involve certain of the "most serious" crimes, *see Salerno*, 481 U.S. at 747:

> (A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
>
> (B) an offense for which the maximum sentence is life imprisonment or death;
>
> (C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

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[3] "Although the hearing is designated a 'detention hearing,' the appellation is not completely accurate. The purpose of the hearing is to determine whether any of the release options available to defendants not immediately subject to a detention hearing will satisfy the statutory safety and appearance concerns." *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985).

[4] As originally enacted, the Act described six categories of cases in which a detention hearing was authorized. *See* Bail Reform Act of 1984, Pub. L. No. 98-473, § 203(a), 98 Stat. 1837, 1979 (codifying 18 U.S.C. § 3142(f)(1)(A)–(D), (f)(2)(A), (B)). Congress added the seventh in 2006. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 216(2)(B), 120 Stat. 587, 617 (adding 18 U.S.C. § 3142(f)(1)(E)).

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code.

18 U.S.C. § 3142(f)(1).[5]

In two more "serious" categories of cases, a reasonable-assurances hearing is authorized without regard to the nature of the crime with which the defendant is charged:

(A) cases in which there is a "serious risk" that the person accused "will flee;" or

(B) cases in which there is a "serious risk" that the person accused will obstruct justice or threaten potential trial witnesses.

18 U.S.C. § 3142(f)(2).

Here, Mr. White is charged with conspiracies to commit fraud and money laundering, which are not among the "most serious" of crimes that Congress included in the

[5] The term "crime of violence" is defined separately in 18 U.S.C. § 3156(a)(4).

list of offenses set forth in § 3142(f)(1). There was no evidence that he would attempt to tamper with witnesses or obstruct justice within the meaning of § 3142(f)(2)(B). Thus a reasonable-assurances hearing was authorized in this case, if at all, only if there was a "serious risk" that Mr. White would "flee."

Other courts outside the Ninth Circuit recognize that the situations set forth in § 3142(f) are the only ones in which a reasonable-assurances hearing is authorized. For instance, the D.C. Circuit has observed that "detention is not an option" in the absence of "one of six [now, seven[6]] circumstances triggering a detention hearing." *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999). Likewise, the Fifth Circuit has noted that a reasonable-assurances hearing is available "only in a case that involves one of the six [now, seven] circumstances listed in" § 3142(f). *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992). The Second Circuit has described the very same "two-step inquiry" for pretrial release or detention that Mr. White reads in the Act. *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988) (per curiam). The First Circuit has said that the two-stage release-or-detention framework is "clear" from the "structure of the statute and its legislative history." *United States v. Ploof*, 851 F.2d 7, 11 (1st Cir. 1988). "A request to detain a defendant pending trial under § 3142(e) triggers a two-step inquiry." *United States v. Villatoro-Ventura*, 330 F. Supp. 3d 1118, 1124 (N.D. Iowa 2018) (citing *United States v. Delgado*, 985 F. Supp. 2d 895, 897 (N.D. Iowa 2013)). By 2005, one district court said that it was "uniformly accepted" that "there are only six [now, seven] instances that permit a court to convene a detention hearing." *United States v. Giordano*, 370 F. Supp. 2d 1256, 1260

[6] *See supra* note 4.

(S.D. Fla. 2005); *accord United States v. Powers*, 318 F. Supp. 2d 339, 341 (W.D. Va. 2004).

3. The court of appeals blessed the district court's decision to impose release conditions under § 3142(c) without requiring any judicial officer to determine that this is one of the "most serious" cases in which Congress authorized a reasonable-assurances hearing.

The Ninth Circuit, however, has not expressly endorsed this framework. As Mr. White will show, it instead collapsed the two-stage reasonable-assurances framework into a single inquiry that allows the second stage to swallow the first. It routinely reviews these issues in this way.

To be sure, the Ninth Circuit has said it eschews an "interpretation of the Act" that would make § 3142(f) "meaningless." *United States v. Twine*, 344 F.3d 987, 987 (9th Cir. 2003) (per curiam). But here it cited no caselaw explaining why § 3142(b), (c), and (e) should not be read *in pari materia*, as Mr. White contended. Nor did the court of appeals otherwise explain how the district court properly found that Mr. White posed a "serious" risk of *fleeing* before trial. The only source of law on which the court of appeals relied to affirm the imposition of release conditions under § 3142(c) was § 3142 itself. (App. 1a–2a)

A. In its haste to credit the government's mere assertion that Mr. White posed a "serious risk" of flight, the court of appeals misread § 3142(f)(2)(A).

