



Bail Reform Act



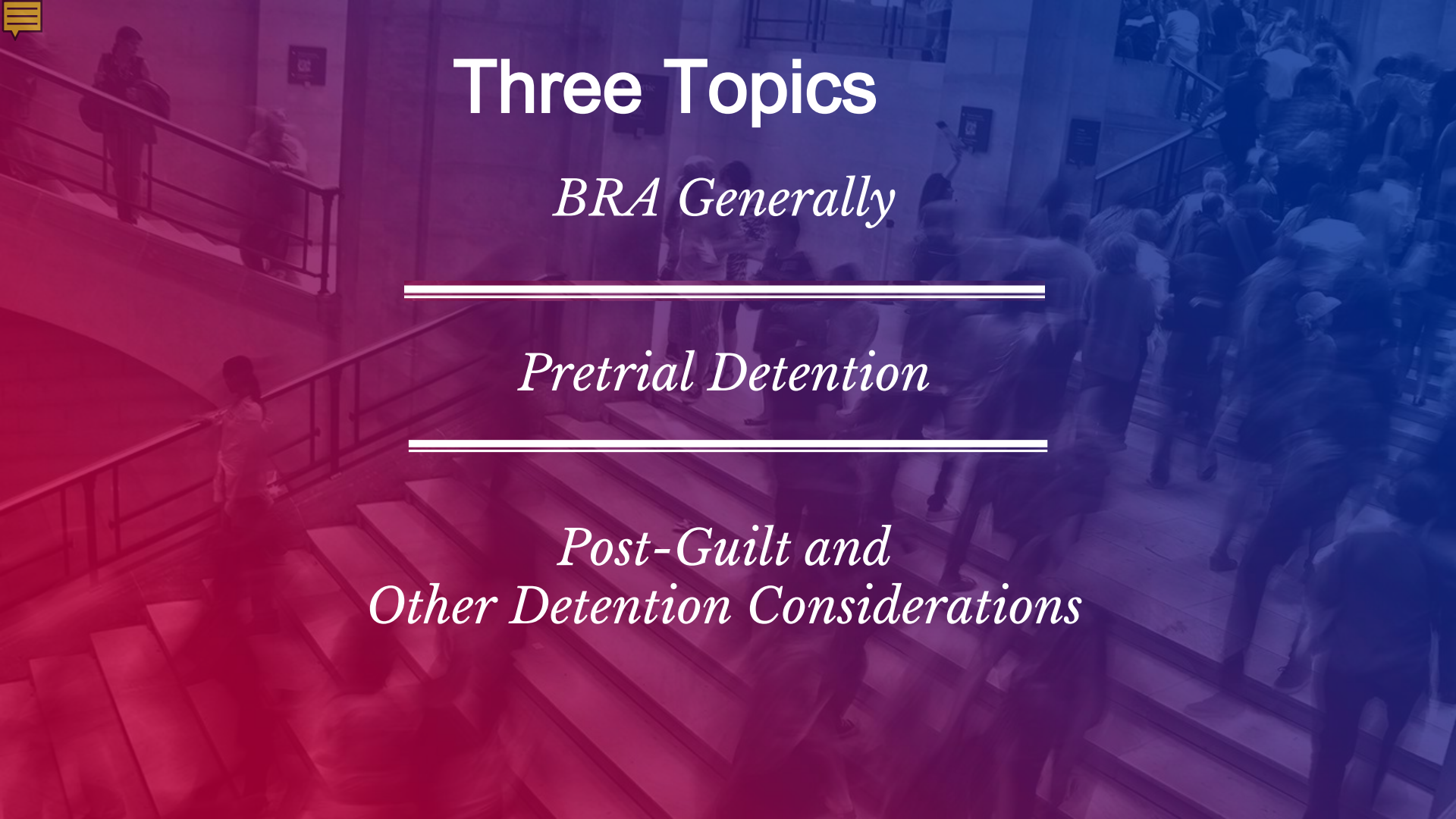
Detention Hearings





Ira Knight

*Assistant Federal Public Defender
Middle District of North Carolina*



Three Topics

BRA Generally

Pretrial Detention

*Post-Guilt and
Other Detention Considerations*

“

Broad Strokes

There are 15 sections of Chapter 207, practice centers on §§3142 and 3143.

