

No. 26A____

IN THE
Supreme Court of the United States

KYLE WAGNER,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR STAY PENDING DISPOSITION OF
PETITION FOR A WRIT OF CERTIORARI**

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September 29, 2026

PARTIES TO THE PROCEEDING

Applicant in this Court is Kyle Wagner, who was Defendant-Appellee below.

Respondent in this Court is the United States of America, which was Plaintiff-Appellant below.

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**TO THE HONORABLE BRETT KAVANAUGH,
ASSOCIATE JUSTICE OF THE SUPREME COURT AND
CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:**

Pursuant to Rule 23 of this Court and the All Writs Act, 28 U.S.C. § 1651, Applicant Kyle Wagner respectfully requests that this Court stay the judgment of the United States Court of Appeals for the Sixth Circuit, pending consideration and disposition of Wagner's petition for a writ of certiorari and any further proceedings in this Court. Wagner initially moved for emergency relief in the court of appeals, which denied Wagner's motion to recall and stay its mandate. Stay App. 1a-7a.

This stay application arises from the Sixth Circuit's reversal of a district court's pretrial release order in Wagner's criminal prosecution. The United States charged Wagner with one count of cyberstalking under 18 U.S.C. § 2261A(2), and one count of interstate communications involving threats, *id.* § 875(c), based on a contentious social media exchange with another influencer. The United States then sought Wagner's pretrial detention under the Bail Reform Act of 1984 by pointing to statements Wagner had made online that were critical of government officials. The government claimed that Wagner's speech indicated dangerousness. After conducting a two-day hearing and reviewing the totality of the other evidence before it—including the facts that Wagner has no violent criminal history, owned no weapons, and consistently counseled nonviolent protest in other social media posts—the district court determined that Wagner could be released pretrial subject to certain conditions, including limits on his movements and internet use. Yet, at the government's request, a divided

Sixth Circuit panel reweighed the evidence de novo and ordered Wagner detained pending trial. Pet. App. 2a, 9a, 10a-20a.¹

If Wagner lived somewhere else in the United States—anywhere within the jurisdiction of seven other circuits—the court of appeals would not have ordered his detention. That is because the circuit courts are “in considerable disarray as to the appropriate standard of review of release and detention determinations under the 1984 Act.” Stern & Gressman, *Supreme Court Practice* § 17.16, at 774 n.81 (11th ed. 2019). Five circuits review the district court’s detention determination de novo. *See United States v. Cook*, 87 F.4th 920, 921 (8th Cir. 2023); *United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015); *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010); *United States v. Cisneros*, 328 F.3d 610, 613 (10th Cir. 2003); *United States v. Quartermaine*, 913 F.2d 910, 915 (11th Cir. 1990). Four circuits review that determination only for clear error. *See United States v. Vane*, 117 F.4th 244, 249 (4th Cir. 2024); *United States v. Hale-Cusanelli*, 3 F.4th 449, 455 (D.C. Cir. 2021); *United States v. Moreno*, 857 F.3d 723, 725-26 (5th Cir. 2017); *United States v. Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004). And three circuits take an intermediate approach, conducting an independent review tempered by deference to the district court’s firsthand experience with the case. *See United States v. Wilks*, 15 F.4th 842, 847 (7th Cir. 2021); *United States v. Tortora*, 922 F.2d 880, 882 (1st Cir. 1990); *United States v. Delker*, 757 F.2d 1390, 1399-1400 (3d Cir. 1985).

¹ Citations to the Pet. App. refer to the Appendix to the Wagner Petition for a Writ of Certiorari previously filed with this Court and docketed on September 22, 2026 (No. 26-391).

If certiorari is granted, the Court is likely to conclude that the Sixth Circuit’s use of the de novo standard is wrong. Under the Bail Reform Act, a federal district court may detain a criminal defendant pending trial only where the government demonstrates, by clear and convincing evidence, that no conditions of release will reasonably assure the defendant’s appearance at trial and the safety of the community. 18 U.S.C. § 3142(e), (f). The Sixth Circuit’s use of a de novo standard to review those determinations contravenes this Court’s established framework for deciding whether “a district court’s decision should be subject to searching or deferential” review. *McLane Co. v. E.E.O.C.*, 581 U.S. 72, 79 (2017).

That framework requires appellate courts to “defer[] to the district court” when “the text of the [governing] statute ‘emphasizes the fact that [a] determination is for the district court’—or when “the district court ‘is better positioned’ to decide” the issue. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 564 (2014) (quoting *Pierce v. Underwood*, 487 U.S. 552, 559-560 (1988)). Both factors make clear “that an appellate court should apply an abuse-of-discretion standard” for pretrial detention orders. *Id.* Indeed, the “language and structure” of the Bail Reform Act is marked by features that this Court typically recognizes to signal “matters of discretion” for district courts. *Pierce*, 487 U.S. at 558-559. And district courts are both more experienced and institutionally better equipped to conduct a detention hearing and make sensitive, predictive judgments about the defendant based on the nature of the case and the defendant’s personal characteristics. 18 U.S.C. § 3142(a), (c), (e), (f).

Wagner respectfully submits that this Court is likely to grant certiorari to resolve the split and correct the Sixth Circuit’s mistaken approach. This case presents the ideal vehicle to bring national uniformity to an important phase of pretrial criminal procedure. The standard of review was outcome-determinative here—and exemplifies why deferential review is appropriate. The district court drew on its extensive experience to craft tailored release conditions for Wagner that took account of his unique circumstances and the particulars of his case. By re-weighing the evidence itself, and giving no deference to the district court’s assessment of the relevant factors, the Sixth Circuit highlighted the error of de novo review.

Wagner will suffer irreparable harm if the application is denied. Absent a stay, Wagner will remain incarcerated pending trial. Each day Wagner is detained, he is deprived of his liberty despite his presumed innocence. Wagner is away from his family; unable to earn an income; and unable to fully participate in trial preparation. This deprivation is all the more stark given the district court’s detailed and well-reasoned finding that his unique circumstances do not “fall within th[ose] carefully limited exception[s]” to pretrial release set forth in the Bail Reform Act. *United States v. Salerno*, 481 U.S. 739, 755 (1987). The impingement of these “rights during [a] potentially protracted” judicial process “constitutes irreparable harm.” *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam).