To affirm the district court's release conditions, the court of appeals hung its hat on the government's mere *assertion* that Mr. White presented a "serious risk" of

fleeing. (App. 1a) This reasoning is both factually and legally flawed. As for facts: Mr. White has a documented history of attending required court hearings. At both his initial appearance and the hearing before the district judge, several members of his family sat in the gallery to show their support. He has no place to stay outside of Arizona. The government's attempt to tie him to a gang in Chicago rested entirely on innuendo. He never traveled out of state or out of the country for more than a couple of days. Indeed, the out-of-state travel was approved by pretrial services. His passport is missing, and so he cannot lawfully travel outside the United States while this case is pending. None of these facts support the conclusion that the risk that Mr. White might flee is "serious."

The court of appeals's legal reasoning, moreover, suffers from three separate flaws. *First*, the decision to hold a reasonable-assurances hearing cannot rest solely on the government's say-so. This is true of the § 3142(f)(1) categories; the courts of appeals regularly review the government's assertion that the defendant is charged with a qualifying crime, thus allowing for a hearing.[7] The courts of appeals also regularly review determinations under § 3142(f)(2).[8] It is true enough that the reasonable-

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[7] *United States v. Mitchell*, 23 F.3d 1 (1st Cir. 1994); *United States v. Watkins*, 940 F.3d 152 (2d Cir. 2019); *United States v. Bowers*, 432 F.3d 518 (3d Cir. 2005); *United States v. Byrd*, 969 F.2d 106 (5th Cir. 1992); *United States v. Lane*, 252 F.3d 905 (7th Cir. 2001); *United States v. Twine*, 334 F.3d 987 (9th Cir. 2003) (per curiam); *United States v. Ingle*, 454 F.3d 1082 (10th Cir. 2006); *United States v. Johnson*, 399 F.3d 1297 (11th Cir. 2005); *United States v. Munchel*, 991 F.3d 1273, 1281 (D.C. Cir. 2021).

[8] *United States v. Dai*, No. 23-8081, 2024 WL 1749883, at *1 (2d Cir. Apr. 24, 2024) (noting the issue but resolving the appeal on other grounds); *United States v. Cook*, 87 F.4th 920 (8th Cir. 2023); *United States v. Ailon-Ailon*, 875 F.3d 1334 (10th Cir. 2017) (per curiam); *United States v. Nwokoro*, 651 F.3d 108 (D.C. Cir. 2011).

assurances hearing can take place in § 3142(f)(1) cases only "upon motion of the attorney for the Government," whereas either the judge or the government may ask for a hearing in § 3142(f)(2) cases. But just as a judge ultimately determines whether, say, a charged crime is a "crime of violence" under § 3142(f)(1)(A), *e.g. Twine*, 334 F.3d 987, a judge must also ultimately determine whether a defendant presents a "serious" risk of flight under § 3142(f)(2)(A). The court of appeals misread the statute when it concluded that the government's mere *assertion* that Mr. White posed a "serious" risk of flight—an assertion that crumbles under scrutiny in light of the proffered evidence—allowed the district court to impose release conditions under § 3142(c).

Second, uncritically accepting the government's mere assertion that a person accused of a federal crime presents a "serious risk" of flight is *itself* a misreading of the statute. It is axiomatic that this Court must "give effect, if possible, to every word Congress used" in a statute. *Carcieri v. Salazar*, 555 U.S. 379, 391 (2009) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). To take the government's assertions regarding flight risk at face value, when those assertions cannot withstand any real scrutiny, is to ignore Congress's directive that where a reasonable-assurances hearing is grounded in a defendant's flight risk, that risk must rise well above the ordinary risk of flight inherent in every criminal case. *See United States v. Stevens*, 559 U.S. 460, 487 & n.4 (2010) (Alito, J., dissenting) (defining "serious" as "not trifling," "weighty," "important"); *United States v. Caraballo*, 88 F.4th 239, 246 (3d Cir. 2023) (giving one definition of "serious" as "having dangerous possible consequences"); *Mumad v. Garland*, 11 F.4th 834, 840 (8th Cir. 2021) (defining "serious" as "grave in manner"); *United States v. Flores*, 974 F.3d 763, 765 (6th Cir. 2020) (giving one definition of "serious" as "having important or

