

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA, | No. 24-929 |
| Plaintiff - Appellee, | D.C. No. 2:23-cr- 01749-PHX-MTL |
| vs. | ORDER (filed Mar. 28, 2024) |
| CORY JERMAINE WHITE, | |
| Respondent - Appellee. | |

Before: FRIEDLAND, VANDYKE, and MENDOZA,
Circuit Judges.

This is an appeal from the district court’s pretrial release order imposing conditions. We have jurisdiction pursuant to 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291.

We review the district court’s factual findings concerning risk of flight under a “deferential, clearly erroneous standard.” *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990). The conclusions based on such factual findings, however, present a mixed question of fact and law. *Id.*

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. *See* 18 U.S.C. § 3142(e), (f). Although the court concluded that White posed such a risk, it found that the risk would be sufficiently mitigated by the conditions imposed by the magistrate judge and an additional home confinement condition. Contrary to White’s argument, the

district court was permitted to add this condition, which the court reasonably found was necessary to assure White's appearance and the safety of the community. *See* 18 U.S.C. § 3142(c).

We therefore affirm the district court's pretrial release order.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Cory Jermaine White,

Defendant.

No. 2:23-cr-01749-
MTL-3

Phoenix, Arizona
February 20, 2024

10:04 a.m.

**BEFORE: THE HONORABLE MICHAEL T.
LIBURDI, JUDGE**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**MOTION FOR REVOCATION OF RELEASE
ORDER**

APPEARANCES:

For the Government:

UNITED STATES ATTORNEY'S OFFICE

By: Mr. Seth Troy Goertz, Esq.

Mr. David Ernest Ahl, Esq.

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Phoenix, Arizona 85004

For the Defendant:

FEDERAL PUBLIC DEFENDER'S OFFICE

By: Ms. Debbie Jang, Esq.
850 West Adams Street, Suite 201
Phoenix, Arizona 85007

Official Court Reporter:

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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

PROCEEDINGS

[Portion of transcript that precedes the ruling omitted.]

THE COURT: All right. Well, that being said, I'm going to affirm the order of the magistrate judge but with modifications.

So as—as counsel knows, and it's been argued here, in order to take a pretrial defendant into custody, the government has the burden to prove by the preponderance of the evidence that the defendant is a flight risk and, beyond that, clear and convincing evidence to prove that the defendant is a danger to the community. And danger to the community does include economic and financial danger, such as the charges that are pending here. But there is a requirement that I consider whether there are any conditions or combination of conditions of pretrial release that would reasonably secure defendant's attendance at trial or protect the community.

So I do want to say at the outset that I do think that the analysis applies contrary to the defendant's argument, and that I do think that the government has proven by a preponderance of the evidence that the defendant is a flight risk given his ties across the United States, his travel to foreign countries, the fact that the—that his passport has not been surrendered, and that the defendant has been able to conceal his identity. So I think that the government has satisfied its burden.

I do think that the dangers [*sic*] to the community is a close call, but I actually think that the defendant is—has been proven to be a danger to the community by clear and convincing evidence given the nature and extent of the information about the alleged crimes that have been proffered to the Court. However, I do want to acknowledge that I feel like at this point adding a restrictive location monitoring program component to defendant's supervised release will be an adequate condition or combination of conditions to secure his attendance at trial and to protect the community.

But, Mr. White, I do want to address you directly on this and say that if I am given information by pretrial services that you have violated any condition of pretrial release or if you do not appear as directed at either a hearing before a magistrate judge or in front of this Court or even if I hear you are involved in a state court case and you do not appear, then I may listen very carefully to a petition to revoke your terms of pretrial release either by the United States or by our pretrial services office.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you commit to abiding by the conditions of pretrial release that will be set in your case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you commit to appear in court when you are ordered to do so?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Because I want you to understand that if you don't and I decide that a bench warrant is appropriate, I will issue a warrant for your arrest, and you will be arrested and brought into court. And then we're going to have to revisit these issues.

It sounds to me like you understand that.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. So I'll affirm the order of the magistrate judge, but I do want to impose the additional condition.

And I'll ask Mr. Goertz, what is it specifically that you had in mind when you offered this to defendant through Ms. Jang?

MR. GOERTZ: It was—it was pretty nebulous, but electronic monitoring, like an ankle monitor, GPS monitoring and, like, home confinement I think is what the government would ask for in this case, Your Honor.

THE COURT: Okay. So home incarceration?

MR. GOERTZ: Yes, Your Honor.

THE COURT: All right. Do you want to be heard on that, Ms. Jang?

And what I have here, I'll let you know I have in front of me the conditions of supervised release that we would impose post-sentencing on either home detention or home incarceration. So I need argument on which one should be

imposed.