Should the Court grant the stay application, Wagner respectfully requests that the Court ensure that this case is heard expeditiously. Pretrial detention orders expire when trial ends. Wagner’s trial is currently scheduled to begin on November 3,

2026. *United States v. Wagner*, No. 2:26-cr-20059-DPH-APP (E.D. Mich. Aug. 14, 2026), Dkt. No. 41. The parties have stipulated to an additional 60-day extension but, at the conclusion of the trial, the Sixth Circuit’s pretrial detention order will have run its course. Wagner therefore requests that the Court construe this stay application as a petition for certiorari, grant the stay application and certiorari, issue an expedited briefing schedule, and schedule the case for argument at the earliest opportunity. This Court took a similar approach in *Nken v. Holder*, 556 U.S. 418 (2009), where it issued a merits decision addressing a legal standard for an interim legal order. Should the Court tread that path here, Wagner would dismiss the petition for certiorari that he has separately filed. *See Wagner v. United States*, No. 26-391. If the Court declines to treat this stay application as a petition for certiorari, however, Wagner asks that the Court grant his separately-filed motion to expedite consideration of his petition for certiorari, and grant the petition as soon as is practicable.

STATEMENT OF THE CASE

A. Statutory Background

Congress passed the Bail Reform Act of 1984 to provide consistent standards for federal pretrial release and detention practices. The Act was not intended to substantially increase pretrial detention but rather to grant judges the discretion to “deny release pending trial” of “a small but identifiable group of particularly dangerous defendants.” S. Rep. No. 98-225, at 6-7 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3189. Congress presumed that release would “continue to be appropriate for the majority of Federal defendants.” *Id.* at 12.

To this end, section 3142 sets forth a general presumption that defendants “shall” be released before trial either upon “personal recognizance” or upon such condition or combination of conditions that “the judicial officer determines” are necessary to “reasonably assure the appearance of the person as required” and “the safety of any other person or the community.” 18 U.S.C. § 3142(a), (c).

If the government nevertheless seeks detention, the judicial officer is required to hold a detention “hearing.” *Id.* § 3142(f). The hearing must be held promptly “upon the person’s first appearance before the judicial officer,” and entitles the person to be represented by counsel, to testify and to present and cross-examine witnesses, and to “present information by proffer or otherwise.” *Id.* A defendant may be detained only if the government overcomes the presumption of release by establishing that no set of release conditions will “reasonably assure” the defendant’s appearance when required and the safety of the community. *Id.*

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,” the judicial officer is directed to “take into account” information concerning several factors. *Id.* § 3142(g). These include “(1) the nature and circumstances of the offense charged”; “(2) the weight of the evidence against the person”; “(3) the history and characteristics of the person, including” the “person’s character, physical and mental condition,” family and community ties, and past conduct; and “(4) the nature and seriousness of the danger to any person or the community.” *Id.*

The “procedures by which a judicial officer evaluates the likelihood of future dangerousness are specifically designed to further the accuracy of that determination.” *United States v. Salerno*, 481 U.S. 739, 751-752 (1987). If the judicial officer finds that no conditions of pretrial release can reasonably assure the safety of other persons and the community, he must state his findings of fact in writing, 18 U.S.C. § 3142(i), and support his conclusion with “clear and convincing evidence,” *id.* § 3142(f).

Both the detainee and the government are entitled to “appeal from a release or detention order.” *Id.* § 3145(c). That appeal is “governed by” the same statutes that grant courts of appeals jurisdiction over final decisions of district courts. *Id.* (citing 18 U.S.C. §§ 1291, 3731). And the statute instructs that “[t]he appeal shall be determined promptly.” *Id.*

B. Factual Background

Applicant Kyle Wagner is a Minneapolis resident with no violent criminal history. Pet. App. 20a, 55a. Like many people, he became a vocal online critic of Immigration and Customs Enforcement (ICE) during “Operation Metro Surge,” a Department of Homeland Security (DHS) immigration-enforcement operation that deployed thousands of federal agents to the Minneapolis-St. Paul area in December 2025. Pet. App. 27a. Wagner regularly posted on social media, sometimes multiple times a day, to criticize ICE and to call for his followers to protest and oppose ICE. *Id.*

Sometime in early January 2026, DHS began reviewing Wagner’s social media posts. Pet. App. 163a-164a. The posts calling for his followers to protest and oppose ICE were generally tempered by references to nonviolence or self-defense. Pet. App.

3a-4a, 30a-32a. For example, on January 10, Wagner posted a video stating that protesters should “[g]et out on the streets. Have some f----- fun. Keep your heads. We’re not the violent ones. Go take their f----- masks off and take their f----- guns.” Pet. App. 169a-170a.

Wagner regularly “disavowed any intent to commit physical aggression” and Wagner noted in his posts that he does not own any weapons. Pet. App. 4a, 28a. For example, on January 12, Wagner stated, “I am unarmed - my only weapon is my fists and my voice.” Pet. App. 31a, 173a. He explained in another post, “I disarmed myself in 2022 during the aftermath of George Floyd *** I chose to surrender the few hunting rifles I had to my dad - and have since been unarmed.” Pet. App. 31a.

Wagner became distraught at the end of January 2026, following ICE officers’ fatal shooting of Minneapolis resident Alex Pretti. Wagner had known Pretti personally for many years. Pet. App. 32a. Some of Wagner’s posts during this time referenced firearms. For example, in an Instagram video, Wagner extolled “the Second Amendment [as] the only thing” that could “protect[]” people, and stated “[g]et your f----- guns and stop these f----- people.” Pet. 32a-33a, 181a-186a. Despite these statements, Wagner did not possess or seek to obtain any firearms. Pet. App. 150a.

Around that time, Wagner was interacting online with J.S., a “pro-ICE” social media user. Pet. App. 164a. J.S. was not a member of ICE nor even a government employee. J.S. was an online personality who vocally supported ICE, in contrast with Wagner’s vocal critique of that organization.

After J.S. posted a video of himself knocking on the door of a left-leaning Minnesota journalist, Wagner noted that J.S. himself had previously been “doxxed”—that is, someone else had previously published J.S.’s name, phone number, and address online. Wagner reposted that information to his own social media account and pointed out that “we can all knock on strangers doors.” Pet. App. 186a-187a. J.S. responded not in fear, but by sending Wagner a direct message challenging him to a “cage fight,” a challenge which Wagner publicly accepted. Pet. App. 6a, 92a, 187a.

