

No. 23-4513

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DORIAN K. MYLES,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of West Virginia,
Case No. 1:23-cr-0021-TSK-MJA-1 (Chief District Judge Thomas S. Kleeh)

MEMORANDUM BRIEF FOR APPELLANT DORIAN K. MYLES

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INTRODUCTION

Appellant Mr. Dorian Myles respectfully requests that this Court reverse the district court's order detaining him pretrial and revoking the magistrate judge's release order. The legal standard the district court used to detain Myles violates the statutory requirements of the Bail Reform Act of 1984 (BRA) and the constitutional right to due process. Two different judges—a Michigan federal magistrate judge and a West Virginia state court judge—determined that Myles should be released pretrial, notwithstanding the conduct alleged in this case. Myles's success on pretrial release for five months proves that those two judges were correct.

Because Myles was charged with drug trafficking offenses for which the maximum term of imprisonment is 10 years or more, the BRA subjects him to a rebuttable presumption of detention. The Michigan magistrate judge used the correct standard, found that the presumption had been rebutted, and ordered Myles released. After the government moved to revoke that release order, the district court found that Myles “did not rebut the presumption in favor of detention,” and then relied in part on that finding to detain him. App.148.¹ But, properly interpreted, the BRA's presumption is what is known as a “bursting bubble

¹ “App.” refers to the Appendix to this memorandum brief, filed electronically as an attachment to the filing entry for the brief. *See* Scheduling Order, ECF No. 3.

presumption,” that is, a presumption that *disappears entirely* once the defense produces evidence contesting detention. Myles rebutted this presumption by producing evidence supporting his release. His detention pending trial based on a purportedly un rebutted presumption therefore violates the plain text of the BRA, as well as due process.

Under the proper legal standard, Myles must be released. Myles presented extensive evidence establishing strong family and community ties, a history of gainful employment, and future employment prospects. Moreover, Myles has never been convicted of a felony, has no history of violence, and has never been to prison. He was released on state bond for the same underlying conduct without any violations for five months when he was first arrested on federal charges. Indeed, federal officers found him exactly where he told the state court he would be living, at his mother’s home. Myles produced more than enough evidence to rebut the BRA’s presumption, which therefore disappears and plays no further role in the detention analysis. Considering the evidence without the presumption, the government has not proven that “no condition or combination of conditions [of release] will reasonably assure” Myles’s appearance or the safety of the community. 18 U.S.C. § 3142(e)(1); *see also* §§ 3142(f), (g). This Court should reverse the detention order and remand with instructions to release Myles with appropriate conditions.

In the alternative, this Court should issue a detailed opinion clarifying the proper legal standard before vacating and remanding to the district court for further proceedings. The Supreme Court has never passed on the proper interpretation of the BRA's presumption of detention nor the parameters of its constitutionality. Despite their importance, these are questions of first impression in this Circuit and ones that have remained largely unexamined in courts nationwide for forty years.

Given that the misinterpretation of the BRA's presumption is a reoccurring problem in this Circuit, *see, e.g., United States v. Gill*, No. 21-4502 (4th Cir. Oct. 12, 2021), Myles respectfully requests that this Court aid in the administration of justice by clarifying the legal standards that apply to the presumption of detention in deciding this appeal.

JURISDICTIONAL STATEMENT

The U.S. District Court for the Northern District of West Virginia has jurisdiction under 18 U.S.C. § 3231. Myles was indicted for violations of 18 U.S.C. § 2; 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 846. App.24-33.

On July 26, 2023, the district court revoked the magistrate judge's release order and detained Myles pretrial under 18 U.S.C. § 3142(e). App.147-149. Myles timely noticed his appeal on August 7, 2023. App.149-50. The U.S. Court of Appeals for the Fourth Circuit has jurisdiction under 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

During the hearing below, Myles produced evidence supporting his release. Nevertheless, the district court found that “Myles did not rebut the presumption in favor of detention arising under 18 U.S.C. § 3142(e)(3) based on the nature of his offenses,” and detained Myles based in part on that finding, reversing the magistrate judge’s release order. App.148.

The issue on appeal is whether the district court used the incorrect legal standard by assigning evidentiary weight to the statutory presumption of detention even though Myles produced evidence in support of release, in contravention of:

- (a) the plain text of the federal Bail Reform Act of 1984, 18 U.S.C. § 3142;
- (b) Myles’s right to procedural due process under the Fifth Amendment of the United States Constitution; and
- (c) Myles’s right to substantive due process under the Fifth Amendment of the United States Constitution.

STATEMENT OF THE CASE

I. Two Courts Determined That Myles Should Be Released.

Two different judges ordered Myles released pretrial. App.21; App.62:9-12. He complied with all of their conditions of release. App.62:1-8. Only the court below, which improperly interpreted the presumption of detention, determined that Myles should be detained.

A. A State Court Judge Ordered Release.

In January 2023, a West Virginia state court released Myles on bond after he was charged with drug trafficking. App.8; App.86:1-89:25.

Myles, who is 25 years old and African American, was released to his mother, Takeysha Daniels. App.117:14-118:15. She was, and remains, prepared to help Myles meet any terms of his pretrial release. App.123:11-20. She drove over twelve hours round-trip from Michigan to pick up Myles the day he was released on the West Virginia state charges. App.119:20-120:23. Two days later, she drove him back to West Virginia for state court again.

Myles complied with the terms of his state bond for five months until he was arrested on federal charges. App.62:1-8. Meanwhile, in May 2023, a federal grand jury in the Northern District of West Virginia indicted Myles for a series of controlled substances charges. App.2; App.24-33. The federal charges and the January state court charges were based on the same alleged conduct. App.24. There

is no allegation that Myles committed new criminal conduct or violated bond conditions while released in the state case.

In June 2023, Myles was arrested for the federal charges, which do not carry a mandatory minimum penalty. App.2; App.24. At that time, Myles had successfully complied with state pretrial release for five straight months.

App.61:23-62:8. When officers arrested Myles on federal charges, they found him exactly where he told the West Virginia state court he would be—at home with his mother in Michigan. App.123:4-10.

B. A Federal Magistrate Judge Ordered Release.

Because Myles was arrested in Michigan on federal charges filed in West Virginia, a federal magistrate judge in the Eastern District of Michigan held an in-person hearing to determine whether he should be released. Fed. R. Crim. Pro.

5(c)(3)(C), (d)(3). The U.S. Pretrial Services Office recommended release.

App.44:1. At the Michigan hearing, the government’s presentation centered on the presumption of detention triggered by Myles’s charges. The AUSA began: “this is a presumption of detention case.” App.39:20-21. The government acknowledged that Pretrial Services “recommend[ed] a bond with conditions,” but urged the magistrate judge to instead consider the facts “in light of the presumption.”

App.43:25-44:3. And in its rebuttal argument, the government again relied on the

“presumption” in arguing that “that no combination of conditions could ensure his appearance or ensure the safety of the community.” App.55:18-21.

The Michigan magistrate judge rejected the government’s arguments, finding that “although there is a presumption in favor of detention in this case, the presumption has been successfully rebutted.” App.56:6-8. According to the record, the presumption played no further role in the judge’s detention determination.

Having found the presumption rebutted, the judge noted “[t]hat doesn’t end the story of course,” and considered the four release factors under 18 U.S.C. § 3142(g). App.56:9-10. After carefully considering each factor, the court ordered Myles released under conditions that would reasonably assure his appearance and community safety App.62:9-12:

[O]ne of the things I’m blessed with in this case is that I have some history of you being on bond. . . . In this particular case, you were on i[t]—from January until you were indicted in May and then you were arrested recently. There is no indication of a bond violation. There is also no indication that you failed to report. You were found where you were supposed to be. And so that all cuts in your favor.

App.61:23-62:8. At the government’s request, the magistrate court immediately stayed its release order pending review by the district court in the Northern District of West Virginia. App.69:9-12; 71:24.

II. The Court Below Improperly Interpreted the Presumption of Detention and Detained Myles.

The government filed a two-page motion in the District Court for the Northern District of West Virginia seeking to revoke the release order and to stay release pending review. App.74. The district court stayed the release order and scheduled a hearing. App.81-82. At the beginning of the hearing, on July 25, 2023, the district court recognized that this is a “presumption case,” identifying it as “the usual burden-shifting quagmire where the Government has filed a motion for detention that’s a *de novo* review and rebuttable presumption case.” App.85:19-22.

During the hearing, Myles produced extensive evidence supporting release. Myles’s mother, Takeysha Daniels, testified that Myles lives with her, and that she and other family members can support Myles in complying with all conditions of release. App.117:21-118:2; App.123:14-16. Six family members and Myles’s girlfriend traveled from Michigan to West Virginia for his bond hearing. App.121:5-7. Ms. Daniels testified that she previously drove from Michigan to West Virginia to post Myles’s state court bond and bring him home, and did the same drive a few days later to bring him to a court appearance in West Virginia. 120:3-120:23. She likewise would continue to drive her son to court and otherwise help ensure that he meets any terms of his release. App.120:25-121:3. Ms. Daniels also testified that Myles is an experienced construction worker and that he has a

job waiting at his cousin's construction company, where Myles previously worked glazing bathtubs and building porches. 121:11-122:7.

Myles showed, through a Pretrial Services officer, that he has a minimal, non-violent criminal history and zero felony convictions. App.110:5-114:22; *accord* App.60:13-14. In fact, the Michigan magistrate judge previously emphasized that “all of [Myles’s] convictions up to this point have been for misdemeanors.” The Pretrial Services Officer likewise established that Myles’s alleged failures to appear mostly dated to his teenager or near-teen years, and all pertained to misdemeanors or traffic cases. App.110:5-112:7. And, through an exhibit, Myles showed that he had spent five months on pretrial release in state court for the same underlying conduct, during which time he did not violate any terms of his bond. App.8-23. Myles’s evidence is described further in Part III.

The district court recognized that Myles’s history and characteristics established significant evidence supporting release. App.142:4-12. Nevertheless, the court explicitly found that Myles “did not rebut the presumption in favor of detention arising from 18 U.S.C. § 3142(e)(3) based on the nature of his offenses.” App.142:13-144:17; App.148. The judge then also found that “the United States met its burden of proving that no condition or combination of conditions of release would reasonably assure Myles’s presence . . . and reasonably assure the safety of

any other person and the community” App.148. Based on all of these findings, the court ordered that Myles be detained pending trial. App.148.

III. People Subject to the Presumption of Detention Do Not Pose a Higher Risk of Flight or Danger.

People subject to the BRA’s presumption of detention do not categorically pose a higher risk of danger or flight that might justify a thumb on the scale in favor of detention. To the contrary, the presumption encompasses nearly all people charged with drug offenses. Amaryllis Austin, *The Presumption for Detention Statute’s Relationship to Release Rates*, 81 Fed. Prob. 52, 55 & tbl.1 (2017).² A robust body of evidence that shows the presumption extends far beyond the wealthy, internationally-connected major drug traffickers identified in congressional findings as justifying the presumption. As the U.S. Pretrial Services Office has observed, “a sizeable segment of low-risk defendants . . . are being detained as a result of the statutory presumption of detention.” Stephen E. Vance, *Overview of Federal Pretrial Services Initiatives from the Vantage Point of the Criminal Law Committee*, 82 Fed. Prob. 30, 33 (2018).³

² https://www.uscourts.gov/sites/default/files/81_2_7_0.pdf [<https://perma.cc/BL9D-D7LC>].

³ https://www.uscourts.gov/sites/default/files/82_2_4_0.pdf.

The Judicial Conference of the United States recommended eliminating the presumption in most drug cases because it “unnecessarily increas[es] detention rates of low-risk defendants, particularly in drug trafficking cases.” Jud. Conf. of the U.S., Report of the Proceedings of the Judicial Conference of the United States 10 (2017).⁴

STANDARD OF REVIEW

Because the district court used the wrong legal standard, this Court’s review of its detention order is *de novo*. *United States v. Goforth*, 546 F.3d 712, 714 (4th Cir. 2008); *see also United States v. Simms*, 128 F. App’x 314, 315 (4th Cir. 2005) (citing *Consolidation Coal Co. v. Local 1643*, 48 F.3d 125, 128 (4th Cir. 1995)).

ARGUMENT

Myles was detained under an incorrect interpretation of the rebuttable presumption of detention triggered by drug charges (“the presumption”). *See* 18 U.S.C. § 3142(e)(3)(A). This misinterpretation of the presumption conflicts with both the plain language of the BRA and Myles’s constitutional right to pretrial liberty. Accordingly, Myles respectfully requests that this Court reverse the detention order and order the district court to release him pending trial.

⁴ https://www.uscourts.gov/sites/default/files/17-sep_final_0.pdf [<https://perma.cc/2GFW-LZUA>].

I. The Detention Order Misinterpreted the Presumption of Detention.

The district court's detention order relied on the presumption of detention and concluded, wrongly, that Myles failed to rebut the presumption. App.148. The presumption of detention is satisfied when the defendant produces evidence supporting release; at that point, the presumption is rebutted as a matter of law and must play no further role in the detention hearing. With the presumption rebutted, the judge then proceeds to consider release or detention under the usual standard. Interpreting the presumption to impose any higher burden, as the district court did here, conflicts with the plain meaning of the BRA. The canon of constitutional avoidance also supports interpreting the BRA to give effect to its text, because the alternative raises serious due process concerns.