§3142 is the BRA workhorse, if you get confused or lost, head back there.



It's ~~not~~ this easy in the MDNC

Chance

**THIS CARD MAY BE KEPT
UNTIL NEEDED, OR SOLD**

**GET OUT OF JAIL
FREE**





Bail Reform Act

(1) Released on PR/OR...

(2) Released on condition(s) under subsection (c)

(3) Temporarily detained for revocation of release, etc.

(4) Detained..

§3142(b): “The judicial officer shall order the pretrial release...unless the [] officer determines that release will not reasonably assure the appearance...or will endanger the safety of any other person or the community.



Bail Reform Act

§3142(c)(B):

“subject to the least restrictive further condition, or combination of conditions, that...will *reasonably assure* the appearance of the person as required and the safety of any other person and the community...”



BRA – Detention Hearing?

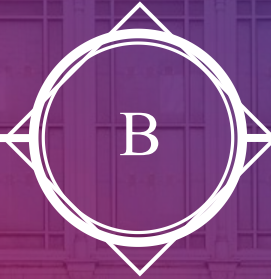
(f) Factor?

RoF / Danger?

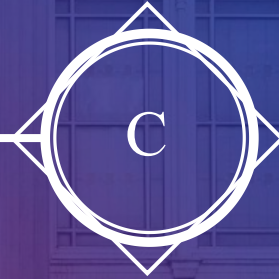
Least Restrictive



Check the statute



Shall be released
unless...



Even if
RoF/Danger, can it
be addressed with
conditions?



Detention Hearings, Generally

(f)
factor?

*Risk of
Flight
or
Danger*

*Able to
Address
?*



F FACTORS

Crime of
Violence or
Terrorism

Controlled
Substances Act

Two prior
COV or (10+
years)

Statutory Maximum is 10 years. Not a
Minor Victim Drug
Offense

*(b)(1)(D) Failure to
Register

Flight or
Obstruction of
Justice



Flight/Obstruction

Dangerousness arguments not
available to Government for
(f)(2) cases!



Detention Hearings, Generally

*(f)
factor?*

**Risk of
Flight**

*Able to
Address
?*



Risk of Flight





Factors to Consider for RoF/D2C

Available Information concerning:

(1) Nature and
Circumstances of
Offense

(2) Weight of the Evidence

[Least important factor;
presumption of innocence]

(3) History and
Characteristics

(4) Nature and seriousness
of the danger to any person
or the community that
would be posed by the
person's release

“

Risk of Flight

- Risk of Flight must be “serious.”*
- Standard: preponderance of evidence*
- Doesn't need to show conditions are “like jail,” just that conditions will assure presence*



“

Risk of Flight

- N.D. Iowa: fact that Δ 's assets frozen eliminate RoF*
- Attempted Suicide does not alone create RoF*
- S.D.Fl: Serious Charges alone not enough for RoF*
- 9CA: Drug use doesn't create RoF*



Detention Hearings, Generally

*(f)
factor?*

*Risk of
Flight
or
Danger*

*Able to
Address
?*



“

Risk of Flight

“Judge, my client doesn’t have...

- Substantial foreign ties*
- Access to considerable funds to finance flight*
- Manifested or demonstrated an intent to flee if arrested*
- Unstable residential ties to the community*



Detention Hearings, Generally

*(f)
factor?*

Danger

*Able to
Address
?*



Danger to Community

Florida Man Accused of Attacking Girlfriend With Banana

Thursday, Jan 2, 2014 | Updated 3:03 PM EST

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Pasco County Sheriff's Office



Factors to Consider for RoF/D2C

Available Information concerning:

(1) Nature and
Circumstances of
Offense

(2) Weight of the Evidence

[Least important factor;
presumption of innocence]

(3) History and
Characteristics

(4) Nature and seriousness
of the danger to any person
or the community that
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person's release



“

Danger

-Standard: Clear and convincing evidence

Danger must be actual: theoretical danger isn't enough

-Presence of a firearm

Look back to 4 Factors



Detention Hearings, Generally

*(f)
factor?*

Danger

*Able to
Address
?*



“

Danger to Community

“Judge, my client...