C. Procedural History

1. Based on the social media post in which Wagner reposted what he believed to be J.S.’s name, phone number, and address, the government indicted Wagner in the Eastern District of Michigan on one count of cyberstalking under 18 U.S.C. § 2261A(2), and one count of interstate communications involving threats, *id.* § 875(c). Pet. App. 186a-188a, 189a-195a.

Although the government based these charges on the J.S. post, the government devoted a great deal of attention to Wagner’s criticisms of ICE. The criminal complaint contained twenty-seven pages reproducing Wagner’s other social media postings that criticized ICE. Pet. App. 160a-188a. The White House Press Secretary highlighted some of those postings during a daily press briefing. *See* Steve Karnowski, *Minneapolis Man Accused of Cyberstalking, Threatening ICE Supporter Amid Crackdown in Minnesota*, Associated Press (Feb. 10, 2026, at 16:33 ET), <https://perma.cc/3H3P-HUW8>. And the Department of Justice issued a press release

that quoted then-Attorney General Pam Bondi as stating “if you come for law enforcement, the Trump Administration will come for you.” See Press Release, Office of Public Affairs, U.S. Dep’t of Justice, *Anti-ICE Antifa member arrested on federal charges of Cyberstalking and Threatening Communications after allegedly calling for the murder and assault of federal immigration officers in Minneapolis* (Feb. 5, 2026), available at <https://perma.cc/Y65K-T34U>.

2. Wagner was arrested in Minnesota, where he lives. But the criminal complaint and indictment were filed in the Eastern District of Michigan. According to the indictment, the alleged victim, J.S., was in the Eastern District of Michigan at the time Wagner posted J.S.’s information on social media. Pet. App. 190a.

A magistrate judge in the District of Minnesota conducted an initial hearing and ordered Wagner detained, later explaining that this decision was based primarily on a “concern that Mr. Wagner may not have the ability * * * to get to Michigan to make the court appearance.” Pet. App. 36a (Bloomekatz, J., dissenting) (quoting arraignment transcript). Wagner’s case was then transferred to the Eastern District of Michigan, and he appealed the magistrate judge’s detention order to the district court. Pet. App. 6a-7a. The district court held a two-day detention hearing. Pet. App. 80a-159a. During that hearing, the government offered evidence of Wagner’s public and private social media activity and presented arguments for why he should be detained. Pet. App. 100a-113a, 128a-135a. Wagner’s counsel noted his lack of violent criminal his-

tory, and explained that the social media posts similarly stressed nonviolence. Pre-trial Services presented the results of its own investigation, and recommended release. Pet. App. 37a, 122a.

At the conclusion of the hearing, the district court issued an oral ruling in which it made findings of fact and ordered that Wagner be released subject to a set of both standard and special release conditions. Pet. App. 139a-152a; *see also* Pet. App. 65a-79a. Those conditions required, among other things, that Wagner submit to GPS monitoring; “refrain from posting on social media”; forgo accessing the internet with anything other than two approved devices (one phone and one computer); and “[n]ot engage in assaultive, threatening, or harassing behavior or statement[s].” Pet. App. 76a. The district court concluded that, given Wagner’s lack of violent criminal history and the other information before it, these conditions were sufficient to assure the safety of others and Wagner’s appearance at trial, as required by the Bail Reform Act. Pet. App. 143a-145a.

3. The government appealed the district court’s release order and moved for an emergency stay, which the Sixth Circuit granted. Pet. App. 7a. Then, a divided panel reversed the district court’s release order. Pet. App. 2a.

Judge Hermandorfer, writing for the panel majority, first held that the court would review the district court’s ultimate detention decision *de novo*, and rejected Wagner’s arguments in favor of “abuse of discretion review.” Pet. App. 9a-10a. The majority concluded that its preferred “framework—*de novo* review for the ultimate application of the statutory factors to the detention determination, and clear-error

review for findings of fact—tracks the circuits’ prevailing approach to reviewing detention decisions under the Bail Reform Act.” Pet. App. 9a.

Turning to the merits, the majority analyzed each of the four factors set forth in section 3142(g) based on a de novo review of the evidence in the record. Pet. App. 11a-20a. Specifically, the majority interpreted Wagner’s various social media posts as “calls for violence,” discounting his explanations about those statements’ context—and concluded that the “‘weight of the evidence’ * * * points toward Wagner’s dangerousness.” Pet. App. 14a, 16a-17a. And the majority further concluded that “the various conditions [the district court] imposed” would not “mitigate Wagner’s dangerousness” because, in the panel’s view, Wagner could evade those conditions. Pet. App. 21a-22a.

Judge Bloomekatz dissented, disagreeing with both the majority’s use of the de novo standard and its weighing of the evidence. Her dissent highlighted the split among the courts of appeals regarding the standard of review—and explained that, under this Court’s precedents, deference is appropriate because “the district court is better positioned than our court to resolve the question of whether any condition or combination of conditions will reasonably assure the defendant’s appearance and the safety of the community.” Pet. App. 40a.

Conducting her own analysis of the record evidence, she further explained that she would have upheld the district court’s release order because—while Wagner’s social media postings were “no doubt fiery and aggressive” and “also clearly full of bravado and rhetoric”—the government, in her view, had “not provided a convincing

reason to overturn the district court’s conclusion that the stringent conditions of Wagner’s release *** are sufficient to protect the public and assure his appearance” at trial. Pet. App. 28a-29a.

4. Wagner moved for emergency relief in the Sixth Circuit. *United States v. Wagner*, No. 26-1294 (6th Cir. Sep. 24, 2026), Dkt. No. 22. Under circuit rule, that motion was referred “as a single-judge matter, to the judge who wrote the opinion.” 6 Cir. I.O.P. 41(b). Judge Hermandorfer acknowledged “the presence of a circuit split over which standard of review governs district courts’ detention decisions under the Bail Reform Act,” but denied Wagner’s request to recall and stay its mandate. Stay-App. 5a. Having exhausted his remedies in the court of appeals, Wagner now respectfully seeks emergency relief from this Court.