A. The Presumption of Detention Is a “Bursting Bubble” that Disappears When the Defense Produces Evidence Supporting Release.

The BRA imposes a presumption that pretrial detention is warranted for nearly all people facing drug charges, “subject to rebuttal by the person” charged. § 3142(e)(3). Such a presumption is known as a “bursting bubble” presumption because it effectively “bursts” or *disappears* upon the defense producing evidence rebutting it, and no longer carries any weight after rebuttal. The BRA uses the word “presumption” without expressly stating whether it is a “bursting bubble” presumption that disappears upon rebuttal, or whether it is a “non-bursting bubble”

presumption that remains as evidence even after rebuttal. However, the plain meaning of the BRA compels interpreting that statute's presumption as a "bursting bubble" presumption.

"Statutory interpretation . . . begins with the text." *Ross v. Blake*, 578 U.S. 632, 638 (2016); *Navy Fed. Credit Union v. LTD Fin. Servs., LP*, 972 F.3d 344, 356 (4th Cir. 2020). This rule requires courts "to afford the law's terms their ordinary meaning at the time Congress adopted them" by looking to "'all the textual and structural clues' bearing on that meaning." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021) (quoting *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018)). Only where the meaning of a given term is ambiguous may courts look beyond the text of the statute to its legislative history and purpose. *See Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011); *Hurlburt v. Black*, 925 F.3d 154, 164 (4th Cir. 2019).

At the time of the BRA's passage, rebuttable presumptions were regarded as bursting bubbles under the dictionary definition, common law, and contemporaneous interpretations of other presumptions. Nothing in the BRA suggests that its rebuttable presumption should be treated any differently. *See Hall v. United States*, 566 U.S. 506, 523 (2012). Against this plain language backdrop, courts are "hardly . . . free to assume a contrary position." *Legille v. Dann*, 544

F.2d 1, 6-7 (D.C. Cir. 1976) (holding “bursting bubble” interpretation is the “prevailing view”).

Looking first to the dictionary, rebuttable presumptions burst (disappear) upon production of evidence. *See Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 567 (2012) (directing courts to consult the “then-current edition of Black’s Law Dictionary”). At the time of the BRA’s passage, *Black’s Law Dictionary* defined “rebuttable presumption” to mean a bursting bubble presumption: “Once evidence tending to rebut the presumption is introduced, the force of the presumption is entirely dissipated.” *Rebuttable Presumption, Black’s Law Dictionary* 1068 (5th ed. 1979).

Common law at the time of the BRA’s enactment parallels the dictionary’s definition. It is a well-established “rule that a common law term in a statute comes with a common law meaning, absent anything pointing another way.” *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 58 (2007); accord *United States v. Shabani*, 513 U.S. 10, 13 (1994) (“[A]bsent contrary indications, Congress intends to adopt the common law definition of statutory terms.”).

Just four years before the passage of the BRA, the Supreme Court held that, at common law, “[t]he word ‘presumption’ properly used refers only to a device for allocating the production burden.” *Tex. Dep’t of Cmty. Affs. v. Burdine*, 450 U.S. 248, 255 n.8 (1981) (quoting F. James & G. Hazard, *Civil Procedure* § 7.9, at

255 (2d ed. 1977)) (citing *inter alia* Fed. R. Evid. 301; 9 J. Wigmore, Evidence § 2491 (3d ed. 1940)). Courts cannot give “artificial probative force to a presumption . . . when the opponent has come forward with *some* evidence to the contrary.” John Henry Wigmore, Wigmore on Evidence § 2491, at 306 (Chadbourn rev. 1981) (emphasis in original). Once this burden of production is met, “the presumption drops from the case.” *Burdine*, 450 U.S. at 255 n.10.

Similarly, almost simultaneously with the BRA’s enactment, this Court held: “It is axiomatic that a presumption is not evidence and *disappears* in the face of evidence sufficient to rebut it.” *Tenneco Chemicals, Inc. v. William T. Burnett & Co.*, 691 F.2d 658, 663 (4th Cir. 1982) (emphasis added). Other circuits contemporaneously concluded the same. The D.C. Circuit observed that the bursting bubble approach was “the prevailing view,” including “the view of the Supreme Court, . . . the approach taken by the Model Code of Evidence and, very importantly, by the newly-adopted Federal Rules of Evidence.” *Legille*, 544 F.2d at 6-7 (collecting cases); *see also* Am. L. Inst., Model Code of Evidence Rule 704(2) (1942) (“[When] evidence has been introduced . . . the existence, or non-existence of the presumed fact is to be determined exactly as if no presumption had ever been applicable.”). The Fifth Circuit similarly held that the bursting bubble approach was “simply a restatement of ‘a traditional feature of the common law.’” *Reeves v. Gen. Foods Corp.*, 682 F.2d 515, 522 n.10 (5th Cir. 1982) (quoting

Burdine, 450 U.S. at 255 n.8). The Second Circuit agreed that the bursting bubble approach “is favored by most authorities in the field of evidence.” *United States v. Hendrix*, 542 F.2d 879, 882 (2d Cir. 1976). As summarized in an authoritative treatise published the same year as the BRA’s enactment, “[t]he most widely followed theory of presumptions in American law [was] . . . the ‘bursting bubble’ theory,” which “had been adopted . . . in countless [then-]modern decisions.” McCormick on Evidence § 344, at 974 (3d ed. 1984).

Two lines of case law contemporaneous with the BRA’s enactment further demonstrate that its presumption is a bursting bubble that disappears after the defense produces some contrary evidence. First, then-recently enacted Federal Rule of Evidence 301 (concerning civil presumptions) exemplified the default rule that presumptions are bursting bubbles. *See Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 347 (2013) (explaining then-contemporaneous default rules are a relevant source for plain-text interpretation). Like the BRA, Federal Rule of Evidence 301 used the word “presumption” without expressly stating whether it bursts upon rebuttal or instead remains as evidence. Courts nonetheless interpreted Rule 301’s presumption as a bursting bubble, consistent with common law. By the time the BRA was enacted, “[m]ost commentators ha[d] concluded that Rule 301 as enacted embodies the . . . ‘bursting bubble’ approach.” *In re Yoder Co.*, 758 F.2d 1114, 1119 (6th Cir. 1985) (collecting sources). This view of Rule 301 as a

bursting bubble presumption remains “widely accepted” today. *McCann v. Newman Irrevocable Tr.*, 458 F.3d 281, 288 (3d Cir. 2006) (collecting cases).

Second, the *McDonnell Douglas* Title VII burden-shifting framework, developed over a period that includes the passage of the BRA in 1984, reflects the Supreme Court’s explanation for how “all” presumptions operate. *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 507 (1993); *see generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Burdine*, 450 U.S. 248. The Supreme Court explained that the function of a “presumption is . . . that a finding of the predicate fact . . . produces a required conclusion in the absence of explanation.” *St. Mary’s*, 509 U.S. at 506 (quotation omitted). The *McDonnell Douglas* framework “operates like all presumptions” to leave “the ultimate burden of persua[sion] . . . at all times with the plaintiff.” *Id.* at 507 (quotation & alteration omitted) (emphasis added). So, if a plaintiff raises a presumption of discrimination, to “rebut the presumption” the defense need only “produc[e] evidence that the plaintiff was rejected . . . for a legitimate, nondiscriminatory reason.” *Burdine*, 450 U.S. at 254. In other words, the Title VII defendant need not *disprove* the presumption—only produce evidence to contest it. Once the defense produces that evidence, the presumption disappears entirely: it “is no longer relevant” and “simply drops out of the picture.” *St. Mary’s*, 509 U.S. at 510, 511; *see also Goldman Sachs Grp., Inc. v. Arkansas Tchr. Ret. Sys.*, 141 S. Ct. 1951, 1966

(2021) (Gorsuch, J., concurring) (“[The Supreme] Court has long recognized that a “presumption” properly used refers only to a device for allocating the production burden” and once the Title VII “defendant produces such evidence [of rebuttal], the presumption ‘drops from the case.’” (citation omitted)). As Justice Gorsuch recently observed, “nearly ‘all presumptions’ operate in this way.” *Id.* (Gorsuch, J., concurring) (citation omitted).

In sum, at the time the BRA was enacted, rebuttable presumptions were by default bursting bubbles—presumptions that disappeared after the defense carried its burden of production. Given there is no statutory language to the contrary, the plain meaning of the BRA’s presumption is a bursting bubble presumption.

B. Contrary Precedent Ignores the Plain Meaning of the Statutory Text.

Applying standard canons of statutory interpretation, the plain meaning of the statute is clear: the rebuttable presumption of detention disappears—it carries no weight—once the defendant produces rebuttal evidence. To the extent that other circuits disagree, those cases are based on flawed reasoning from a single First Circuit case: *United States v. Jessup*, 757 F.2d 378 (1st Cir. 1985). *Jessup* held, contrary to the plain language of the statute, that the BRA’s presumption of detention is not a bursting bubble and retains evidentiary weight even if the defense produces evidence to rebut it. *Id.* at 383.

While other circuits have adopted *Jessup*'s conclusion, none has engaged in independent analysis of this issue.⁵ In a similar context, where out-of-circuit caselaw “essentially relied on [one flawed opinion] with little analysis,” this Court has willingly departed from other circuits and insisted that that “the plain meaning of the statute must be given effect.” *In re JKJ Chevrolet, Inc.*, 26 F.3d 481, 485, 486 (4th Cir. 1994). It should do so here.

Jessup's statutory holding was wrong for two reasons. First, its central analysis improperly prioritized legislative history and purpose at the expense of the statutory text. Second, *Jessup* gets the legislative history and purpose wrong.

First, *Jessup* did not begin its interpretation of the presumption with the BRA's text, but instead with the court's own view of the statute's ostensible purpose. Skipping over any textual analysis, *Jessup* asserted that the bursting bubble approach “could undercut the legislative purpose in creating the presumption (say, an intent to have courts follow the legislature's assessment of

⁵ See *Jessup*, 757 F.2d at 382; *United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1991); *United States v. Martir*, 782 F.2d 1141, 1144 (2d Cir. 1986); *United States v. Fortna*, 769 F.2d 243, 250-51 (5th Cir. 1985); *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010); *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986); *United States v. Abad*, 350 F.3d 793,797 (8th Cir. 2003); *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008); *United States v. Stricklin*, 932 F.2d 1353, 1354-55 (10th Cir. 1991); *United States v. Cook*, 880 F.2d 1158, 1162 (10th Cir. 1989); *United States v. Hurtado*, 779 F.2d 1467, 1470 n.4 (11th Cir. 1985); *United States v. Gamble*, 810 Fed. App'x 7, 8 (D.C. Cir. 2020).

probabilities or the furtherance of some other specific public policy).” *Jessup*, 757 F.2d at 383; *id.* at 383-84. Notably, *Jessup* offered no citation to the statutory text for this claim.

Methodologically, *Jessup*’s reasoning “g[ot] the inquiry backward” by starting with the statute’s ostensible purpose rather than its text. *Jam v. Int’l Fin. Corp.*, 139 S. Ct. 759, 769 (2019). When the statutory text “yields a clear answer”—as it does here—“judges must stop.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019); *see, e.g., United States v. Pressley*, 359 F.3d 347, 350 (4th Cir. 2004). The statute’s text is the law, not its alleged purpose. *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). Even judges “who sometimes consult legislative history will never allow it to be used to ‘muddy’ the meaning of ‘clear statutory language.’” *Food Mktg.*, 139 S. Ct. at 2364. By skipping past the text to rely on the statute’s supposed purpose (drawn from legislative history), *Jessup*’s interpretation of the BRA “is a relic from a ‘bygone era of statutory construction.’” *Id.* (citation omitted).

Second, even if the statutory text were ambiguous and looking at legislative history were appropriate, *Jessup* got that history wrong. Unfortunately, the BRA’s legislative history does not acknowledge—much less answer—the question of whether the presumption is a bursting bubble. To get around that issue, *Jessup* instead looked to the legislative history of Federal Rule of Evidence 301. But as

explained above, the enacted version of Rule 301 provides no support for—and in fact, runs contrary to—*Jessup*'s interpretation of the presumption.

Jessup erred by mistakenly relying on a *rejected* version of Rule 301 to conclude that the presumption is a non-bursting bubble. *See Jessup*, 757 F.2d at 383. The opinion accurately quoted a House report criticizing bursting bubble presumptions, *id.*, but did not acknowledge that the Conference Committee explicitly rejected the House's view in favor of the Senate's bursting bubble approach to Rule 301. *See* H.R. Rep. No. 93-1597 (1974) (Conf. Rep.), *as reprinted in* 1974 U.S.C.C.A.N. 7098, 7099 (“Conference adopts the Senate amendment.”); S. Rep. No. 93-1277 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 7051, 7056 (“[T]he committee has deleted that provision of the House-passed rule that treats presumptions as evidence.”) (citation omitted)). “In Congress, winning and losing matters.”⁶ Simply put, the bursting bubble version of Rule 301 won, and this Court should not replicate *Jessup*'s mistaken reliance on the losing version. Like Rule 301, the “most reasonable interpretation” of the BRA's presumption “is that it incorporates the ‘bursting bubble’ theory.” *See Sheridan v. E.I. DuPont de*

⁶ Victoria F. Nourse, *A Decision Theory of Statutory Interpretation: Legislative History by the Rules*, 122 Yale L.J. 70, 118 (2012).