MS. JANG: Excuse me. It was home?

THE COURT: Home detention, which means he could leave his house for various reasons. And then home incarceration is, of course, much more restrictive.

MS. JANG: Yes, Your Honor. We—we would request the home detention, meaning that he would—Mr. White would be allowed to leave as—with the—with the constant communication with the pretrial services office. We do believe that Mr. White has shown that he is going to show up to court and is not—is not needed to home confinement, or being confined in one space is not necessary for him.

THE COURT: Okay. Ms. Dzezinski, if I impose the condition of home detention, is that something that pretrial services can monitor?

THE PRETRIAL SERVICES OFFICER: Yes, Your Honor. The only concern would be with his employment. He would have to be very specific and give us specific information regarding his breeding. Typically under home detention, they have to have a legitimate paycheck, tax-withdrawing employment in order to be let out on a schedule. So that's the only concern for pretrial, would be his employment.

THE COURT: Do you wish to suggest some alternative language or just follow what's in the conditions, and if there's an issue you could bring it back to me for resolution?

THE PRETRIAL SERVICES OFFICER: That would be satisfactory, just following what—the general terms in the conditions. And, if we need to, we will approach the Court.

THE COURT: Okay. And then I've reviewed the conditions that Judge Morrissey has set. Are there any other conditions that you think should be added from your point of view?

THE PRETRIAL SERVICES OFFICER: No, Your Honor.

THE COURT: Okay. Then, as I said, I'm reaffirming Judge Morrissey's order setting conditions of release, but I'm adding the following:

Mr. White, you must participate in the location monitoring program utilizing technology at the pretrial services officer's discretion, and you must abide by all technology requirements. Under the condition of home detention, you are restricted to your residence at all times except for employment, education, religious services, medical, substance abuse, or mental health treatment, attorney visits, court appearances, court-ordered obligations, or other activities as pre-approved by the pretrial services officer.

MS. JANG: Your Honor? I'm sorry.

THE COURT: I have one more sentence.

MS. JANG: Oh, I'm sorry.

THE COURT: Can I finish that, and then I'll let you know when you could address your issue.

All right. The final sentence is this: You must follow all the program rules and pay all or part of the costs of preparation in the location monitoring program as directed by the Court and/or the pretrial services officer.

Yes, Ms. Jang.

MS. JANG: Would it be possible to caveat out also Mr. White's visitation with his children? He has four children here in Arizona, not all of whom live with him.

THE COURT: Could the children visit him at his residence?

MS. JANG: It depends on the age of those—the children, unfortunately. I—

(The defendant and counsel conferred off the record.)

MS. JANG: The—I think the other issue is that because of the breeding dogs, it also makes it a little difficult for having children at—at his house.

THE COURT: Mr. Goertz, do you wish to be heard on that?

MR. GOERTZ: Certainly understand that he wants to see his children, but it is, from our perspective, either this is a—we—I view this as lenient, Your Honor. And so it's sort of in comparison to being incarcerated right now, I think this is a pretty good opportunity and option. And I'm sure that there can be some workarounds with pretrial services to be able to visit his children.

THE COURT: Okay. I'm going to stand on what I've just imposed.

Oh, do you want to say something?

MR. AHL: I just—I'm sorry to interrupt, and I have to ask this. But can I have permission to be excused? I have a meeting at 11:00 o'clock back at the office I have to—

THE COURT: Of course.

MR. AHL: —I have to get to.

Mr. Goertz—Mr. Goertz obviously has this covered, so—

THE COURT: Okay. Go ahead.

MR. AHL: Thank you.

THE COURT: You're excused.

Okay. Well, as I was saying, I'm going to stand on the condition of home detention. And if there's an issue with children visitation, please present it to pretrial services. And if there's something that could be worked around with pretrial services and the government, that would be fine. Otherwise you could ask me to resolve some sort of an impasse.

Do you understand this condition of home detention, Mr. White?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Counsel, is there anything else that I need to address?

MR. GOERTZ: Nothing from the government, Your Honor. Thank you.

MS. JANG: No, Your Honor. Thank you.

THE COURT: Okay. Thank you all.

Court is adjourned.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Cory Jermaine White,

Defendant.

No. 2:23-cr-01749-
MTL-3

**Phoenix, Arizona
January 8, 2024**

3:56 p.m.

**BEFORE: THE HONORABLE MICHAEL T.
MORRISSEY, MAGISTRATE JUDGE**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

INITIAL APPEARANCE/ARRAIGNMENT

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Proceedings Recorded by Electronic Sound Recording

Transcript Produced by Transcriptionist

PROCEEDINGS

(Proceedings commenced at 3:56 p.m.)