dangerous possible consequences"). Congress's use of the word "serious" in both subparagraphs of § 3142(f)(2) thus bolsters the conclusion that some independent evaluation of the gravity of the risk posed by the defendant's potential flight must precede any reasonable-assurances hearing. Simply crediting the government's mere assertion that the defendant's flight risk is "serious" effectively cancels out Congress's careful limitation on the use of pretrial detention. *See Salerno*, 481 U.S. at 747.

Third, uncritically accepting the government's assertions about "serious risk" of fleeing conflates two different concepts embodied in § 3142. A reasonable-assurances hearing was authorized here only if Mr. White presented a "serious risk" that he might "flee," § 3142(f)(2)(A), while the aim of the hearing is to see if the risk that he will not attend future court hearings is one that can be adequately managed, § 3142(e)(1). As one scholar has observed, "What judges, attorneys, and scholars frequently describe in shorthand terms as 'flight risk' is defined in older statutes and in newer risk-assessment tools in significantly broader terms: the risk that a defendant will fail to appear for a future court date." Lauryn P. Gouldin, *Defining Flight Risk*, 85 U. Chi. L. Rev. 677, 682 (2018). The terms "flight" and "nonappearance" are not interchangeable. *Id.* at 682–83. A defendant who *flees* actually leaves the jurisdiction. *Id.* at 725. A defendant who simply fails to appear could do so for a variety of reasons: lack of awareness or memory of a court date; illness or other unforeseen emergencies; competing obligations such as employment, school, or childcare; or a purposeful decision to flaunt the court system while remaining in relative proximity to the courthouse. *See id.* at 729–30. In sum, all defendants who *flee* have failed to appear in court, but not all defendants who *fail to appear* in court have fled.

Simply put, the court of appeals's incorrect reading of § 3142(f)(2)(A) is the product of three legal errors. The government's mere assertion of "serious" risk of flight cannot substitute for the independent determination that a reasonable-assurances hearing is authorized in a particular case. The reasonable-assurances hearing cannot take place against the backdrop of only the theoretical possibility that a person might escape the jurisdiction. And the "serious risk" described in § 3142(f)(2)(A) is one of actually *leaving* the jurisdiction, not simply of any kind of nonappearance at future court hearings.

B. The Ninth Circuit often fails to insist on the Bail Reform Act's two-step process for convening a reasonable-assurances hearing, and thus often allows illegal pretrial detention or release conditions.

This case is hardly the only one in the Ninth Circuit in which that court has conflated flight risk with risk of nonappearance, and concluded that proof of the latter established the former. The following sentence (or some slight variation on it) appears in seven Ninth Circuit judgments[9] affirming detention orders between April 2023 and April 2024: "The district court correctly found that the government has met its burden of showing, by a preponderance of the evidence, that 'no condition or combination of conditions will reasonably assure the [defendant's] appearance,' 18 U.S.C. § 3142(e), and that

[9] *United States v. Diallo*, No. 24-1255 (9th Cir. Apr. 17, 2024); *United States v. Le*, No. 24-1079 (9th Cir. Apr. 3, 2024); *United States v. Chavez*, No. 23-1796 (9th Cir. Sept. 20, 2023); *United States v. Ahmed*, No. 23-1067 (9th Cir. Jul. 13, 2023); *United States v. Beasley*, No. 23-892 (9th Cir. Jun. 9, 2023); *United States v. Rosales-Villegas*, No. 23-714 (9th Cir. Jun. 5, 2023).

appellant therefore poses a risk of flight." This sentence is always accompanied by a citation to *United States v. Motamedi*, which established the atextual conflation of risk of nonappearance with risk of flight as a feature of circuit law. *See* 767 F.2d 1403, 1408–09 (9th Cir. 1985) (concluding that the "grounds upon which the district court based its determination that Motamedi poses a serious risk of flight, and that no condition or combination of conditions will reasonably assure his appearance as required, are insufficient"). Granting review in this case will allow the Court to clarify that the words "flee" and "appearance" in § 3142 have different meanings, and instruct the Ninth Circuit to implement that difference.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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