Nemours & Co., 100 F.3d 1061, 1081 (3d Cir. 1996) (Alito, J., concurring in part and dissenting in part) (concluding same for Rule 301).

The *Jessup* court further claimed that a bursting bubble presumption would be “virtually meaningless.” 757 F.2d at 383. That claim is wrong: the presumption imposes a burden of production that defendants in non-presumption cases do not face. And judges also retain abundant discretion to detain defendants who successfully rebut the presumption. For example, when a major drug trafficker poses an unmitigable risk of flight or danger, the government will ordinarily have little difficulty meeting its burden, and the court will order detention—even if the presumption is rebutted. *See id.* at 383-84. A bursting bubble presumption simply means that a court may not consider *the rebutted presumption itself* as evidence, and instead must rely—as it does in every case where the presumption is not implicated—on its individualized evaluation of the 18 U.S.C. § 3142(g) factors.

In sum, *Jessup*’s interpretation of the BRA’s presumption as a non-bursting bubble was wrong. This Court should not follow its wrongheaded analysis.

C. Constitutional Avoidance Likewise Requires Interpreting the BRA’s Presumption as a Bursting Bubble.

If there were any ambiguity in the plain meaning of the BRA’s rebuttable presumption, constitutional avoidance requires interpreting it as a bursting bubble. Any more expansive interpretation of the presumption would violate due process for the reasons discussed in the following Section, or at the very least would raise

“serious constitutional problems.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 300 (2001). As such, this Court is “obligated to construe the statute to avoid such problems.” *Id.*

To invoke constitutional avoidance, Myles need not show that the district court’s interpretation of the statute violates due process, or that Myles’s interpretation is the best interpretation. “The canon is not a method of adjudicating constitutional questions by other means.” *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Instead, “[i]t is a tool for choosing between competing plausible interpretations of a statutory text.” *Id.*; *see also Boos v. Barry*, 485 U.S. 312, 331 (1988) (“[T]he federal courts have the duty to avoid constitutional difficulties by doing so if such a construction is fairly possible.”).

Here, the bursting bubble construction is not only plausible, it is the best interpretation of the text. The Court should avoid serious due process problems by construing the presumption as a bursting bubble.

II. The Detention Order Violates Due Process.

The district court found that Myles “did not rebut the presumption in favor of detention,” App.148, even though he produced evidence supporting release. In other words, the court improperly interpreted the BRA’s presumption as a *non-bursting bubble* presumption. That interpretation is not only inconsistent with the

plain language of the statute, but also violates the Fifth Amendment's Due Process Clause.⁷

Specifically, interpreting the presumption as a non-bursting bubble undermines the accuracy of the detention procedures that the Supreme Court deemed constitutional in *United States v. Salerno*, 481 U.S. 739 (1987). The presumption as written sweeps far beyond congressional findings, which were limited to major drug traffickers, to include many low-risk defendants. It is fundamentally unfair to require courts to consider this inaccurate presumption after a defendant produces individualized rebuttal evidence. Notwithstanding limited out-of-circuit precedent to the contrary, this misinterpretation of the BRA flips the statute's otherwise narrow scheme on its head, violating the Supreme Court's mandate that "liberty is the norm, and detention prior to trial . . . is the carefully limited exception." *Id.* at 755.

⁷ The constitutional due process arguments in Section II are limited to the presumption that arises under 18 U.S.C. § 3142(e)(3)(A) that applies to people, like Myles, who are charged with "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."

A. The Detention Order Violates Procedural Due Process.

Myles's detention under a non-bursting bubble presumption violates procedural due process because his detention was not "implemented in a fair manner." *Salerno*, 481 U.S. at 746 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). To determine whether a procedure for depriving someone of liberty is constitutionally adequate, the Court must consider (1) the private interest at stake and (2) the risk that the procedures used will result in the erroneous deprivation of that private interest, as well as the probable value of additional procedural safeguards; against (3) the government's interest, including the administrative burdens of additional procedures. *Mathews*, 424 U.S. at 335. The Supreme Court cited this test in *Salerno*, 481 U.S. at 751, to uphold the BRA's ordinary procedures for pretrial detention based on dangerousness.⁸

The question posed here is whether layering a non-bursting bubble presumption on top of those procedures unjustifiably increases the risk of erroneous pretrial detention. Each *Mathews* factor tells us the answer is yes: (1) Myles's private interest in pretrial liberty is fundamental; (2) the non-bursting bubble presumption dramatically increases the risk of erroneous detention because

⁸ *Salerno* did not address the presumption of detention at issue in this appeal. 481 U.S. at 745 n.3. ("We intimate no view on the validity of any aspects of the Act that are not relevant to respondents' case.").

it lacks evidentiary support; and (3) the government has no legitimate interest in requiring a court to consider a largely unsupported presumption after a defendant has produced rebuttal evidence.

1. Pretrial Liberty Is a Fundamental Right.

The first step of the *Mathews* framework considers “the private interest” at stake—here, the right to pretrial liberty. 424 U.S. at 335. *Salerno* recognized the right to pretrial liberty as “fundamental.” 481 U.S. at 750. “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

The “strong interest in liberty” prior to trial is intrinsically important, *Salerno*, 481 U.S. at 750, but it also has practical consequences extending beyond detention itself. Pretrial detention increases the likelihood that an individual will be convicted, plead guilty, and receive a longer sentence. *See* Alison Siegler, *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis* 67-68 (2022) (collecting sources).⁹ “Every day that a defendant remains in custody, he or she may lose employment, which in turn may lead to a loss of housing. These financial pressures may create a loss of community ties.” Austin, *supra*, at 53.

⁹ <https://freedomdenied.law.uchicago.edu/report> [<https://perma.cc/Q8W8-SJDL>].

Given every individual's strong liberty interest, *Salerno* held that "extensive [procedural] safeguards" are required to ensure that pretrial detention is "implemented in a fair manner." 481 U.S. at 752, 746 (citing *Mathews*, 424 U.S. at 335).

2. *The Presumption Sweeps Well Beyond Congress's Findings, Creating an Intolerable Risk of Erroneous Pretrial Detention.*

The second *Mathews* factor is "the risk of an erroneous deprivation" of the private liberty interest caused by using a non-bursting bubble presumption, and the likely "value" of alternative procedures in reducing that risk. *Kirk v. Comm'r of Soc. Sec. Admin.*, 987 F.3d 314, 325, 327 (4th Cir. 2021).

Here, the "substitute procedural safeguards," *Mathews*, 424 U.S. at 335, are simply the ones that *Salerno* itself endorsed. *Salerno* squarely held that procedural due process is satisfied by an ordinary BRA detention hearing without a presumption, *see* 481 U.S. at 751-52, where the court analyzes the § 3142(g) release factors to determine whether the government has carried its burden of meeting the § 3142(e)(1) detention standard, *see id.* at 742. And *Salerno* teaches that these readily-available procedures "are specifically designed to further the accuracy of [the detention] determination." 481 U.S. at 751.

A non-bursting bubble presumption increases the risk of erroneous detention because the presumption does not meaningfully track people who pose an unmitigable high risk of flight or dangerousness. The challenged presumption

applies to nearly everyone facing federal drug charges. For example, the presumption applies to those who sell any amount of Schedule I, II, or III drugs, with exceptions only for marijuana.¹⁰ Ninety-three percent of federal drug offenses are presumption cases. Austin, *supra*, at 55, 60. The presumption sweeps far more broadly than Congress's findings—which were limited to major drug traffickers—to encompass many low-risk defendants, while failing to reliably track higher-risk defendants. Against this backdrop, requiring courts to assign weight to the presumption, even in the face of rebuttal evidence, increases the risk of erroneous liberty deprivations. It substitutes an unsupported charge-based presumption for individualized consideration of the § 3142(g) factors and effectively lowers the government's evidentiary burden.

¹⁰ The presumption applies to any controlled substance offense carrying a statutory maximum greater than 10 years in prison. 18 U.S.C. § 3142(e)(3). With limited exceptions, all controlled substance offenses fall into that category. *See* 21 U.S.C. § 841(b) (setting sentence schedule for all drug crimes). For example, all cocaine, crack cocaine, oxycodone, codeine, anabolic steroids, and other Schedule I, II, and III drug trafficking charges, except certain marijuana offenses, are subject to the presumption of detention because they carry a maximum sentence of 10 years or more imprisonment. *Compare* §§ 841(b)(1)(A)-(E) *with* §§ 841(b)(1)(D), (b)(4).

a. Congress's Findings Supporting the Presumption Were Limited to Major Drug Traffickers.

Congress passed the challenged presumption based on sparse evidence about rich major drug traffickers who had the means, motivation, and international connections to flee the country easily. Congress's findings were limited to two sources, and were discussed in Senate Report 98-225.¹¹

First, as to risk of flight, the Senate Judiciary Report discussing the presumption drew heavily on the testimony of Florida Senator Lawton Chiles, who emphasized Florida's unique role as "the national port of entry" at the height of the Medellin cartel's international drug trade.¹² Senator Chiles testified that individual revenues from drug transactions ran up to \$1.5 million per month (in 2023

¹¹ Senate Report 98-225 provides the explanation of the text of the presumption that is closest in time to the legislative enactment. S. Rep. No. 92-225 (1983). The text of the presumption was passed by the Senate as part of the Comprehensive Crime Control Act of 1983, S.1762, 98th Cong. (1984), accompanied by Senate Report 98-225 on February 2, 1984. That text was added to H.R.J. Res. 648, 98th Cong (1984), and passed as part of the conference report, H.R. Rep. No. 98-1159, at 113 (1984) (Conf. Rep.), and became part of the Bail Reform Act of 1984, Pub. L. 98-473, Title II, ch. I, 98 Stat 1837. The Supreme Court and circuits around the country rely on Senate Report 98-225 as the most probative piece of legislative history about the BRA. *See Salerno*, 481 U.S. at 742, 747, 750; *see, e.g., Hurtado*, 779 F.2d at 1472.

¹² S. Rep. No. 98-225, at 20 & n.58 (1983) (citing *Bail Reform, Hearing on: S. 440, S. 482, S. 1253, S. 1554 Before the Subcomm. on the Const. of the S. Comm. on the Judiciary*, 97th Cong. 56-60 (1981) (Statement of Sen. Lawton Chiles)).

dollars).¹³ According to the Senator, access to these resources meant that major drug traffickers “will never appear in court.”¹⁴ Senator Chiles further emphasized that “major drug traffickers,” for whom forfeiting bond “translates into no more than a temporary business loss,” presented “a very special situation” requiring “specially crafted legislation[.]” *Id.* at 59.

In addition to his testimony, Senator Chiles appended a pretrial services report that further underscores the uniqueness of any flight risk problem in the Southern District of Florida. The report describes the financial value of the drug transactions at issue in that district as “immense—many times greater than the volume and dollar value of drugs per defendant . . . nationally.” *Id.* at 78. The report also noted that “length of time in the community [] and criminal history” distinguish “defendants in the Southern District of Florida who fail to appear [from] those in [other] districts.” *Id.* The report concluded that Southern District of Florida “drug defendants” released on bond failed to appear for court approximately eight times more often than “drug defendants” in other districts, *id.*

¹³ The Bureau of Labor Statistics’ CPI-based inflation calculator shows that \$500,000 in January 1984 is the equivalent to \$1,499,955.84 in July 2023. *CPI Inflation Calculator*, Bureau of Labor Statistics, data.bls.gov/cgi-bin/cpicalc.pl?cost1=500%2C000&year1=198401&year2=202307.

¹⁴ *Bail Reform, Hearing on: S. 440, S. 482, S. 1253, S. 1554 Before the Subcomm. on the Const. of the S. Comm. on the Judiciary*, 97th Cong. 57 (1981) (Statement of Sen. Lawton Chiles).

at 65; outside the Southern District of Florida, appearance rates for “drug defendants” matched the average rates for people facing other charges (two percent failure-to-appear rate), *id.* at 64.

Nonetheless, based on Senator Chiles’s testimony *alone*, the Senate Judiciary Committee Report recommended a nationwide presumption of detention for “major drug traffickers” charged with “a grave drug offense” for whom drug trafficking is “extremely lucrative,” and who “have both the resources and foreign contacts to escape to other countries with relative ease[.]” S. Rep. No. 98-225, at 20. The Report concluded that such defendants posed an unusual risk of flight sufficient to necessitate a rebuttable presumption of detention. *Id.*

As for dangerousness, Congress cited nothing more than one Fifth Circuit decision, *United States v. Hawkins*, 617 F.2d 59 (5th Cir. 1980). *See* S. Rep. No. 98-225, at 20 n.59. As with the pretrial services report entered into the congressional record by Senator Chiles, *Hawkins* undermines rather than supports the assumptions on which the presumption rests. *Hawkins* approved of the concept that a defendant who had already been convicted can pose a danger to the community while his appeal was pending because he might continue trafficking drugs while on release. *Id.* at 61. But it did so based on individualized factual findings, including that the defendant had evidently not severed ties with major drug traffickers, because he had no “legitimate source of funds,” but nevertheless

maintained an expensive lifestyle while on bail pending trial and acquired a “cattle ranch for fine cattle.” 617 F.2d at 60-61. *Hawkins* expressly rejected the government’s argument that “the single fact that [the defendant] has engaged in one drug conspiracy, by itself, is sufficient basis for a conclusion that the risk of repetition is a danger to the community that supports denial for bail.” *Id.* at 61.