ARGUMENT

Under Rule 23 and the All Writs Act, 28 U.S.C. § 1651, the Court may stay a court of appeals’ ruling. *See, e.g., Dep’t of State v. Aids Vaccine Advoc. Coal.*, 146 S. Ct. 19 (2025). To obtain a stay, an applicant must show a likelihood of success on the merits, a reasonable probability of certiorari, and a likelihood of irreparable harm. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Wagner satisfies each of these factors. There is a reasonable probability that the Court will grant certiorari to resolve an entrenched, acknowledged 5-4-3 circuit split over an important and recurring question. There is more than a fair prospect that this Court will reverse; the Sixth Circuit’s decision is wrong. And if a stay were denied, Wagner would suffer

irreparable harm. Most significantly, he is being deprived of his liberty despite the constitutional presumption of innocence and the statutory presumption of release.

I. THIS COURT IS LIKELY TO GRANT CERTIORARI TO REVIEW THE SIXTH CIRCUIT’S DECISION.

A. There Is A Clear And Acknowledged Circuit Split.

The federal courts of appeals are intractably divided over the standard of review for pretrial detention and release orders under the Bail Reform Act of 1984. The split emerged almost immediately after the Act’s passage, and it has only become more entrenched in the decades since. Stern & Gressman, *Supreme Court Practice* § 17.16, at 774 n.81 (11th ed. 2019) (“The courts of appeals continue to be in considerable disarray as to the appropriate standard of review of release and detention determinations under the 1984 Act.”). Today, the circuits are divided into three camps. Five circuits review the district court’s ultimate detention determination de novo. Four circuits review that determination only for clear error. And three circuits take an intermediate approach, conducting an independent review tempered by deference to the district court’s firsthand experience with the case.

1. Five Circuits Apply De Novo Review To Pretrial Detention And Release Decisions.

Five circuits—the Sixth, Eighth, Ninth, Tenth, and Eleventh—review pretrial detention orders de novo, and have done so for decades. In the decision below, for example, the Sixth Circuit applied a forty-year Circuit precedent under which “mixed questions of law and fact—including the “ultimate question whether [pretrial] detention is warranted”—are reviewed de novo. Pet. App. 9a (quoting *United States v.*

Hazime, 762 F.2d 34, 37 (6th Cir. 1985), and *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010)). Indeed, the Sixth Circuit adopted that rule shortly after the Bail Reform Act was enacted. *See Hazime*, 762 F.2d at 37. And the court has no interest in revisiting that precedent. *See* Pet. App. 10a (“[W]hatever the first-instance case for applying deferential review, we lack power here to revisit our precedents.”); Stay App. 2a (“[S]ince the 1985 decision in *United States v. Hazime*, 762 F.2d 34, our precedent implementing the Bail Reform Act has directed application of *** de novo review for the ‘ultimate question whether pretrial detention is warranted.’”).

The Eighth Circuit also reviews de novo “the ultimate conclusion that detention is required.” *United States v. Cook*, 87 F.4th 920, 921 (8th Cir. 2023) (citation omitted); *see, e.g., United States v. Abad*, 350 F.3d 793, 800 (8th Cir. 2003) (applying de novo review and reversing the district court’s decision to release a defendant pretrial, concluding that the defendant was “a danger to the community” and “a flight risk”). And it too adopted this standard one year after the Bail Reform Act was enacted. *United States v. Maull*, 773 F.2d 1479, 1487 (8th Cir. 1985) (en banc) (citing *Hazime*, 762 F.2d at 37).

The Ninth Circuit likewise conducts de novo review of the “whether the district court’s factual determinations justify the pretrial detention order.” *United States v. Santos-Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015) (citation omitted). The Ninth Circuit has explained that, under this standard, an appellate court must “make an independent examination of the record to determine whether the pretrial detention order is consistent with the defendant’s constitutional and statutory rights and arrive at

[its] conclusion de novo.” *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990).

The Tenth Circuit does the same. It “appl[ies] de novo review” and reexamines “all of the evidence” when it hears an appeal of a district court’s pre-trial detention or release order. *United States v. Cisneros*, 328 F.3d 610, 613, 616 (10th Cir. 2003); *see also, e.g., id.* at 616, 618-619 (affirming a pretrial detention order only after independently concluding that the government had established that the defendant posed a threat); *United States v. Ailon-Ailon*, 875 F.3d 1334, 1337 (10th Cir. 2017) (per curiam) (de novo review applies to “the detention or release decision”) (citation omitted).

The Eleventh Circuit also subjects pre-trial detention and release orders to “plenary review on appeal.” *United States v. Quartermaine*, 913 F.2d 910, 915 (11th Cir. 1990). The Eleventh Circuit adopted this standard in *United States v. Hurtado*, 779 F.2d 1467 (11th Cir. 1985), where it observed, shortly after the Bail Reform Act’s enactment, that the “circuit courts of appeals are sharply split” on the standard of appellate review under the Act, before adopting the “more expansive” de novo standard. *Id.* at 1470, 1471-72. The court continues to apply that standard. *See, e.g., United States v. Clum*, 492 F. App’x 81, 84-85 (11th Cir. 2012) (per curiam) (applying de novo review to affirm pretrial detention of a defendant accused of tax fraud).

2. Four Circuits Review Detention Decisions For Clear Error Or Abuse Of Discretion.

Four circuits—the Second, Fourth, Fifth, and D.C.—review the district court’s detention decision for clear error or abuse of discretion. Each of these courts believe

that it is appropriate to grant deference to the district court's decision to detain or release the defendant. In their view, the district court judge's decision is entitled to deference because, having had the defendant personally appear before him, the district court judge has "unique insights into the defendant as an individual and into his personal, professional, and financial circumstances." *United States v. Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004).

The Second Circuit, for example, has explained that "[t]he clear error standard applies not only to the factual predicates underlying the district court's decision, but also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by a defendant's release." *United States v. Zhang*, 55 F.4th 141, 146 (2d Cir. 2022) (quoting *United States v. Mattis*, 963 F.3d 285, 291 (2d Cir. 2020)). Under this standard, the court will reverse only where it is "left with the definite and firm conviction that a mistake has been committed." *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007) (citation omitted). *United States v. English*, 629 F.3d 311 (2d Cir. 2011), illustrates this standard. There, two defendants were charged with conspiring to traffic cocaine and with firearms offenses. The district court ordered them detained pre-trial, even though they presented "extraordinarily strong" evidence supporting their release, including evidence of substantial community ties. *Id.* at 313-314, 318. Applying clear-error review, the Second Circuit affirmed. The court recognized that the evidence *could* support a finding that the defendants were neither a flight risk nor a danger to the community, but it found the district court's contrary assessment equally permissible. *Id.* at 319-322. "Where there are two permissible

views of the evidence,” the court explained, the district court’s “choice between them cannot be clearly erroneous.” *Id.* at 319 (citation omitted).