THE COURTROOM DEPUTY: Criminal Case No. CR-23-01749, United States of America versus Cory White, set before the Court for initial appearance and arraignment.

MR. WHEELER: Good afternoon, Your Honor. Travis Wheeler standing in for David Ahl and Seth Goertz for the United States, seeking detention.

THE COURT: Good afternoon.

MS. JANG: Good afternoon, Your Honor. Debbie Jang awaiting appointment for Cory White. He is present and in custody.

THE COURT: Good afternoon to you both.

[Portion of transcript that precedes the discussion of detention omitted.]

THE COURT: Okay. Then with the government seeking detention, how would you like to proceed on that?

MS. JANG: Your Honor, if I'm reading the 13-3142 statute correctly, I don't believe the government can have Mr. White detained unless they make a finding—unless the Court makes a finding that the government has shown there would be a serious risk of flight for Mr. White, and I do not believe they will be able to do so, but I would—

THE COURT: Or a serious risk of obstruction.

MS. JANG: Right. Yes, Your Honor.

THE COURT: Okay. So I agree that the—by itself, the statute itself does not provide for a—for detention, but I cannot say at this point that the government cannot make that showing.

Mr. Wheeler, how would the government proceed at a hearing with respect to that, by—with witnesses or proffer?

MR. WHEELER: At this time, Your Honor, I do not know how the government would proceed. The lead AUSA on the case has asked me to ask for a continuance of the detention hearing to be set a few days from now. He has referred—told me that he is a serious—that Mr. White is a serious risk of flight. The information I have is that it's due to his lack of employment, his lack of ties to Arizona, and then also his risk of danger to the community in the form of economic harm.

I recognize—I assume he would be proceeding by proffer. I do not know that for certain.

MS. JANG: And, Your Honor, would I be able to respond to that?

THE COURT: Yeah. Yes.

MS. JANG: Okay. Thank you, Your Honor.

Your Honor, as it relates—well, before I say anything about Mr. White, I would note that his family is here present. We have his baby's mother, his other baby's mother, his uncle, their cousin in the back of the courtroom.

THE COURT: The record will reflect the presence of family on behalf of Mr. White.

MS. JANG: Thank you, Your Honor. And that shows that Mr. White has ties to the community.

I would like to note also that Mr. White has been living here for over five years. If Your Honor—Mr. White does have some criminal history, though much of it is dated.

Of note, I would like to point the Court's attention to this 2018 case, where Mr. White was put on pretrial release, completed it successfully, then completed the supervised release after his term of custody successfully as well.

Mr. White does not pose any risk of flight. His family's here. All, I believe, six of his children are here, range of ages from three months all the way up to about 10, I believe.

So, Your Honor, there's really no risk that Mr. White would flee. And I don't believe dangerousness is at issue here because I believe that in order to even have the detention hearing—

THE COURT: Danger is not in play.

MS. JANG: Yes, Your Honor. And so I would like to just point that out because the government did note that.

Mr. White has also, I think, over a dozen French bulldogs that he is currently breeding as a part of his own business. He incorporated it just a year and a half ago to make it a legitimate business, and he is actively working in that.

So, Your Honor, there's no—there's no reason to believe that Mr. White would flee. There's no reason to believe that he would pose any risk if he were to be put on pretrial release. As he has shown, he is able to be trusted by the Court in other instances, and as Your Honor is aware, this—Mr. White is presumed innocent until proven otherwise.

THE COURT: Mr. Wheeler, I can't get there in terms of there being any basis at this point for obstruction or a serious risk of flight.

I'll give you one last chance to proffer, and if the proffer has enough in it, then I'll set this rapidly for a detention hearing. But I do not see it at this point.

MR. WHEELER: The information that I have, Your Honor, Mr. White has committed serious financial fraud against the community. He has limited ties to Arizona, and he is a risk of flight.

And the government has asked to continue any detention hearing for as short a time period as you can so that the attorneys on the case may be here for a detention hearing.

THE COURT: Okay. I just, I don't think—factually, I just don't think that that's correct that there are weak ties to Arizona. 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.

So, Mr. White, I am going to release you on conditions, which I will give to you now.

Counsel, I do have one concern. The pretrial services report also refers to a probation matter in Maricopa County Superior Court. Has that expired?

MS. JANG: Could I have a moment with—

THE COURT: Yes.

(Conference off the record between the defendant and Ms. Jang.)

MS. JANG: Your Honor, we believe that it is expired. Mr. White is not on probation for any reason right now.

THE COURT: Okay. So, Mr. White, I am going to release you. I'm going to give you those conditions in a minute.