Nevertheless, with this citation as its only support, Congress postulated that that “[p]ersons charged with major drug felonies are often in the business of importing or distributing dangerous drugs, and thus, because of the nature of the criminal activity with which they are charged, they pose a significant risk of pretrial recidivism.” S. Rep. No. 98-225, at 20. Congress thus concluded that major drug traffickers are universally likely to present a danger to the community. Irrespective of the wisdom of that conclusion, the presumption as written extends far beyond major drug traffickers.

b. The Presumption Is Not Focused on Major Drug Traffickers.

Despite the limitations of Congress’s findings, the presumption Congress passed attaches to nearly *all* people charged with federal drug offenses. Ninety-three percent of defendants charged with federal drug offenses are presumption cases. *Austin, supra*, at 55. But only a tiny fraction of the individuals to whom the presumption attaches can be considered the kinds of major international drug traffickers whom Congress found pose an especially high unmitigable risk of flight

or danger. Four decades of data following the presumption's passage reinforce that it is not narrowly focused on major drug traffickers, including: (1) Pretrial Risk Assessment (PTRA) scores, (2) rates of statutory safety valve eligibility, (3) role adjustments under the Sentencing Guidelines, and (4) post-conviction financial data on presumption defendants. Each of these sources shows that the presumption typically applies to defendants who are *not* the type of major drug traffickers described in Congress's findings. Instead, the presumption is a wildly inaccurate charge-based proxy for risk.

First, the advent of the PTRA shows that the presumption fails to meaningfully track who poses a high risk of nonappearance or danger. The PTRA was implemented in 2010, approximately twenty-six years after the passage of the presumption. Thomas H. Cohen, Christopher T. Lowenkamp & William E. Hicks, *Revalidating the Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary*, 82 Fed. Prob. 23, 23 (2018).¹⁵ Unlike the presumption's reliance on charge alone, the PTRA is an actuarial tool that is used to predict the risk of nonappearance and rearrest based on eleven factors. *Id.* at 24. The PTRA categorizes each person into one of five risk categories; all people in the same

¹⁵ https://www.uscourts.gov/sites/default/files/82_2_3_0.pdf
[<https://perma.cc/T3YK-TKXP>].

category are predicted to pose similar actuarial risks of nonappearance or rearrest.

Id.

The Administrative Office of the U.S. Courts (AO) released a study in 2018 that compared PTRAs scores to the presumption. That study's two major results undermine any claim that the presumption meaningfully tracks risk of nonappearance or danger *at all*—let alone by identifying major drug traffickers. *See Austin, supra*, at 60-61. By categorizing federal defendants by PTRAs score (i.e., risk of nonappearance or rearrest), the study showed that the BRA subjects many people to the presumption who are at the *lowest* risk of nonappearance or rearrest. *Id.* at 55-56, 60. The study concluded that the presumption is “overly broad” for precisely this reason: rather than narrowly focusing on high-risk defendants, the presumption applies to many defendants across all risk categories. *Id.* at 60; *see also id.* at 56 fig.2.

Another troubling conclusion of the AO study is that the presumption increases the likelihood of detaining the lowest-risk people. *Id.* at 60. For two people in the same low-risk PTRAs category, the person subject to the presumption is *more* likely to be detained, simply because their case is categorized as a presumption case. *Id.* at 57. For people in higher risk categories, by contrast, the presumption makes “no difference” to detention rates. *Id.*; *see id.* at 60 (“[T]he effect of the presumption on actual release rates and on the recommendations of

pretrial services officers was most significant for low-risk defendants (meaning there may be some level of unnecessary detention), while having a negligible effect on the highest risk defendants.”).

In short, “the presumption . . . unnecessarily increas[es] pretrial detention rates” overall because it increases the likelihood of detaining “a sizeable segment of low-risk defendants” who “tend to be successful on pretrial supervision[.]” Vance, *supra*, at 33 (Chief, Criminal Law Policy Staff, AO Probation & Pretrial Services Office); accord Matthew G. Rowland, *The Rising Federal Pretrial Detention Rate, in Context*, 82 Fed. Prob. 13, 17 (2018) (Chief, AO Probation & Pretrial Services Office) (“Research indicates that the enumerated offenses [in the presumption] may not be the best predictors of risk of flight or danger to the community.”). Notably, the Judicial Conference of the United States agrees: it recommends eliminating the presumption in most drug cases because the presumption “unnecessarily increas[es] detention rates of low-risk defendants, particularly in drug trafficking cases.” Jud. Conf. of the U.S., *supra*, at 10.

Second, the widespread use of statutory “safety valve” reductions in federal drug cases demonstrates that the presumption applies to many people who are, by definition, not major drug traffickers. The statutory safety valve relieves people from mandatory minimum sentences when their criminal history and underlying conduct are deemed less serious. *See generally* 18 U.S.C. § 3553(f)(1)-(4). Forty

percent of the people sentenced for drug trafficking offenses who faced mandatory minimums in 2022 received the benefit of this statutory safety valve. *See* U.S. Sent’g Comm’n, 2022 Annual Report and Sourcebook of Federal Sentencing Statistics 121 tbl.D-13 (2022).¹⁶ The statutory safety valve, by definition, is unavailable to high-risk major drug traffickers engaged “in the business of importing or distributing dangerous drugs”—the people identified in Congress’s findings to support the presumption. S. Rep. No. 98-225 at 20; § 3553(f)(2) (cannot have used or threatened violence), §§ 3553(f)(1), (f)(4) (cannot have “engaged in a continuing criminal enterprise”). And yet every person who received a statutory safety valve reduction was subject to the BRA’s presumption of detention at the outset of their case, demonstrating that the presumption improperly attaches to many low-risk individuals.

Third, role adjustments under the Sentencing Guidelines further demonstrate that the presumption sweeps in many people who are not major drug traffickers. In 2022, approximately 20 percent of people subject to the presumption received a *mitigating* role adjustment for their lesser role in the offense. U.S. Sent’g Comm’n,

¹⁶ <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2022/2022-Annual-Report-and-Sourcebook.pdf> [<https://perma.cc/KZ3E-LN55>]. This percentage was calculated by dividing the number of drug mandatory minimum cases *with safety valve* in 2022 (5,046) by the total number of all drug mandatory minimum cases in 2022 (5,046+7,543).

2022 Annual Report, *supra*, at 117 tbl.D-9. By comparison, only about six percent of those convicted of drug trafficking received an *aggravating* role adjustment. *Id.* And this six percent figure overstates the number of ostensible major drug traffickers because the aggravating role adjustment applies to any “manager or supervisor” not just an “organizer or leader.” U.S. Sent’g Comm’n, Guidelines Manual, § 3B1.1 (Nov. 2018). These sentencing data suggest that only a small percentage of federal drug defendants are the major drug traffickers.

Fourth, defendants’ financial status at the end of their cases further confirms that many are not the wealthy international drug traffickers who Congress identified. Thirty-eight percent of people convicted of federal drug charges have difficulty maintaining stable housing, and “more than a quarter . . . are under significant financial stress.” Matthew G. Rowland, *Projecting Recidivism Rates for Federal Drug Offenders Released Early from Prison*, 28 Fed. Sent’g Rep. 259, 260 (2016). Yet most of these people were subject to a presumption of detention at the outset of their cases. *See Austin, supra*, at 55; *id.* at 56 fig.2. Again, the overall population of people charged with federal drug crimes does not resemble the high-flying Miami drug traffickers on whom Senator Chiles’s testimony focused, and who were the subject of Congress’s findings.

These statistics show that the presumption is not carefully limited to the major drug traffickers who were the subject of congressional findings. Instead, the

presumption that attaches to people facing drug charges is a wildly inaccurate charge-based proxy for risk.

c. The Non-Bursting Bubble Presumption Used in this Case Undermines the Accuracy of Detention Procedures that Salerno Endorsed.

Against the foregoing background, the second *Mathews* factor—the risk of erroneous deprivations of liberty—weighs heavily in favor of finding that a non-bursting bubble presumption violates procedural due process. Giving weight to the challenged presumption, even in the face of rebuttal evidence, treats all people subject to the presumption as if they pose the same risks as major international drug traffickers. Reading the statute to require a non-bursting bubble presumption thus necessarily increases the danger of erroneous detention. The inaccurate presumption undermines what is otherwise a fully individualized detention determination. It likewise puts an unsupported thumb on the scale in favor of detention, effectively lowering the government’s burden of proof.

Salerno approved the BRA’s general detention framework precisely because it was “specifically designed to further the accuracy” of the detention determination and not a “scattershot attempt to incapacitate those who are merely suspected of [] serious crimes.” 481 U.S. at 750-51. No one can be detained based on “future dangerousness” without an individualized showing that the specific “arrestee presents an identified and articulable threat to an individual or the

community.” *Id.* at 751. To that end, the Court highlighted the many ways in which the BRA’s detention framework mandates individualized consideration of the facts of someone’s case: (1) a defendant’s ability to present their own evidence, *id.* at 751; (2) the judge’s individualized consideration of “the nature and the circumstances of the charges, the weight of the evidence, the history and characteristics of the putative offender, and the danger to the community,” *id.* at 751-52 (citing § 3142(g)); and (3) the government’s burden to “muster[] convincing proof” that, considering these § 3142(g) factors, “no conditions of release can reasonably assure the safety of the community or any person,” *id.* at 750 (citing § 3142(f)); *accord id.* at 752. *Salerno* concluded that, taken together, these procedures ensure that only the right individuals are detained pretrial—those who *actually* pose an unmitigable risk of flight or danger that outweighs their personal liberty interest. *See id.* at 751.

By contrast, a non-bursting bubble approach necessarily introduces error into the individualized detention framework described above by assigning weight to the presumption even where the defense produces evidence supporting release. First, under a non-bursting bubble presumption, no amount of individualized evidence supporting release stops the presumption from carrying weight. *Contra Salerno*, 481 U.S. 751. Second, a non-bursting bubble presumption undermines the court’s individualized consideration of the enumerated statutory factors. And third,

with a non-bursting bubble presumption, the government need offer no proof at all—let alone “convincing” proof—about the presumption’s factual accuracy in each case. *Id.* at 750; *accord id.* at 752. If the presumption accurately tracked risk, incorporating it into all cases might maintain the accuracy of *Salerno*’s detention hearing framework. But it plainly does not.

Giving weight to the presumption after individualized rebuttal evidence has been introduced likewise effectively lowers the government’s burden of persuasion. *See Addington v. Texas*, 441 U.S. 418, 423, 433 (1979) (observing that “[t]he standard [of proof] serves to allocate the risk of error between the litigants” and requiring “equal to or greater than the ‘clear and convincing’ standard” for civil commitment). As to dangerousness, requiring a court to consider the unsupported and rebutted presumption undermines *Salerno*’s holding that the government bears the burden of *proving* dangerousness by clear and convincing evidence. *See Salerno*, 481 U.S. at 750-752 (citing § 3142(f)). Notably, the Supreme Court has never permitted civil detention of citizens for dangerousness based on anything less than clear and convincing evidence. *See, e.g., Foucha*, 504 U.S. at 86 (dangerousness of insanity acquittees); *Addington*, 441 U.S. at 433 (dangerousness for civil commitment); *United States v. Antone*, 742 F.3d 151, 159 (4th Cir. 2014) (dangerousness for civil commitment); *see generally Santosky v. Kramer*, 455 U.S. 745, 756 (1982) (discussing Court’s requirement of clear and

convincing evidence “when the individual interests at stake in a state proceeding are both ‘particularly important’ and ‘more substantial than mere loss of money’ (quoting *Addington*, 441 U.S. at 425)); *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 282-83 (1990) (explaining Court has required, at minimum, clear and convincing evidence for deportation, denaturalization, civil commitment, termination of parental rights, allegations of civil fraud, and other civil matters)).¹⁷

A similar problem arises with nonappearance risk: relying on the unsupported and rebutted presumption to cross the evidentiary threshold effectively means lowering the government’s burden to *less than a preponderance of the evidence*. See *United States v. Stewart*, 19 Fed. App’x 46, 48 (4th Cir. 2001) (interpreting statute to require preponderance of the evidence showing). By relying on the presumption, the court can order detention when the government has not presented enough individualized evidence to meet the preponderance standard. The

¹⁷ In part of an opinion in a case that involves noncitizen detention and reflects the reasoning of one judge, this Court found that the district court erred in ignoring Supreme Court law that has allowed the government to “presume detention categorically.” *Miranda v. Garland*, 34 F.4th 338, 363 (4th Cir. 2022). In support, it drew a comparison to the BRA’s presumption by claiming the presumption shifts the burden of *persuasion* to the defense. *Id.* *Miranda*’s comment about the presumption is dicta, and besides, it is wrong. If fact, the Supreme Court and every circuit to consider it have held the presumption does *not* shift the burden of persuasion. See *Salerno*, 481 U.S. at 745 n.3; cases cited *supra* note 5. In any event, it has no bearing in this case, which does not involve immigration.