The Fourth Circuit likewise reviews pre-trial detention decisions “for clear error.” *United States v. Vane*, 117 F.4th 244, 249 (4th Cir. 2024); *see also, e.g., United States v. Clark*, 865 F.2d 1433, 1438 (4th Cir. 1989) (en banc) (affirming a detention decision because “the district court’s finding * * * of insufficient conditions for release was not clearly erroneous”).

The Fifth Circuit applies the same standard, reviewing pretrial detention orders under “a deferential standard of review that * * * equate[s] to the abuse-of-discretion standard.” *United States v. Flores*, 53 F.4th 313, 315 (5th Cir. 2022) (per curiam) (citation omitted). Under this standard, the “question is ‘whether the evidence as a whole supports the conclusions of the proceedings below.’” *United States v. Moreno*, 857 F.3d 723, 725-726 (5th Cir. 2017). Thus, where “the district court’s finding[s]” are “supported by the record,” the Fifth Circuit will not conclude that the district court has “abused its discretion,” and the district court’s decision will be affirmed. *Flores*, 53 F.4th at 316.

The D.C. Circuit also reviews pre-trial detention decisions for clear error. *United States v. Hale-Cusanelli*, 3 F.4th 449, 455 (D.C. Cir. 2021). That standard is “highly deferential,” and the court “will find clear error only when, although there is evidence to support” the district court’s decision, “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Id.* (quoting *United States v. Munchel*, 991 F.3d 1273, 1282 (D.C. Cir. 2021)). So

where “[r]easonable minds might disagree” on a detention decision, the D.C. Circuit will not “substitute [its] judgment for that of the District Court.” *Id.* at 457. This standard reflects “the large discretion normally accorded the trial court in this area.” *United States v. Vasquez-Benitez*, 919 F.3d 546, 551 (D.C. Cir. 2019) (citation omitted).

3. Three Circuits Conduct Independent Review Tempered By Deference To The District Court’s Judgment.

Three circuits—the First, Third, and Seventh—take an intermediate approach, conducting independent review of the detention decision but tempering that review with deference to the district court’s firsthand assessment of the defendant and the case. These courts, too, accord this deference because district judges are generally “much closer to the case” than a circuit court, having “the opportunity to observe the defendant, his alleged confederates, if any, his family, and those with whom he will probably associate if released.” *United States v. Portes*, 786 F.2d 758, 763 (7th Cir. 1986).

The First Circuit, for example, conducts “independent review” of pretrial detention decisions, “tempered by a degree of deference” to the district court’s decision. *United States v. Tortora*, 922 F.2d 880, 882 (1st Cir. 1990). This is “an intermediate level of scrutiny, more rigorous than the abuse-of-discretion or clear-error standards, but stopping short of plenary or de novo review.” *Id.* at 883. The First Circuit stops short of de novo review because it recognizes that the district court’s “firsthand” experience with the case provides “an extra dimension not available to appellate

judges.” *United States v. Bayko*, 774 F.2d 516, 520 (1st Cir. 1985); *see United States v. O’Brien*, 895 F.2d 810, 813-814 (1st Cir. 1990). Thus, if the appellate court “sees the decisional scales as evenly balanced,” “the trial judge’s determination should stand.” *O’Brien*, 895 F.2d at 814.

In *Tortora*, for example, the defendant was charged with RICO violations in connection to organized crime. 922 F.2d at 882. The district court released him on conditions including electronic monitoring, house arrest, and a pen register on his telephone. *Id.* Applying “independent review, tempered by a degree of deference” to the district court, the First Circuit reversed, concluding that “the safety of the community cannot reasonably be assured” because the conditions “hinge[d] on the defendant’s good faith compliance,” authorized outside visits created “a sizeable loophole,” and contact restrictions were “honor-dependent.” *Id.* at 882, 886-887, 890; *see also United States v. Hussain*, 6 F. App’x 50, 51 (1st Cir. 2001) (per curiam) (applying an “independent standard of review” and affirming pretrial detention decision); *United States v. Sadeghi*, No. 25-1501, 2025 WL 4352421 (1st Cir. Aug. 21, 2025) (similar).

The Third Circuit similarly conducts an independent review of detention decisions, tempered by “respectful consideration” for the district court’s “supporting statement of reasons for his or her actions.” *United States v. Delker*, 757 F.2d 1390, 1400 (3d Cir. 1985); *see also, e.g., United States v. Himler*, 797 F.2d 156, 159, 162 (3d Cir. 1986) (reversing the district court’s detention order, but only “after careful review of the record and of the trial court’s reasoning” and reaching the conclusion that “the

district court improperly considered danger to the community in detaining the defendant pending trial rather than in setting conditions of release”).

The Seventh Circuit also conducts “independent review” tempered by “deference” to the district court’s “greater familiarity with the defendant and the case.” *United States v. Wilks*, 15 F.4th 842, 847 (7th Cir. 2021) (citation omitted). A “prudent appreciation for the importance of” that greater familiarity requires the court of appeals to “give great weight to the * * * [district court’s] assessment.” *Portes*, 786 F.2d at 763; *see, e.g., id.* at 762-763, 766 (affirming district court’s detention decision after “independent review,” but giving “great weight to the assessment of those judicial officers” who were “much closer to the case”).

B. This Court Is Likely To Grant Certiorari In This Case To Resolve The Split.

1. The Question Presented Is Important.

This Court has repeatedly recognized that the “standard for appellate review” bears on the “essential characteristic[s] of” how “[the federal court] system” administers justice. *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 431 (1996) (citation omitted). Accordingly, this Court has addressed standards of review across a range of different contexts in recent years. *See, e.g., Bufkin v. Collins*, 604 U.S. 369, 381 (2025) (resolving the “appropriate standard of review for challenges to the VA’s application of the benefit-of-the-doubt rule”); *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 24 (2021) (resolving the standard of review for a finding of “fair use” under copyright laws); *U.S. Bank Nat’l Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*,

583 U.S. 387, 389 (2018) (resolving the standard for reviewing a Bankruptcy Court’s determination that a creditor does not qualify as a non-statutory insider).