Let me tell you the standard by which I made the decision to release you. The law says that if I can find that there are conditions that would ensure your appearance at court case—at court hearings and the safety of the community, then I am obligated to release you.

And I do find that there are conditions that I can impose. I do note that your record from the past causes concern, and so I would—I would advise you to listen carefully to these conditions of release. You've been in the audience today when other individuals were here for violations of the conditions of release, so please pay careful attention.

You are to appear at all court appearances as required and to surrender for service of any sentence imposed. Your next court appearance is the trial date of February 6th or as directed through counsel.

You are not to commit any federal, state, or local crime.

You are to cooperate in the collection of a DNA sample if called for by statute.

Before you make a change in your residence address, mailing address, or telephone number, you are to immediately advise your attorney and pretrial services in writing.

You are to maintain or actively seek employment and provide proof of such to pretrial services.

You shall not travel outside of Arizona unless you have prior Court or pretrial services permission to do so.

You shall avoid all direct or indirect contact with persons who are considered alleged codefendants and potential witnesses: Mr. Burroughs, Mr. Standifer, Mr. Curry, Mr. Jackson, Mr. Cornett, and Mr. Crumb.

You shall report as directed to U.S. Pretrial Services.

You shall surrender all travel documents to pretrial services by January 15th, 2024, and shall not obtain a passport or other travel documents during the pendency of these proceedings.

You shall not possess or attempt to acquire any firearm, destructive device, or other dangerous weapon or ammunition.

You shall maintain weekly contact with your attorney by Friday noon of each week.

If you violate these conditions, it may result in a warrant for your arrest, revocation of your release, detention, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

Mr. White, do you understand these conditions as I have given them to you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Ms. Jang, anything further?

MS. JANG: No. Thank you.

THE COURT: All right. We—does your client have clothes?

MS. JANG: Yes, I believe his family members did bring clothes.

THE COURT: Okay. Mr. Wheeler, anything further?

MR. WHEELER: Yes. The government would like to ask for time to appeal the detention decision. 24 hours, Your Honor.

THE COURT: You want me to issue a stay?

MR. WHEELER: I would like the defendant to not be released for 24 hours while the United States appeals the decision on detention.

I believe under 3142(f), you're allowed to stay your decision on that on motion of the government.

THE COURT: I—there's no question I can stay my order. The issue is I think you can appeal it whether or not I stay it. And so I'm not convinced there's a necessary connection between those two matters. The government can appeal.

MR. WHEELER: The fact that he was a fugitive for over a month while they were trying to locate him, were unable to, again, the lead AUSA on the case has asked that I make all efforts.

THE COURT: Where is the information about Mr. White knowing that there was a court appearance and he was a fugitive? Where is that information?

MR. WHEELER: That information was provided me to—by email just before this hearing. I do not have a copy of it.

In lieu of a stay on release, we would ask for a condition of electronic monitoring.

THE COURT: I don't—I don't see it. The government—the government can appeal this order as it wishes, but I don't see a basis for that at this time.

MR. WHEELER: Okay.

THE COURT: Counsel, anything further?

MS. JANG: No. Thank you.

THE COURT: We are adjourned.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Eighth Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

18 U.S.C. § 3142:

- (a) IN GENERAL.— Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—
- (1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
 - (2) released on a condition or combination of conditions under subsection (c) of this section;

- (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or
 - (4) detained under subsection (e) of this section.
- (b) RELEASE ON PERSONAL RECOGNIZANCE OR UNSECURED APPEARANCE BOND.—The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.
- (c) RELEASE ON CONDITIONS.—
- (1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—
 - (A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized

pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); and

- (B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—
 - (i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;
 - (ii) maintain employment, or, if unemployed, actively seek employment;
 - (iii) maintain or commence an educational program;
 - (iv) abide by specified restrictions on personal associations, place of abode, or travel;
 - (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;
 - (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
 - (vii) comply with a specified curfew;

- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;
- (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the

surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

- (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and
- (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

- (2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.
- (3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) [Omitted.]

(e) DETENTION.—

- (1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions

will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

- (2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—
 - (A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;
 - (B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and
 - (C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.
- (3) Subject to rebuttal by the person, 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 if the judicial officer finds that there is probable cause to believe that the person committed—

- (A) 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;
 - (B) an offense under section 924(c), 956(a), or 2332b of this title;
 - (C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
 - (D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
 - (E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.
- (f) DETENTION HEARING.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—
- (1) upon motion of the attorney for the Government, in a case that involves—
 - (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;
 - (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; or
- (2) upon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves—
- (A) a serious risk that such person will flee; or

- (B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the

hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) **FACTORS TO BE CONSIDERED.**—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including—
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on

parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.