Supreme Court has never permitted courts to order detention of citizens based on so low a standard.

Ultimately, by requiring courts to treat every arrestee as if they pose the same risks as a major drug trafficker, a non-bursting bubble presumption undermines the accuracy of the detention procedures that *Salerno* endorsed. Where a person's pretrial liberty is at stake, that increased risk of error is intolerably high. *See Addington*, 441 U.S. at 423-24. The Supreme Court has made clear that "the social cost of even occasional error is sizable" when a constitutional right such as the right to pretrial liberty is involved. *See Santosky*, 455 U.S. at 764.

Accordingly, for the reasons discussed above, the second *Mathews* factor—risk of erroneous deprivation—weighs heavily in favor of finding that a non-bursting bubble presumption violates procedural Due Process.

3. *The Government Has No Legitimate Interest in Assigning Evidentiary Weight to an Unsupported Presumption.*

The third *Mathews* factor further weighs in favor of finding that a non-bursting bubble presumption violates procedural due process. Here, the government has no "countervailing interests" in requiring a court to assign weight to the presumption after the defense has rebutted the presumption by presenting evidence. *Kirk*, 987 F.3d at 327. Irrespective of the presumption, the government's general interests in preventing pretrial flight and danger are already adequately served by the BRA's ordinary detention framework, as affirmed in *Salerno*.

Congress’s findings identify the government’s narrower interest in the presumption itself as curbing the especially high risks of flight and danger posed by the limited class of major international drug traffickers. However, four decades of the government’s own data show that the challenged presumption does not apply only—or even primarily—to high-risk major drug traffickers. The government accordingly has no legitimate interest in having a court consider a rebutted presumption at a detention hearing. Instead, treating the presumption as a bursting bubble actually advances the government’s interest in promoting basic fairness and avoiding the cost and societal harms of unnecessary incarceration. *See Morrissey v. Brewer*, 408 U.S. 471, 483-84 (1972).

Nor would prohibiting courts from treating the presumption as a non-bursting bubble impose any notable “administrative burden[.]” *Mathews*, 424 U.S. 335. Regardless of the weight given to the presumption, the defense is still entitled to a detention hearing. § 3142(f). Both parties must investigate the § 3142(g) factors to prepare for that hearing, and, at the hearing, can call witnesses, cross-examine them, present argument, and so on, regardless of whether the government relies on the presumption. *See* §§ 3142(g), (f). And in all cases, the Court is required to issue a written order to detain someone that “include[s] written findings of fact and a written statement of the reasons for the detention.” *Id.* at § 3142(i)(1).

No doubt, requiring courts to consider a rebutted presumption makes it easier for the government procure a detention order, by putting a thumb on the scale in favor of detention. But the government’s administrative burdens are alleviated far more when the law helps people maintain a “normal and useful life within the law” and treats them with “basic fairness.” *Morrissey*, 408 U.S. at 484. Needlessly detaining people exacts tremendous social and economic costs, including the cost of unnecessary incarceration. *Id.* at 483-84 & n.10 (agreeing that the cost of unnecessary imprisonment outweighs the cost of robust parole revocation procedures). By “becom[ing] an almost de facto detention order for almost half of all federal cases . . . the presumption has contributed to . . . the over-detention of low-risk defendants,” exacting the costs of “pretrial incarceration on the community, and the significant burden of pretrial detention on the taxpayers.” *Austin, supra*, at 61. The procedural protection Myles seeks reinforces the government’s interest in minimizing the costs of detention and more than satisfies the *Mathews* balancing test—it is a win/win.

In sum, the *Mathews* test weighs decidedly in Myles’ favor. Myles has an “importan[t] and fundamental” interest in his right to pretrial liberty. *Salerno*, 481 U.S. at 750. Assigning weight to the presumption *itself*, even after Myles produced rebuttal evidence, increased the likelihood that Myles would be erroneously detained. This error prevented individualized consideration of the BRA’s release

factors, effectively lowering the government's burden of proof. Finally, the government has no legitimate interests to outweigh the individual's interest in liberty and the procedural interest in increased accuracy. In short, properly interpreting the presumption as a bursting bubble presumption makes detention determinations more accurate and costs the government and taxpayers less money, with no increased administrative burden on either the parties or the court.

For all these reasons, interpreting the BRA's presumption as a non-bursting bubble presumption violates procedural due process.

B. The Presumption Violates Substantive Due Process.

A pretrial detention scheme must be “narrowly focus[ed] on a particularly acute problem in which the Government interests are overwhelming.” *Salerno*, 481 U.S. at 750; *Foucha*, 504 U.S. at 81 (striking down a civil commitment statute that was “not carefully limited” by comparison to the “sharply focused scheme at issue in *Salerno*”). This substantive standard is stringent—it protects “the individual's strong interest in liberty,” which the *Salerno* Court recognized as “importan[t] and fundamental.” 481 U.S. at 750.

Here, the presumption is not sharply focused on *any* specific problem “in which the Government interests are overwhelming,” much less a “particularly acute problem.” *Salerno*, 481 U.S. at 750. For the reasons discussed above, the challenged presumption lacks a “narrow[] focus[]”—or any focus—between the

group described in congressional findings (major international drug traffickers) and the group subject to the presumption (almost anyone charged with a federal drug offense). *See id.* (focusing on what Congress “specifically found”). Relying on the presumption as a substantive consideration, even after the defense has produced evidence to rebut it, therefore violates substantive due process.

C. The Two Opinions to Have Considered the Constitutionality of the Presumption Are Outdated and Wrong.

As with the statutory interpretation of the BRA, the First Circuit in *Jessup* again offers a frequently cited case on the constitutionality of the presumption. *See Jessup*, 757 F.2d at 387. The Eleventh Circuit uncritically followed *Jessup* in the only other appellate case to address the issue. *See Medina*, 775 F.2d at 1402-03. This Court should decline to follow *Jessup*’s due process holdings because, like *Jessup*’s statutory holdings, they depend entirely on an unwarranted deference to the meager legislative findings.

Jessup was wrong in holding that a non-bursting bubble presumption of detention provides constitutionally adequate procedural protections. *Jessup*’s procedural due process analysis was limited by a scant record: the case was decided only a year after the BRA’s passage, when the First Circuit was hesitant to “reevaluate the statistical studies or other evidence presented at congressional hearings.” *Jessup*, 757 F.2d. at 386. Relying on nothing more than the two sources cited in the Senate Judiciary Committee Report (and a reference to the failed

version of Fed. R. Evid. 301, *supra* at Section I.B), *Jessup* concluded that requiring courts to consider the presumption even after a defendant introduces individualized rebuttal evidence would not “significantly increase the risk of an ‘erroneous deprivation’ of liberty.” *Id.* (citing *Mathews*, 424 U.S. at [335]). For the reasons discussed above, that is incorrect. The evidence shows that the presumption’s bite is reserved for people in the *lowest* risk categories. The presumption makes *no* difference to the high-risk defendants it was supposed to target and instead results in erroneous detention of low-risk defendants who pose little risk of flight or danger. *Austin, supra*, at 57-58.

Jessup’s substantive due process analysis was incorrect for similar reasons. Even assuming the accuracy of Congress’s findings, *Jessup* did not respond to *Salerno*’s substantive question, namely, whether the presumption as written was “narrowly focus[ed]” on the problem Congress “specifically found[.]” *Salerno*, 481 U.S. at 750. As discussed above, plainly it is not. Unlike the *Jessup* court, this Court has access to decades of government data demonstrating that the presumption is not narrowly or otherwise focused on the risky major international drug traffickers Congress’s findings described.

In sum, requiring courts to consider the unsupported presumption of detention even after the defense has produced rebuttal evidence violates procedural and substantive due process. Out-of-circuit precedent to the contrary should be

rejected for its erroneous use of legislative history and purpose, as well as its failure to account for the absence of evidence supporting the presumption.

The BRA's presumption is a bursting bubble presumption that disappears from consideration once the defense introduces rebuttal evidence. The plain text of the statute demands as much. The legal dictionary, common law, treatises, case law, and constitutional avoidance all confirm that bursting bubble presumptions are the default, and the text of the BRA offers no reason to vary. Four decades of government data show that the presumption as written applies to a broad swath of low-risk defendants charged with drug crimes who bear little similarity to the major international drug traffickers that were the subject of Congress's findings in support of the presumption.

Requiring courts to consider the presumption in the face of rebuttal evidence to the contrary violates the Bail Reform Act and the fundamental right to pretrial liberty. That approach should be squarely rejected as a matter of law.

III. This Court Should Release Myles.

A. The District Court Used the Incorrect Legal Standard, Requiring *De Novo* Review By this Court.

The court below employed the wrong legal standard in its detention order, revoking the Michigan magistrate judge's release order. The detention inquiry in a presumption case like Myles's should proceed in two steps. First, the court must assess whether the person has rebutted the presumption. If the person presents

evidence supporting release, the court must find the presumption rebutted as a matter of law. Once the presumption is rebutted, the bubble bursts and the presumption entirely disappears from the analysis. From that point forward, the court may not consider the presumption.

At the second step of the analysis, the court must determine whether the government has carried its ultimate burden of proof under § 3142(e)(1). Detention is warranted only if the government proves (1) by “clear and convincing evidence,” § 3142(f), that there exist “no condition or combination of conditions [of release that] will reasonably assure” community safety, § 3142(e)(1), or (2) by at least a preponderance of the evidence that there exist no conditions of release that will reasonably assure the person’s appearance in court, *see United States v. Stewart*, 19 Fed. App’x 46, 48 (4th Cir. 2001).¹⁸ The court must consider the individualized factors set forth in § 3142(g), consider all available conditions of release in § 3142(c)(1), and “shall order the pretrial release of the person . . . subject to the

¹⁸ There are serious questions about whether a preponderance standard for flight risk is interpretively correct or constitutional, and this Court has never upheld such a standard in a published decision. *See* Jaden M. Lessnick, *Pretrial Detention by A Preponderance: The Constitutional and Interpretive Shortcomings of the Flight-Risk Standard*, 89 U. Chi. L. Rev. 1245 (2022); Marty Berger, *The Constitutional Case for Clear and Convincing Evidence in Bail Hearings*, 75 Stan. L. Rev. 469 (2023).

least restrictive . . . combination of conditions” that will reasonably assure appearance and safety, *id.* The rebutted presumption plays no role in the analysis.

The court below erred and used the wrong legal standard. Myles produced evidence supporting release, which was sufficient to rebut the presumption. However, the district court erroneously found that “Myles did not rebut the presumption in favor of detention,” and cited that conclusion in support of its detention order. App.148. This was error.

B. The Law and the Evidence Demonstrate that the Presumption Is Rebutted and Pretrial Release Is Warranted in this Case.

This Court’s review is *de novo*, and it conducts its “own review of the facts as found by the district court.” *Simms*, 128 F. App’x at 315. Using the correct legal standard, the government has not come close to carrying its burden of proof to detain Myles, and therefore Myles must be released. *See, e.g., United States v. Singh*, 860 F. App’x 283, 284 (4th Cir. 2021) (reversing district court and ordering release “based on [this Court’s] review of the record and consideration of the four § 3142(g) factors,” “subject to appropriate conditions to be prescribed by the district court”); *United States v. Gill*, No. 21-4502 (4th Cir. Oct. 12, 2021) (reversing and remanding with instructions to release appellant where district court erroneously held she had not rebutted the presumption).

At the first step of the analysis, Myles has presented extensive evidence that more than rebuts the presumption, including: (1) Myles's five months of success on state pretrial release for the same alleged underlying conduct, § 3142(g)(3)(A), (g)(3)(B), (g)(4); (2) Myles's tight family and community ties and concrete employment plan, § 3142(g)(3)(A); (3) the fact that Myles has no felony convictions, no history of violence, and has never been sentenced to prison, § 3142(g)(3)(A); and (4) the fact that Myles's alleged offense does not carry a mandatory minimum penalty, § 3142(g)(1), (g)(4). Given this evidence, the Court must find the presumption rebutted. Because the presumption is a bursting bubble presumption, the presumption then disappears entirely from consideration. At the second step of the analysis, the same facts that rebut the presumption also demonstrate that there are conditions of release that will reasonably assure the safety of the community and Myles's appearance in court.

1. Myles's Success on State Pretrial Release Rebutts the Presumption and Strongly Favors Release.

Most importantly, Myles's resounding success on pretrial release in the West Virginia state case definitively (1) rebuts the presumption, and (2) establishes that there exist conditions of release that can "reasonably assure" both the safety of the community and Myles' appearance in court.

For the five months leading up to his federal arrest, Myles was on bond in state court *for the same alleged underlying conduct* as in this case. App.8-App.23.

During that time, he appeared at a court date in West Virginia state court and resided at home with his mother—exactly where he said he would be. App.119:20-120:2, 120:14-23, 123:4-10. Since his release in the state case, Myles has had zero violations, and his state court file shows no allegations of new or additional criminal conduct while on release from the West Virginia state case. *See* App.99:8-22 (receiving exhibit); App.8-App.23. In fact, in releasing Myles, the Michigan magistrate judge stated: “[T]here is no indication of a bond violation in any case you have ever had.” App.62:1-2.