These stakes are higher in criminal proceedings, where “the individual’s strong interest in liberty” is at stake. *Salerno*, 481 U.S. at 750. Both criminal defendants and the federal government have a compelling interest in correct and uniform legal standard. *See generally Turner v. Rogers*, 564 U.S. 431, 445 (2011) (“it is obviously important to ensure accurate decisionmaking” given the “importance” of the “interest against loss of personal liberty through imprisonment”).

Despite the importance of the issue, this Court is presented with few opportunities to correct the ongoing and entrenched split highlighted by the Sixth Circuit’s decision. Although district courts conduct tens of thousands of pretrial detention hearings annually²—and courts of appeal review such orders with some regularity—the circuit split has remained entrenched because “the maximum length of pretrial detention is limited by the stringent time limitations of the Speedy Trial Act.” *Salerno*, 481 U.S. at 747 (footnote omitted); *see* 18 U.S.C. § 3161 *et seq.* As a result, a detention decision often proves too short “in its duration * * * to be fully litigated’ through the * * * courts (and arrive here) prior to its ‘expiration’” at the conclusion of trial. *Turner*, 564 U.S. at 440 (citations omitted) (imprisonment for up to 12 months

² For example, the Administrative Office of U.S. Courts has reported that a “total of 73,815 bail determinations were made by the courts” in 2025. U.S. Courts, Pretrial Services — Judicial Business 2025, <https://perma.cc/5PH4-MUB7> (last visited Sept. 17, 2026). Excluding immigration cases, 27,537 defendants were detained and never released during that period. U.S. Courts, Judicial Business 2025 Table H-14A, <https://perma.cc/3U3S-CTJH> (detailing pretrial services release and detention statistics for 2025).

is too short for review); *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 774 (1978) (18-month period too short).

2. This Case Is An Excellent Vehicle.

This case presents an ideal vehicle for resolving the otherwise evasive issue because the standard of review was outcome-determinative here. The district court conducted a two-day hearing and drew on its extensive experience to craft tailored release conditions for Wagner that took account of his unique circumstances and the particulars of his case. Yet the Sixth Circuit, applying de novo review, re-weighed the evidence itself, giving no deference to the district court’s situational awareness. In doing so, it highlighted the error of this approach.

By seeking this emergency stay and filing a petition for certiorari, Wagner has ensured that the Court has an opportunity to address and resolve the longstanding split regarding proper allocation of functions between the trial and the appellate court in pretrial detention proceedings. Because all regional circuits have now weighed in on this question and no further development or percolation on these questions is needed, it is likely that this Court will grant review.

3. The Sixth Circuit’s Stay-Denial Order Confirms the Split’s Significance.

Wagner first sought a stay from the Sixth Circuit. A single judge, acting on behalf of the court, denied that request. But even in denying Wagner’s motion to recall and stay the mandate, Judge Hermandorfer acknowledged “the presence of a circuit split over which standard of review governs district courts’ detention decisions under the Bail Reform Act.” Stay App. 5a. And she confirmed that the circuits have

adopted three approaches, recognizing that the Sixth Circuit applies “de novo review” while other circuits apply “clear-error review” and “independent review tempered by deference.” Stay App. 1a-2a, 5a.

The longevity of the split does not suggest that this Court is unlikely to grant certiorari. *Contra* Stay App. 5a. The split originated decades ago because the Bail Reform Act was enacted in 1984—and the circuits divided almost immediately. *See, e.g., Hazime*, 762 F.2d at 37 (6th Cir. 1985); *Maull*, 773 F.2d at 1487 (8th Cir. 1985); *Hurtado*, 779 F.2d at 1470-72 (11th Cir. 1985). The longevity of the split is evidence of entrenchment, not staleness. “A stale conflict sometimes may suggest that the disagreement is not a recurring and important one.” Stern & Gressman, *Supreme Court Practice* § 4.4(D) at 248 (quoted in Stay App. 5a). But this disagreement is both recurring and important. Recent decisions confirm that the courts of appeals regularly face this question, and that each camp continues to apply its chosen standard. *See, e.g., Cook*, 87 F.4th at 921 (8th Cir. 2023) (de novo); *Vane*, 117 F.4th at 249 (4th Cir. 2024) (clear error); *Flores*, 53 F.4th at 315 (5th Cir. 2022) (abuse of discretion); *Wilks*, 15 F.4th at 847 (7th Cir. 2021) (independent review tempered by deference). Moreover, the circuits have had four decades to converge and have not done so. *See* Stern & Gressman, *Supreme Court Practice* § 17.16, at 774 n.81 (11th ed. 2019) (lamenting that “[t]he courts of appeals continue to be in considerable disarray as to the appropriate standard of review of release and detention determinations under the 1984 Act”). This split has percolated to maturity, and only this Court can resolve it.

And the standard of review was plainly outcome-determinative. *Contra* Stay App. 6a. The majority applied de novo review and reversed the district court’s release order after independently reweighing the evidence. Pet. App. 9a-10a, 11a-20a. Meanwhile, the dissent disagreed with the majority’s standard of review, applied a deferential framework, and concluded that it would “defer to the district court’s judgment” and affirm the release order. Pet. App. 28a-29a, 40a. The author of the majority opinion suggests that “the dissent’s core objection” was “the meaning of what it viewed as ambiguous statements by Wagner,” Stay App. 6a, but in so doing, the author of the majority opinion merely reinforces the fact that deference to the district court was outcome determinative in this case. *See* Pet. App. 28a-29a (dissent concluding that “[n]ot only does the government overstate the evidence of dangerousness, but in my view, the government has not provided a convincing reason to overturn the district court’s conclusion that the stringent conditions of Wagner’s release * * * are sufficient to protect the public and assure his appearance.”).