- Was cooperative with authorities when arrested*
- Does not have any prior convictions for a CoV*
- No longer possesses the contraband that is alleged in the indictment (danger must be prospective)*
- Has a strong network of support in the community*



Presumption of Detention

Do you still have a shot?



“

Presumption of Detention

“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...



Rebuttable Presumption

Under (f)(1)

THREE CRITERIA:
Must be (f)(1) offense

(f)(1) prior must have been
while on pretrial release

Not more than five years
since release from above

Enumerated Offenses

Controlled Substance Act
Offense w/ >10 year max

924(c) or Terrorism Offense

Human Trafficking

Minor Victim Offense



How to Rebut The Presumption?

- ❑ The ball is in your court to present “some evidence;” the Government is never relieved of its burden to prove by PoE/C+C.
- ❑ Pre-trial services report is “some credible evidence.”
- ❑ Cross-examination
- ❑ Case is not heartland case (not a typical drug dealer)
- ❑ Evidence of polygraph
- ❑ Use of conditions (TPC / ELM / Curfew)



Presumptive Detention

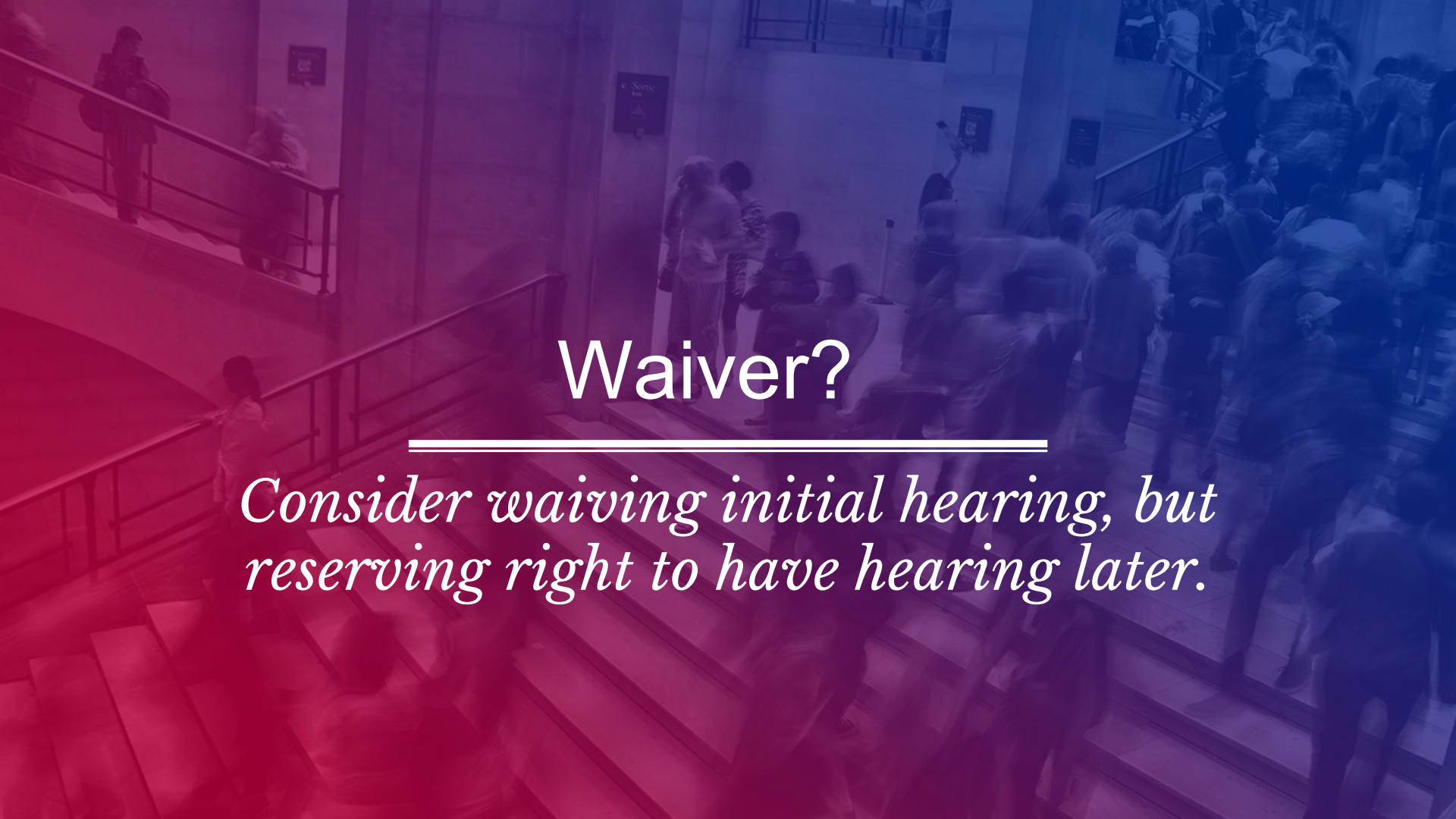


Maximum Insecurity Prison



Second Bite?

The hearing *may* be reopened if...[material]
information...not known to the movant at the
time of the hearing



Waiver?

*Consider waiving initial hearing, but
reserving right to have hearing later.*



Post -Guilt Release

The law, Judicial Discretion, Negotiation

“

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§3142 is the BRA workhorse, if you get confused or lost, head back there.



“

§3143: Release Pending Sentence

“[T]he judicial officer shall order that a person who has been found guilty of an offense...be detained, unless the judicial officer finds by C+C evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community...”



“

§3143: It Just Gets Worse...

*(f)(1) cases: beware if the case is from (A), (B), or (C) –
mandatory detention [unless new trial/no sentence