It is hard to imagine stronger evidence supporting release. First, Myles’s compliance on the West Virginia state bond rebuts the presumption, especially when combined with his employment history, employment prospects, family support, community ties, and lack of felony convictions. Second, his adherence to conditions of release and lack of new criminal conduct relates directly to several of the § 3142(g) factors—most notably, demonstrating that his release will not endanger the community under § 3142(g)(4). Myles’s success also establishes his “record concerning appearance at court proceedings” and good “character” under § 3142(g)(3)(A). Myles’s proven track record on release standing alone, shows that there *are* conditions of release that provide the requisite reasonable assurance—the government certainly hasn’t met its burden to prove otherwise.

2. *Myles's Strong Family Ties, Community Ties, and Employment Plan Likewise Rebut the Presumption and Support Release.*

Myles's demonstrated "family ties," "community ties," "length of residence in the community," "employment" history and prospects, and educational history under § 3142(g)(3)(A) also (1) rebut the presumption, and (2) will reasonably assure both the safety of the community and his appearance in court.

Myles just turned twenty-five years old and is a Detroit high school graduate. App.118:20-21, 123:23. His extended family lives in the Detroit area. *See* App.121:4-7, 122:2-5. He has no passport. App.121:8-9. He lives with his mother and sister in the Detroit home his mother owns and that he helped fix up. App.118:7-9. Even the Michigan AUSA recognized Myles's "residentially[] strong ties to the Detroit community." App.50:11-12.

Myles's mother, Takeysha Daniels, is a stable and responsible presence in his life. She "work[s] with the little babies in preschool" for the early childhood program of the Detroit Community School District. App.118:13-16. Moreover, Myles's mother has already proven her commitment to helping her son attend court as required. She testified that she would make sure that "Myles would be at court at every court hearing." App.121:3. In January, when Myles was released on state court bond, Ms. Daniels drove twelve hours round-trip to pick Myles up in West Virginia, and made the same drive a few days later to bring him back for court.

App.120:3-23. She testified that it is important to her that when her son is “on bond conditions that [she] do everything [she] can to help him meet those conditions.”

As she explained, “I believe in being responsible and doing things right. And, yes, that’s why we made it back down here to that court date.” App.123:14-19. She further testified that she would make that same trip with him for the federal case.

Id.

Myles’s family’s presence at his federal detention hearing also shows that he would have extensive family and community support if released. In addition to his mother, five other members of his family, and his girlfriend, attended the detention hearing. App.121:4-7. Myles’s girlfriend also made the long trip to court to support him, just as she did for his state detention hearing. App.120:3-8. It is the rare individual who has seven supporters present in court for a *local* detention hearing, much less one that requires a twelve-hour round-trip drive.

Myles’s future employment prospects and employment history also rebut the presumption and reasonably assure appearance and safety. His mother testified that Myles has a job waiting for him if he is released on bond. If released, Myles will not be at loose ends nor be tempted to seek income through other means, both potential concerns in a drug case. *See* App.44:9-15 (AUSA arguing same). Instead, Myles will be working for his cousin at Myles Home Improvement, where he has previously spent summers building porches and patio decks and working on

concrete and winters doing home improvement, such as glazing bathtubs.

App.121:12-122:1. This job will occupy Myles's time and further ensure that he complies with the conditions of release. Any misstep would risk not only losing his job and going to jail but also damaging his cousin's business. Working for a family business, especially given Myles's tight family ties, provides additional incentive to adhere to the conditions of release.

Myles's track record of successful employment likewise supports release. Ms. Daniels testified that Myles previously worked at Whole Foods and Ford Fields. App.121:11-12. The Michigan magistrate judge relied on this work history in releasing Myles, comparing him favorably to other defendants "who are your age who have not done anything" for employment. App.60:1-4.

3. *Myles's Minimal Criminal History and the Fact That He is Not Charged with a Mandatory Minimum Further Rebut the Presumption and Support Release.*

Myles relatively minimal criminal history under § 3142(g)(3)(A) and the non-mandatory nature of his offense under § 3142(g)(1) & (g)(4), further rebut the presumption and support his release. Most notably, Myles has no prior felony convictions, no history of violence, and has never before been incarcerated in prison. As the Michigan magistrate judge observed when releasing Myles: "[A]ll of [Myles's] convictions up to this point have been for misdemeanors." App.60:13-14. Nor is there any allegation of criminal misconduct in the five months during

which Myles was on pretrial release in the West Virginia state case. In addition, while serious, these charges do not carry any mandatory minimum, indicating that on the spectrum of federal drug charges, the alleged conduct is truly low-level. App.24; *see also* § 3142(g)(1) (nature and circumstances of the offense); § 3142(g)(4) (nature and seriousness of the danger posed by release).

Allegations of stale failures to appear are not to the contrary. *Contra* App.144:11-13. Several of these failures to appear were from misdemeanor or traffic cases that were ultimately dismissed. App.110:5-112:7 (discussing criminal history). App.45:21-46:2. Most of the alleged failures to appear are from when Myles was still a teenager or barely out of his teenage years. 57:22-24. Much has changed since then—he has worked steady jobs and has fully complied with his conditions of release in the West Virginia case. In releasing Myles, the Michigan magistrate judge found that he “has matured in that regard” and now “know[s] enough to show up for court.” App.57:23-24.

4. *Myles’s Proposed Conditions of Release Will Reasonably Assure His Successful Compliance.*

The BRA requires this Court to consider every available condition of release and impose the least restrictive conditions that will reasonably assure compliance. § 3142(c)(1). Myles proposes a package of conditions that will reasonably assure his appearance and the safety of the community, along with any other conditions the Court deems necessary. His travel will be restricted to the Eastern District of

Michigan (where he lives), the Northern District of West Virginia, and points in between to travel to court. App.139:20-22. He will be required to secure employment, and he already has a stable home and good job lined up. App.139:23-25. He will not be permitted to leave his home except to attend court, go to work, and attend faith-based services. App.140:6-7. If the Court deems location monitoring to be necessary, such a stricture would provide additional assurance. App.140:4. He also proposes a no-contact order with the co-defendants in his case and a \$10,000 unsecured bond. App.139:17; App.139:15-16; App.140:8-11.

For these reasons, Myles has rebutted the presumption and the government has not carried its burden.

CONCLUSION

For the reasons stated above, this Court should reverse the detention order and remand with instructions to release Myles immediately with appropriate conditions. Release is especially appropriate given the magistrate judge's bond hearing, which was conducted under the correct legal standard and includes careful factual findings. In the alternative, Myles requests that this Court vacate the district court's detention order and remand for proceedings on the question of release. In any event, an opinion clarifying the correct legal standard and holding that the BRA's presumption is a "bursting bubble" will aid the administration of justice.

STATEMENT REQUESTING ORAL ARGUMENT

Oral argument is warranted here because it would assist this Court in resolving the novel legal questions presented by this appeal, some of which involve questions of first impression in this Circuit.

August 23, 2023

Respectfully submitted,

/s/ L. Richard Walker

Counsel of Record

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because—according to the word-count feature of the word-processing program with which it was prepared (Microsoft Word)—the brief contains 12,990 words, excluding the portions exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Times New Roman font.

/s/ L. Richard Walker

L. RICHARD WALKER

Counsel of Record

CERTIFICATE OF SERVICE

I electronically filed the foregoing on August 23, 2023, using the Court's appellate CM/ECF system, which effected service on all counsel of record.

/s/ L. Richard Walker

L. RICHARD WALKER

Counsel of Record

No. 23-4513

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DORIAN K. MYLES,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of West Virginia,
Case No. 1:23-cr-0021-TSK-MJA-1 (Chief District Judge Thomas S. Kleeh)

**APPENDIX TO MEMORANDUM BRIEF
FOR APPELLANT DORIAN K. MYLES**

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APPEAL

U.S. District Court
Northern District of West Virginia (Clarksburg)
CRIMINAL DOCKET FOR CASE #: 1:23-cr-00021-TSK-MJA-1

Case title: USA v. MYLES

Date Filed: 05/02/2023

Assigned to: Chief District Judge
 Thomas S Kleeh
 Referred to: Magistrate Judge
 Michael John Aloï

Appeals court case number:
 23-4513 US Court of Appeals for
 the Fourth Circuit

Defendant (1)**Dorian Myles**

represented by **L. Richard Walker**
 Federal Public Defender Office-Clk.
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 Fax: (304) 622-4631
 Email: richard_walker@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

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 Federal Public Defender
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 304-622-3823
 Fax: 304-622-4631
 Email: sean_shriver@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
 Defender Appointment*

Pending Counts

CONSPIRACY TO DISTRIBUTE
 CONTROLLED SUBSTANCE
 (1)

CONTROLLED SUBSTANCE –
 SELL, DISTRIBUTE, OR
 DISPENSE
 (5-10)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition**Disposition**

Highest Offense Level
(Terminated)

None

Complaints

None

Disposition**Plaintiff**

USA

represented by **Zelda E. Wesley**
 U.S. Attorney's Office – Clarksburg
 320 W. Pike St.
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 Email: zelda.wesley@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: United States Attorney

Date Filed	#	Docket Text
05/02/2023	<u>1</u>	INDICTMENT as to Dorian Myles (1) for counts 1, 5-10, John Thomas (2) counts 1, 2-4, 7-8, Shakur Jones (3) counts 1 and 10, and Nolan Eickleberry (4) counts 1, 9-10. (jb) (Copy to AUSA and USMS by email) (Entered: 05/03/2023)
05/02/2023	<u>2</u>	*SEALED* INDICTMENT – Unredacted re <u>1</u> Indictment as to Dorian Myles (1), John Thomas (2), Shakur Jones (3) and Nolan Eickleberry (4). (Attachments: # <u>1</u> Grand Jury Docket Sheet) (jb) (Entered: 05/03/2023)
05/02/2023	<u>3</u>	UNITED STATES' MOTION FOR ORDER TO SEAL by USA as to Dorian Myles (1), John Thomas (2), Shakur Jones (3), Nolan Eickleberry (4). (jb) (Copy to AUSA by email) (Entered: 05/03/2023)
05/02/2023	<u>4</u>	ORDER TO SEAL: granting <u>3</u> Motion to Seal as to Dorian Myles (1), John Thomas (2), Shakur Jones (3), Nolan Eickleberry (4). Signed by Chief District Judge Thomas S Kleeh on 5/2/2023. (jb) (Copy to AUSA and USMS by email, along with sealed Indictment <u>1</u>) (Entered: 05/03/2023)
06/29/2023		Case unsealed per <u>4</u> Order upon arrest of Defendant Dorian Myles (1). (jb) (Entered: 06/29/2023)
06/29/2023		Arrest of Dorian Myles (1) in Eastern District of Michigan. (jb) (Entered: 06/29/2023)
07/05/2023	<u>10</u>	MOTION to Seek Review of Release Order by USA as to Dorian Myles. (Attachments: # <u>1</u> Exhibit 1)(Wesley, Zelda) (Entered: 07/05/2023)
07/05/2023	<u>11</u>	ORDER GRANTING-IN-PART THE GOVERNMENT'S MOTION FOR REVIEW OF RELEASE ORDER [ECF NO. <u>10</u>] as to Dorian Myles (1). Any supplement to the Government's Motion is due by 7/12/2023. Responses due by 7/19/2023. Motion Hearing is set for 7/25/2023 01:00 PM in Wheeling District Judge Courtroom, South before Chief District Judge Thomas S Kleeh. Signed by Chief District Judge Thomas S Kleeh on 7/5/2023. (jb) (Copy to USP and USMS by email) NEF regenerated on 7/5/2023 to FPD (jb). (Entered: 07/05/2023)
07/05/2023	<u>12</u>	ORDER APPOINTING COUNSEL as to Dorian Myles (1). Sean Blythe Shriver is hereby appointed to represent the defendant in this action. Signed by Magistrate Judge Michael John Aloï on 7/5/2023. (jb) (Copy to Defendant by regular mail. Copy to FPDO, AUSA, USP and USMS by email) (Entered: 07/05/2023)
07/12/2023	<u>22</u>	Rule 5(c)(3) Documents Received as to Dorian Myles (1). (Attachments: # <u>1</u> Petition, # <u>2</u> Initial Appearance Audio File, # <u>3</u> Order Appointing Federal Community