II. THIS COURT IS LIKELY TO REVERSE THE DECISION BELOW.

This Court is also likely to reverse the Sixth Circuit’s decision because it contravenes this Court’s established framework for deciding whether “a district court’s decision should be subject to searching or deferential” review. *McLane*, 581 U.S. at 79. That framework requires appellate courts to “defer[] to the district court” when “the text of the [governing] statute ‘emphasizes that [a] determination is for the district court’—or when “the district court ‘is better positioned’ to decide” the issue. *Highmark*, 572 U.S. at 564 (quoting *Pierce*, 487 U.S. at 558). Both factors make clear

“that an appellate court should apply an abuse-of-discretion standard” for pretrial detention orders. *Id.*

1. Although Congress did not explicitly prescribe a standard of appellate review in the Bail Reform Act, “the language and structure of the” relevant provision makes clear that detention orders warrant deference. *Pierce*, 487 U.S. at 559. Section 3142 repeatedly instructs “judicial officer[s]” to “determine” whether pretrial detention is appropriate on the basis of a multitude of evidentiary and case-specific factors and to set tailored and individualized release conditions. 18 U.S.C. § 3142(a), (c), (f). Judicial officers are required to craft such orders based on a “hearing” in which the defendant may testify, present and cross-examine witnesses, and otherwise proffer information—and then consider “the nature and circumstances of the offense charged,” “the weight of the evidence against the person,” “the history and characteristics of the person,” including his or her “character, physical and mental condition,” and the “the danger” the person poses. *Id.* § 3142(e), (f), (g). The Act further allows courts to both modify release orders “at any time,” *id.* § 3142(c)(3), and to “permit the temporary release of the person” if “the judicial officer determines such release to be necessary” for a “compelling reason.” *Id.* § 3142(i).

These repeat directions for district courts to make nuanced predictive judgments based on the evidence before them necessarily require the exercise of discretion. Indeed, this Court has repeatedly recognized that statutes directing district courts to “find[]” or “determin[e]” some issue in proceedings they oversee signal a discretionary act. *Pierce*, 487 U.S. at 559 (citation and emphasis omitted). For example, in *Pierce*,

the Court held that the statutory direction that “the court find[]” whether the position of the United States was “substantially justified” made abuse-of-discretion review appropriate. *Id.* (citation and emphasis omitted). More recently, in *Highmark*, it emphasized that a district court’s “determin[ation] whether a case is ‘exceptional’” for purposes of another statutory provision requires “case-by-case exercise of their discretion” and should thus be reviewed “for abuse of discretion.” 572 U.S. at 563 (citation omitted). These standards are “creature[s] of statute” and call for inquiries that “tend[] to be case specific and fact intensive”—all hallmarks of discretionary judgments that warrant deference. *Bufkin*, 604 U.S. at 385. Further, it is well established that “courts of appeals afford broad discretion” to district courts’ findings on evidentiary matters, given their “greater experience.” *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008).

Because “Congress is understood to legislate against a background of common-law adjudicatory principles,” its choice to not explicitly prescribe a standard of appellate review indicates that it did not wish to depart from the default abuse-of-discretion rule that applies in such circumstances. *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991).

2. Beyond the Bail Reform Act’s language and structure, this Court has made clear that the standard for appellate review “all depends—on whether” a court is called upon to perform “primarily legal or factual work.” *U.S. Bank Nat’l Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 395-396

(2018). De novo review is generally appropriate “when applying the law involves developing auxiliary legal principles of use in other cases.” *Id.* at 396. But when the trial court is “immerse[d]” in “case-specific factual issues,” “appellate courts should usually review a decision with deference.” *Id.*; *see also Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 228 (2020) (noting that this test provides the “proper standard” for review of “mixed questions in * * * a district, bankruptcy, or agency decision” (internal quotation marks omitted)).

Pretrial detention determinations fall squarely in the latter category. The ultimate assessment that a district court makes—whether any set of release conditions can likely ensure that defendant will appear for trial and not pose a danger to others—“must be made individually” and the “inquiry is factbound.” *Munchel*, 991 F.3d at 1283 (quotes and citations omitted); *Tortora*, 922 F.2d at 888 (“Detention determinations * * * must be based on the evidence which is before the court regarding the particular defendant.”). To analyze these issues under the statutory framework, district courts must “marshal and weigh evidence, make credibility judgments, and otherwise address * * * ‘multifarious, fleeting, special, narrow facts’” about an individual defendant—all tasks that “utterly resist generalization.” *Lakeridge*, 583 U.S. at 396 (quoting *Pierce*, 487 U.S. at 561-562); *see* 18 U.S.C. § 3142(g) (prescribing the “[f]actors to be considered” including “the weight of the evidence against the person”). “And the fact-bound nature of the decision limits the value of appellate court precedent.” *Buford v. United States*, 532 U.S. 59, 65-66 (2001).

The Sixth Circuit’s analysis confirms this. In parsing the record evidence, the panel did not pronounce any new legal rule or standard. Rather, the majority merely conducted its own assessment of the substance, context, and probative value of Wagner’s various social media postings. Pet. App. 3a-6a, 16a-19a. Based on those assessments, the panel drew conclusions about, among other things, the “weight of the evidence” of Wagner’s dangerousness and the credibility of “his asserted promises to abide by the” release conditions imposed by the district court. Pet. App. 14a, 21a. This “tak[ing] a raft of case-specific historical facts, consider[ing] them as a whole, [and] balanc[ing] them one against another” is “about as factual sounding as any mixed question gets.” *Lakeridge*, 583 U.S. at 397 (footnote omitted).

This Court has repeatedly held that de novo review is inappropriate in such circumstances. *Bufkin*, 604 U.S. at 383 (“[W]hen the initial decisionmaker is ‘marshall[ing] and weigh[ing] evidence’ and ‘mak[ing] credibility judgments’ * * * its work is fact intensive, and its determinations should be reviewed with deference.”) (quoting *Lakeridge*, 583 U.S. at 396); *Wilkinson v. Garland*, 601 U.S. 209, 222, 225 (2024) (holding that mixed question involving the adjudicator’s “weigh[ing] [of] found facts” was “primarily factual” and that review of the adjudicator’s decision therefore was “deferential”); *Koon v. United States*, 518 U.S. 81, 98-99 (1996) (a district court’s decision to depart from sentencing guidelines warrants deference because “the district court must make a refined assessment of the many facts bearing on the” question). The Sixth Circuit’s failure to acknowledge, much less follow, these precedents was error.