AND C+C evidence not likely to flee or pose a danger*



Pre-Sentence Release

DEFENDANT'S MOTION FOR WITHHOLDING OF ADJUDICATION OF GUILT FOR RELEASE PENDING SENTENCING and FOR RELEASE PENDING EXECUTION OF A SENTENCE PURSUANT TO 18 U.S.C. § 3143

Mr. Fox moves the Court to permit him to remain on release pending sentencing, subject to the same terms and conditions as is his pre-trial release. Specifically, Mr. Fox moves the Court to accept his guilty plea but withhold adjudication of guilt until the time of his sentencing, or, in the alternative, to adjudicate him guilty of the offense and find that clear and convincing evidence exists that Mr. Fox is not a serious flight risk or a real danger to the community.



“

§3145: Exceptional Reasons

A BRA “safety valve” exists that allow post-guilt defendants to be released “if it is clearly shown that there are exceptional reasons why such person’s detention would not be appropriate.”



Rule 5 Issues

Government Appeal of Release



Rule 5

MOTION TO STAY ORDER OF RELEASE

NOW COMES the United States of America, by and through Sandra J. Hairston, United States Attorney for the Middle District of North Carolina, through the undersigned Assistant United States Attorneys, and hereby moves this Court to review and revoke the magistrate judge's order of release in this matter and, showing the following:

“

General Pointers

-Leverage Awkwardness – Judges in our district don't want to look overbearing to judges in other districts.

-Leverage Workload – AUSA's don't want to file all these documents

Leverage Facts – Give your audience a hook for their hat



Adam Walsh Act

Mandatory Conditions of Release



Adam Walsh Mandatory Release Conditions

Mandatory Conditions:

Electronic Monitoring

Restrictions on travel and associations

Avoid all contact with an alleged victim or witness

Report on a regular basis to USPO

Curfew

No dangerous weapons



Thanks!

Any questions?

You can find me at Ira_Knight@fd.org