		Defender, # <u>4</u> Order Regarding Brady Materials, # <u>5</u> Notice of Attorney Appearance, # <u>6</u> Order Scheduling a Detention Hearing, # <u>7</u> Detention Hearing Audio File, # <u>8</u> Waiver of Rule 5 Hearing, # <u>9</u> Copy of from Western District of VA re: Release Order) (jb) (Entered: 07/13/2023)
07/17/2023	<u>25</u>	MAIL RETURNED AS UNDELIVERABLE: <u>12</u> Order Appointing Public Defender addressed to Dorian Myles (1) Returned As "Return to Sender. No Such Number. Unable to Forward. Return to Sender. More than one inmate with this name, can not identify without inmates full name or inmate number." (jb) Modified on 8/10/2023 to correct docket text (jb). (Entered: 07/17/2023)
07/17/2023	26	PAPERLESS ORDER as to Dorian Myles. Arraignment set for 7/25/2023 at 01:00 PM in the Wheeling District Judge Courtroom, South, before Chief District Judge Thomas S. Kleeh. Signed by Chief District Judge Thomas S. Kleeh on 7/17/23. (sg) (Entered: 07/17/2023)
07/25/2023	<u>31</u>	MINUTE ENTRY: <u>***NOTICE*** THE ATTACHED DOCUMENT IS NOT ACCESSIBLE. IT IS FOR STATISTICAL PURPOSES ONLY.</u> Proceedings held before Chief District Judge Thomas S Kleeh: Arraignment as to Dorian Myles (1) for Counts 1 and 5–10 held on 7/25/2023. Motion Hearing as to Dorian Myles (1) held on 7/25/2023 re <u>10</u> MOTION to Seek Review of Release Order filed by USA. (Court Reporter Rachel Kocher) (jb) (Entered: 07/25/2023)
07/25/2023	<u>32</u>	** SEALED ** CJA 23 Financial Affidavit as to Dorian Myles (1). (Copy to FPD by email) (jb) (Main Document 32 replaced on 8/11/2023 for a signed copy from TSK) (jb). (Entered: 07/25/2023)
07/25/2023	<u>33</u>	CLERK'S EXHIBIT AND WITNESS LIST by Dorian Myles (1). (Physical copies lodged in Clerk's office) (Attachments: # <u>1</u> Monongalia County Magistrate Court records) (jb) (Entered: 07/25/2023)
07/26/2023	<u>34</u>	DUE PROCESS PROTECTIONS ACT ORDER TO ALL COUNSEL REGARDING BRADY OBLIGATIONS as to Dorian Myles (1). Signed by Chief District Judge Thomas S Kleeh on 7/26/2023. (jb) (Entered: 07/26/2023)
07/26/2023	<u>35</u>	ORDER GRANTING THE GOVERNMENT'S MOTION FOR REVIEW OF RELEASE ORDER [ECF NO. <u>10</u>] as to Dorian Myles (1). Signed by Chief District Judge Thomas S Kleeh on 7/26/2023. (jb) (Copy to USP and USMS by email) (Entered: 07/26/2023)
07/27/2023	<u>36</u>	INITIAL SCHEDULING ORDER as to Dorian Myles (1). <u>***NOTICE TO ATTORNEYS*** : Pursuant to Rule 12.4(a)(1) of the Federal Rules of Criminal Procedure, ALL Non-governmental CORPORATE PARTIES must file a DISCLOSURE STATEMENT with the Court. Additionally, per Rule 12.4(a)(2) of the Federal Rules of Criminal Procedure, the GOVERNMENT must file a statement identifying all organizational victims. Forms are available on the Court's Web Site at http://www.wvnd.uscourts.gov/forms.htm</u> Discovery due by 8/10/2023. Motions due by 8/21/2023. Responses due by 8/28/2023 MJ Motion Hearing set for 8/30/2023 09:00 AM in Clarksburg Magistrate Judge Courtroom, 3rd Floor before Magistrate Judge Michael John Aloï. Signed by Magistrate Judge Michael John Aloï on 7/27/2023. (jb) (Copy to USP and USMS by email) (Entered: 07/27/2023)
08/01/2023	<u>37</u>	NOTICE of Discovery Disclosure by USA as to Dorian Myles, John Thomas (Wesley, Zelda) (Entered: 08/01/2023)
08/07/2023	<u>41</u>	NOTICE NOTICE OF APPEAL REGARDING DETENTION IN A CRIMINAL CASE by Dorian Myles (Shriver, Sean) (Refiled on 8/7/2023 using the correct event at <u>42</u> Notice of Appeal (jb).) (Entered: 08/07/2023)
08/07/2023	<u>42</u>	NOTICE OF APPEAL REGARDING DETENTION IN A CRIMINAL CASE filed by Dorian Myles (1) as to <u>35</u> ORDER re Detention. (jb) Modified on 8/15/2023 to correct

		file date (jb). (Entered: 08/10/2023)
08/10/2023	<u>43</u>	Transmission of Notice of Appeal and Docket Sheet as to Dorian Myles (1) to US Court of Appeals re <u>42</u> Notice of Appeal – Conditions of Release. (jb) (Entered: 08/10/2023)
08/10/2023	<u>44</u>	NOTICE OF ATTORNEY APPEARANCE: L. Richard Walker appearing for Dorian Myles (Walker, L.) (Entered: 08/10/2023)
08/10/2023	<u>45</u>	USCA NOTICE OF APPELLATE CASE OPENING as to Dorian Myles (1) for <u>42</u> Notice of Appeal – Conditions of Release filed by Dorian Myles. Case Number: 23–4513. Case Manager: Karen Stump. (jb) (Main Document 45 replaced on 8/15/2023 to adjust USCA4 header) (jb). (Entered: 08/10/2023)
08/10/2023	<u>46</u>	USCA ORDER appointing Federal Defender to represent Dorian Myles (1) on appeal. (jb) (Main Document 46 replaced on 8/15/2023 to adjust USCA4 header) (jb). (Entered: 08/10/2023)
08/13/2023	<u>48</u>	TRANSCRIPT of Proceedings held on 7/25/2023 before Judge Thomas S. Kleeh as to Dorian Myles. Court Reporter/Transcriber Rachel Kocher, Telephone number (304) 623–7179. Parties have five business days to file a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will become available via PACER to the public without redaction after 90 calendar days. Redaction Request due 9/5/2023. Redacted Transcript Deadline set for 9/13/2023. Release of Transcript Restriction set for 11/13/2023. (rak) (Entered: 08/13/2023)
08/15/2023	<u>51</u>	TRANSCRIPT PURCHASE ORDER for proceedings held on 7/25/2023 before Judge Thomas S. Kleeh. (rak) (Entered: 08/15/2023)

**U.S. District Court
Eastern District of Michigan (Detroit)
CRIMINAL DOCKET FOR CASE #: 2:23-mj-30272-DUTY-1**

Case title: United States of America v. Myles

Date Filed: 06/29/2023

Other court case number: 23cr21 Northern District of West
Virginia

Date Terminated: 07/05/2023

Assigned to: Magistrate Judge
Unassigned

Defendant (1)

Dorian Kristopher Myles
TERMINATED: 07/05/2023

represented by **Federal Community Defender**
613 Abbott
5th Floor
Detroit, MI 48226
313-967-5555
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Rhonda R. Brazile
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313-967-5850
Email: Rhonda_Brazile@fd.org
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

Rule 5(c)(3)

Disposition

Transferred

Plaintiff

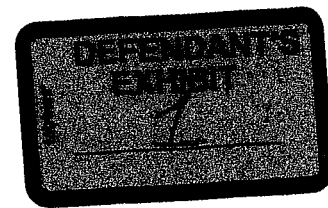
United States of America

represented by **Michael Taylor**
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Ste. 2001
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 313-226-9516
 Email: michael.taylor3@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
 Designation: U.S. Attorney

Date Filed	#	Docket Text
06/29/2023	<u>1</u>	PETITION for Transfer under Rule 5(c)(3) by United States of America as to Dorian Kristopher Myles (1). (LHos) (Entered: 06/29/2023)
06/29/2023		Minute Entry for in-person proceedings before Magistrate Judge Anthony P. Patti: Initial Appearance in Rule 5(c)(3) Proceedings as to Dorian Kristopher Myles held on 6/29/2023. Disposition: Defendant temporarily detained. Defendant requests an Identity Hearing. Detention Hearing set for 6/30/2023 at 01:00 PM and Identity Hearing set for 6/30/2023 at 01:00 PM. (Court Reporter: Digitally Recorded) (Defendant Attorney: Elizabeth Young) (AUSA: Michael Taylor) (LHos) (Entered: 06/29/2023)
06/29/2023	<u>2</u>	Public Audio File of Initial Appearance in Rule 5(c)(3) Proceedings as to Dorian Kristopher Myles held on 6/29/2023 before Magistrate Judge Anthony P. Patti. AUDIO FILE SIZE (2.6 MB) (NAhm) (Entered: 06/30/2023)
06/29/2023	<u>3</u>	ORDER APPOINTING FEDERAL COMMUNITY DEFENDER as to Dorian Kristopher Myles. Signed by Magistrate Judge Anthony P. Patti. (NAhm) (Entered: 06/30/2023)
06/29/2023	<u>4</u>	ORDER Regarding Brady Materials as to Dorian Kristopher Myles. Signed by Magistrate Judge Anthony P. Patti. (NAhm) (Entered: 06/30/2023)
06/29/2023	<u>6</u>	ORDER SCHEDULING A DETENTION HEARING AND FOR TEMPORARY DETENTION as to Dorian Kristopher Myles Signed by Magistrate Judge Anthony P. Patti. (NAhm) (Entered: 06/30/2023)
06/30/2023	<u>5</u>	NOTICE OF ATTORNEY APPEARANCE: Rhonda R. Brazile appearing for Dorian Kristopher Myles (Brazile, Rhonda) (Entered: 06/30/2023)
06/30/2023		Minute Entry for in-person proceedings before Magistrate Judge Anthony P. Patti: Identity Hearing Not Held as to Dorian Kristopher Myles. Defendant waived the hearing on the record and presented a written waiver. (Court Reporter: Digitally Recorded) (Defendant Attorney: Rhonda Brazile) (AUSA: Michael Taylor) (LHos) (Entered: 06/30/2023)
06/30/2023		Minute Entry for in-person proceedings before Magistrate Judge Anthony P. Patti: Detention Hearing as to Dorian Kristopher Myles held on 6/30/2023. Magistrate Judge's decision is stayed until July 5, 2023 at 5:00 p.m. pending Government appeal to the District Judge in the Northern District of West Virginia. Disposition: Defendant released on \$10,000 unsecured bond with conditions. (Court Reporter: Digitally Recorded) (Defendant Attorney: Rhonda Brazile) (AUSA: Michael Taylor) (LHos) (Entered: 06/30/2023)
06/30/2023	<u>7</u>	Public Audio File of Detention Hearing as to Dorian Kristopher Myles held on 6/30/2023 before Magistrate Judge Anthony P. Patti. AUDIO FILE SIZE (21.2 MB) (NAhm) (Entered: 06/30/2023)
06/30/2023	<u>8</u>	WAIVER of Rule 5 Hearings by Dorian Kristopher Myles. (NAhm) (Entered: 06/30/2023)
07/07/2023	<u>9</u>	COPY ORDER FROM WESTERN DISTRICT OF VIRGINIA GRANTING IN PART GOVERNMENT'S MOTION FOR REVIEW OF RELEASE ORDER (1:23CR21) as to Dorian Kristopher Myles (KBro) (Entered: 07/07/2023)
07/12/2023		TEXT-ONLY NOTICE to Northern District of West Virginia of Transfer as to Dorian Kristopher Myles. Your case number is: 23-cr-21. Using your PACER account, you may retrieve the docket sheet and any unrestricted documents and text-only entries. Please note the following documents: <u>9</u> Docket Annotation, <u>1</u> Rule 5(c)(3) Petition for

		Transfer Proceedings, Initial Appearance – Rule 5(c)(3),, <u>4</u> Order Regarding Brady Materials, Detention Hearing – with Appeal,, <u>8</u> Waiver of Rule 5 Hearings (Formerly Rule 40), <u>3</u> Order Appointing Federal Community Defender, Hearing Not Held/Hearing Cancelled, (If you require sealed documents or certified copies, please send a request to InterDistrictTransfer_mied@mied.uscourts.gov. If you require a defendant's payment history, please send a request to financial@mied.uscourts.gov.) (LHos) (Entered: 07/12/2023)
08/17/2023	<u>10</u>	TRANSCRIPT of Detention Hearing held on 06/30/2023 as to Dorian Kristopher Myles. (Court Reporter/Transcriber: Rene L Twedt) (Number of Pages: 38) (Appeal Purposes) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 9/7/2023. Redacted Transcript Deadline set for 9/18/2023. Release of Transcript Restriction set for 11/15/2023. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Twedt, R) (Entered: 08/17/2023)



Session started: 07:45:18 Last Page Run: 07:46:17

Rev. 2020_0701

[Back](#) [New Search](#)

BASIC CASE INFORMATION:

Case ID: 23-M31F-00030
 Case Location: Magistrate Court of Monongalia County, West Virginia
 Case Description: State v. Dorian Kristopher Myles
 Filing Date: 01/20/2023
 Type: FE - Felony
 Trial Type: None
 Claim/Amount: \$0.00
 Appearance Date:
 Agency: TFMON - Mon Metro Drug Task Force

CASE CHARGES:

Charge	Citation	On or About	Person	Charge
1	01/19/2023		Dorian Kristopher Myles	60A-04-401(a)(i): Manufacture/deliver/possess with intent to manufacture/deliver (Sched I or II Narcotic) Citn/Comp Code: Citn/Comp Desc: Plea: Not Guilty 01/20/2023 Disposition: Plea/Disposition Magistrate: Disposition Trial Type: Disposition Text: Due Date:
2	01/19/2023		Dorian Kristopher Myles	60A-04-414(b): Conspiracy to manufacture/deliver heroin/cocaine/phencyclidine/diethylamide/meth/etc (2-30 years) Citn/Comp Code: Citn/Comp Desc: Plea: Not Guilty 01/20/2023 Disposition: Plea/Disposition Magistrate: Disposition Trial Type: Disposition Text: Due Date:

CIVIL JUDGMENTS:

No Civil Judgment Found.