Practical considerations reinforce that deference is warranted because, “as a matter of the sound administration of justice,” district courts are “better positioned * * * to decide” pretrial detention issues. *Pierce*, 487 U.S. at 559-560. As Judge Bloomekatz observed in her dissent below, the analysis district courts conduct to craft pretrial release orders is broadly “analogous” to other work that district courts are regularly called upon to do in criminal matters, such as sentencing. Pet. App. 40a-41a. This Court has repeatedly applied a deferential standard for reviewing district courts’ application or departures from the Sentencing Guidelines, due to “the relative institutional advantages enjoyed by the district court in making the type of determination at issue.” *Buford*, 532 U.S. at 64; *Koon*, 518 U.S. at 99 (departure from sentencing guidelines reviewed for abuse of discretion because it involves “the consideration of unique factors” that district courts are better equipped to decide) (citation omitted). As this Court has explained, a “district judge sees many more” such matters “than does an appellate judge,” and this “[e]xperience” helps the district court make its decisions. *Buford*, 532 U.S. at 64.

Indeed, the district court expressly relied on that experience here, explaining that it was drawing on its history with similar proceedings to decide that it would be adequate to subject Wagner to home detention, GPS monitoring, device restrictions, third-party custodian supervision, and a comprehensive ban on social media and protest activity. Pet. App. 143a-144a. Under these circumstances, “basic principles of institutional capacity counsel in favor of deferential review.” *McLane*, 581 U.S. at 81.

Tellingly, the stay-denial opinion offers no defense of de novo review under this Court's precedents. That is because there is none.

III. WAGNER FACES IRREPARABLE HARM ABSENT A STAY.

Finally, there is good cause for a stay because Wagner's continued detention causes him ongoing irreparable injury, and the balance of equities clearly points in favor of his release.

1. This Court has repeatedly emphasized that the “interest in securing * * * freedom” from “imprisonment” lies “at the core of the liberty protected by the” Constitution. *Turner*, 564 U.S. at 445 (citation omitted); see *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that” the Due Process Clause protects). In “our society[,] liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Salerno*, 481 U.S. at 755. “To a prisoner, th[e] prospect of additional time behind bars is not some theoretical or mathematical concept.” *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (quotation marks and citation omitted). Wagner's interest in securing release from detention pending trial is thus indisputable. See, e.g., *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987) (“The interest of the habeas petitioner in release pending appeal [is] always substantial * * * .”).

For each day Wagner is detained, he is irreparably deprived of his liberty interest despite his statutory and constitutional presumption of innocence. This depri-

vation is all the more stark given the district court’s detailed and well-reasoned finding that his unique circumstances do not “fall within th[ose] carefully limited exception[s]” to pretrial release set forth in the Bail Reform Act. *Salerno*, 481 U.S. at 755. Wagner is away from his family; unable to earn an income; and “hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.” *Barker v. Wingo*, 407 U.S. 514, 533 (1972). The impingement of these “rights during [a] potentially protracted” judicial process “constitutes irreparable harm.” *Mirabelli*, 607 U.S. at 497.

The stay-denial order suggests that Wagner’s irreparable harm is “self-inflicted” because he has agreed to continuances of his trial date. Stay App. 6a. That reasoning is untenable. As Wagner explained in his stay application to the Sixth Circuit, one of the reasons that Wagner wants to be released prior to the start of his trial is that detained defendants are “hindered in [their] ability” to “prepare [their] defense.” *Barker*, 407 U.S. at 533. Wagner wants to be fully prepared to defend himself at trial. But Wagner cannot secure pretrial release unless this Court reverses the Sixth Circuit. That is why Wagner is willing to delay his trial in order to provide this Court an opportunity to resolve his petition for certiorari: He wants to be acquitted. Wagner’s decision to prioritize his acquittal above his pre-trial detention is *not* a concession that pre-trial detention is unharful. *Contra* Stay App. 6a.³

³ Moreover, treating continuances as evidence that detention is somehow voluntary or harmless would turn the presumption of innocence on its head, making pretrial detention the rule rather than a “carefully limited exception.” *Salerno*, 481 U.S. at 755.

2. Wagner’s irreparable injury—combined with the “reasonable probability” of this Court’s review and the “fair prospect” that this Court will reverse the Sixth Circuit’s decision—mean that this is not one of those “close cases” where the Court needs to further “balance the equities.” *Hollingsworth*, 558 U.S. at 190. But those equities favor a stay in any event because Wagner’s release will neither harm the government nor the public. *Nken*, 556 U.S. at 435 (“Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest.”).

The district court carefully considered public safety in crafting the conditions for Wagner’s release. Pet. App. 143a-144a. These included careful limits on Wagner’s travels and use of technology—the very avenues by which the government alleged Wagner’s release posed a danger. Pet. App. 147a-148a. Notably, the district court’s analysis and predictive judgment were proven correct by Wagner’s subsequent compliance on bond and his self-surrender into custody when the Sixth Circuit granted a stay of the district court’s release order. Pet. App. 37a. To the extent the Sixth Circuit reached a different conclusion about Wagner’s dangerousness based on its tendentious reading of Wagner’s social media postings, it did so without the benefit of the district court’s experience, and without observance of this Court’s precedents. Its conclusion therefore does not warrant deference from this Court.

That Wagner’s release would not harm the public interest is underscored by the fact that Wagner is being detained not on the basis of a history of violence, but rather based on his speech. Pet. App. 47a. Of course, “the First Amendment precludes

punishment, whether civil or criminal, unless the speaker’s words” amount to “[t]rue threats’ of violence” or are “‘intended’ (not just likely) to produce imminent disorder.” *Counterman v. Colorado*, 600 U.S. 66, 74, 76 (2023). That the government in this case did not charge Wagner on the basis of the public social media postings it proffered as proof of dangerousness—and on which the Sixth Circuit relied—undermines any claim that those postings indicate any real danger to the public.

This Court has emphasized that “the public legitimacy of our justice system relies on procedures that are ‘neutral, accurate, consistent, trustworthy, and fair,’ and that ‘provide opportunities for error correction.’” *Rosales-Mireles*, 585 U.S. at 141 (citation omitted). The Sixth Circuit’s legal errors undermine those interests. Because this case does not fall into one of the “special and ‘narrow’ nonpunitive ‘circumstances’” where detention is appropriate, this Court should grant a stay permitting Wagner’s release. *Zadvydas*, 533 U.S. at 690 (citation omitted).

CONCLUSION

The application for a stay should be granted.

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