BOND INFORMATION:

Bond ID	Bond Type	Bond Set Amount	Reduced Amount	Posted Bond Total	Payer Amount	Bond Status	Person Paying Bond	Receipt No
23-SU31-0035	Property/Surety Bond	\$50,000.00	\$0.00	\$50,000.00	\$50,000.00	Posted	Minard's Bail Bonding	
	Set Date:	01/20/2023	Bond Set Notes: c/s let					
	Posted Date:	01/27/2023	Bond Posted Notes:					

RELATED CASES:

No Related Cases Found.

CASE EVENT SCHEDULE:

Record	Event Type	Date/Time	Room	Location	Judge	Reason Closed	Text
1	Preliminary Hearing	01/30/2023 10:30 AM	To Be Determined	Monongalia	Nabors, James E.	Hearing/Event Closed	

2	Preliminary Hearing	04/25/2023 02:00 PM	To Be Determined	Monongalia	Nabors, James E.	Hearing Continued	Magistrate out
3	Preliminary Hearing	08/11/2023 02:30 PM	To Be Determined	Monongalia	Nabors, James E.		

CASE PARTIES:

Record Type	Name	Address	End Date
1	Defendant/Respondent	<u>Myles, Dorian Kristopher</u>	19568 Hamburg Atreet Detroit MI 48205
2	Law Enforcement Officer	<u>Trump Jr., Mark Kevin</u>	300 Spruce Street Morgantown WV 26505
3	Issuing Magistrate	<u>Holepit, Sandy</u>	75 High Street Suite 23 Morgantown WV 26505
4	Prosecutor	<u>Monongalia County Prosecutor</u>	75 High Street Suite 11 Morgantown WV 26505
7	Magistrate	<u>Nabors, James E.</u>	Monongalia Magistrate Court 75 High Street Suite 21 Morgantown WV 26505
8	Surety	<u>Minard's Bail Bonding</u>	214 ADAMS ST Fairmont WV 26554
9	Defendant/Respondent Atty	<u>Jorgensen, Ramsey K</u>	PO Box 4206 Morgantown WV 26504

DOCKET ENTRY:

Record	Filing Date	Code	Description	Filed By	Entry
1	01/20/2023	MMCDR	Court Disposition Reporting		The CDR Number is: 11600009151
2	01/20/2023	MFFCF	Felony Complaint		
3	01/20/2023	MBOND	Bond/Bail Set	<u>Myles, Dorian Kristopher</u>	Bond for Myles, Dorian Kristopher set at \$50,000.00. c/s let
4	01/20/2023	MMIRS	Initial App.-Rights Sheet		
5	01/20/2023	MMOJC	Order - Jail Commitment		
6	01/27/2023	MMOJR	Order - Jail Release		
7	01/27/2023	MBONI	Bond/Bail Posted		Bond ID: 23-SU31-0035 Amount: \$50,000.00 Type: Non-Monetary Notes: Posted By: Minard's Bail Bonding-\$50,000.00 Receipt(s):
8	01/30/2023	MMWTP	Waiver of Time Prelim Hearing		
9	01/31/2023	MGHCC	Hearing/Event Closed		Auto. Event Close of: 1-MFPH-Preliminary Hearing Scheduled for: 30-JAN-23 @ 10:30:00.
10	02/03/2023	MMOPD	Order-Pub Def/Att/Counsel-Gmt		
11	02/03/2023	MMNAC	Notice - Appearance of Counsel		
12	02/03/2023	MGJRQ	Jury Request	<u>Jorgensen, Ramsey K</u>	
13	02/24/2023	MGNCH	Notice of Hearing		Letter printed from batch letter.
14	04/24/2023	MGHCT	Hearing Continued		Event Date: 25-APR-2023 14:00:00 Event: Preliminary Hearing Judge: James Nabors
15	08/27/2023	MGNCH	Notice of Hearing		Letter printed from batch letter.

CASE/PERSON FEES:

Record	Person	Fee Type	Fee Description	Original Amount	Balance
--------	--------	----------	-----------------	-----------------	---------

SERVICE DOCUMENTS:

No Service Documents Found.

CASE IMAGES:

Record	Type	Image Description	Number of Pages
1	<u>initial appearance combo</u>		12
2	<u>order appointing attorney</u>		4
3	<u>bond</u>		4

Administrative Office of the Courts
Capitol Complex, Bldg 1, RM E-100
Charleston, WV 25305-0830
(304) 558-0145
Fax: (304) 558-1212

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IN THE MAGISTRATE COURT OF MONONGALIA COUNTY, WEST VIRGINIA

Out-of-County Warrant:

State of West Virginia

Case No.: 23-M31F-00030

v.

DORIAN K MYLES

Defendant (Full Name)

Misdemeanor / Felony

XXX-XX-4598

07/21/1998

M / F

Social Security Number Date of Birth

Gender

MAGISTRATE COURT TEMPORARY JAIL COMMITMENT ORDER

WV Code: Cash Bond [§ 62-1C-12], P.R. [§ 62-1C-1a and 4], 10% Cash Bond [Trial Ct. Rule 31.01], Surety Company [§ 62-1C-4]

The Court hereby ORDERS commitment of the defendant to the custody of the WV Division of Corrections and Rehabilitation (WVDCR) for the following charges:

1) POSSESSION WITH INTENT (METH.) 2) CONSPIRACY

Until bail is posted as follows: \$50,000 C/S or \$12 LF.

To await Court action. Hearing date: 1-30-23

To self-report to _____ on _____ at _____ a.m. / p.m.
Date Time

Other (specify):

The Magistrate, Magistrate Assistant and /or Magistrate Court Clerk shall provide a copy of this Temporary Jail Commitment Order to the appropriate WVDCR Facility by facsimile and /or e-mail.

(Date) 1-22-23

(Time) 8:30 AM

Magistrate's Signature

Received and executed by
Officer Taking Custody / Jail Officer (Date) (Time)

IN THE MAGISTRATE COURT OF MONONGALIA COUNTY, WEST VIRGINIA

Out-of-County Warrant: _____

State of West Virginia
v.

Case No. 23-M31F-00030

DORIAN K MYLES
Defendant (Full Name)

XXX-XX-4598 07/21/1998
Social Security Number Date of Birth

19568 HAMBURG ST
Address

MI M420149478574
Driver's License / Identification Number

DETROIT MI 48205
City, State, & Zip Code

313-523-8209
Phone Number(s)

INITIAL APPEARANCE: RIGHTS STATEMENT

Mag. Ct. Criminal Procedure Rule 5 (5.1 and 5.2 if applicable)

A. GENERAL: EITHER MISDEMEANOR OR FELONY OR BOTH

1. The magistrate has informed me that I am not required to make a statement, and that any statement I do make may be used against me.
2. The magistrate has informed me that I am charged with the Misdemeanor Felony Offense(s) of
1) POSSESSION WITH INTENT (METH.) 2) CONSPIRACY

and that, if I am later found guilty or plead guilty, the possible penalties are (*mandatory minimum penalty, if any, and maximum penalty*) 1) Imprisoned not less than 1 year nor more than 15 years and/ or fined not more than \$25,000. 2) Confined not less than 1 nor more than 5 years and/or by a fine of not more than \$10,000.

3. The magistrate has informed me that I have the right to be represented by an attorney at every stage of the proceeding. If the statutory offense provides for a possible jail sentence, and if I cannot afford to hire an attorney and I meet the financial guidelines, an attorney will be appointed to represent me. I understand this right, and further understand that if I decide to represent myself, I cannot later claim that I was deprived of my right to be represented by an attorney.

DEFENDANT MUST INITIAL ONE OF THE FOLLOWING:

- (a) I give up my right to have an attorney represent me.
- B (b) I want to hire an attorney to represent me.
- (c) I want an attorney appointed to represent me. I understand that if I am found guilty, I may be required to reimburse the State for attorney fees even if a court-appointed or public defender attorney is approved to represent me.

01/20/2023
Date

[Signature]
Defendant's Signature

Case No. 23-M31F-00030

- 4. The magistrate has informed me that I have been charged with an offense for which the penalty is life imprisonment, and bail must be set by the circuit court.
- 5. The magistrate has informed me that I may be released from custody while awaiting further proceedings on the charge(s) stated above if I am able to make bail as follows: \$50,000 c/s 4

\$12,000 LF

If real property is used as security, a justification of surety IS or IS NOT required.

- 6. The magistrate has informed me that I will be given reasonable time and opportunity to talk with an attorney or some other person for the purpose of obtaining counsel or for arranging bail.

B. MISDEMEANOR CHARGE(S) ONLY

- 1. The magistrate has informed me that I have a right to plead not guilty, a right to a trial by jury or by a magistrate without a jury, and that if I plead guilty or no contest, I give up my right to a trial.
- 2. The magistrate has informed me that I have the right to demand a jury trial and, if I want a jury trial, I must let the magistrate court know in writing no later than twenty (20) days from the date of this initial appearance, or if I receive court-appointed counsel, twenty (20) days from the date an attorney is appointed. The magistrate has further informed me that if I demand a jury trial, I may not withdraw my demand for a jury trial if the prosecuting attorney objects to the withdrawal. If I do not demand a jury trial within the twenty-day period, I have also been informed that I give up my right to a jury trial. The magistrate will try my case without a jury, and an appeal of a magistrate court conviction will not entitle me to a jury trial in circuit court. I understand if I have a jury, the jury fee will be assessed against me if I am convicted.
- 3. (if applicable) The magistrate has informed me that if I have been charged with First Offense Driving Under the Influence of Alcohol in violation of *W. Va. Code § 17C-5-2(e)*, I may be eligible for the DUI Deferral Program. I understand that I have thirty (30) days from the date of my arrest to request to participate in the program as set out in *W. Va. Code § 17C-5-2b*.
- 4. (if applicable) The magistrate has informed me that it **SHALL** be unlawful for me to have/possess/own or purchase a firearm, including a handgun or long gun, or ammunition pursuant to federal law under *18 U.S.C. 922(g)(9)* if I am convicted of a domestic violence offense such as assault, battery, domestic assault, domestic battery, malicious wounding/assault, unlawful wounding/assault, or any attempt to commit a domestic violence offense involving the use of physical force or threatened use of a deadly weapon; and I am a current or former spouse, current or former intimate partner, parent or guardian of the victim, or have a child in common with the victim, or I am or was involved in another similar relationship with the victim, or currently or formerly cohabited with the victim. I understand that if I have any questions regarding whether or not this law makes it illegal for me to ship, transport, purchase, or possess a firearm or ammunition, I may consult an attorney.
- 5. The magistrate has informed me that if I am convicted or plead guilty, failure to pay in full all costs, fines, fees, forfeitures, restitution or penalties may result in the withholding of my West Virginia personal income tax refund pursuant to *W. Va. Code § 50-3-2c* or that a judgment lien may be placed against property I own or my account may be submitted to a state approved collection agency under the authority of *W. Va. Code § 62-4-17*.

01/20/2023

Date

[Signature]
Defendant's Signature

Case No. 23-M31F-00030

C. FELONY CHARGE(S) ONLY

The magistrate has informed me that

1. if I have been charged with a felony offense for which the penalty is life imprisonment, only the circuit court may set and grant bail;
2. I have the right to a preliminary hearing to determine whether or not any felony charge(s) should be bound over for possible presentation to a grand jury;
3. the preliminary hearing shall be held within ten (10) days of my initial appearance if I am in custody, or within twenty (20) days of my initial appearance if I am not in custody (*W. Va. Code § 62-1-8*).

DEFENDANT MUST INITIAL ONE OF THE FOLLOWING THREE CHOICES:

- (a) I want a preliminary hearing.
- (b) I give up my right to a preliminary hearing.
- (c) I, or my attorney, will inform the court whether I want a preliminary hearing.

01/20/2023

Date

[Signature]
Defendant's Signature

I have informed the defendant of the matters set out above. I find that any waiver of rights herein is made knowingly and voluntarily by the defendant.

 (*initial if applicable*) I certify that the defendant refused to initial and/or sign this document at the appropriate places.

1-20-23
Date

[Signature]
Magistrate's Signature

IN THE MAGISTRATE COURT OF Monongalia COUNTY, WEST VIRGINIA

State of West Virginia Case No. 23M31F-00030

v Misdemeanor/ Felony

Dorian K MYLES Defendant (Full Name) XXX XX 4598 Social Security Number 07/21/1998 Date of Birth

19568 Hamburg Street Address Michigan -M420149478574 Driver's License / Identification Number

Detroit, MI 48205 City, State & Zip Code Phone Number(s)

CRIMINAL COMPLAINT

Mag. Ct. Criminal Procedure Rule 3,4; 18 U.S.C § 921 (a) (33)

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about January 19, 2023 in Monongalia County,

West Virginia, in violation of *West Virginia Code § (cite specific section, subsection, and/or subdivision, if applicable)* Dorian K. MYLES the defendant did *(state statutory language of the offense)* possess a schedule II controlled substance to wit: Methamphetamine, with the intent to deliver. 60A-4-401(a)(i)

I further state that this complaint is based upon the following facts:

See Attached

Continued on an attached sheet? Yes No

(If this complaint involves misdemeanor assault/battery, [West Virginia Code § 61-2-9] or misdemeanor domestic assault/battery, [West Virginia Code § 61-2-28], check all that apply.)

The defendant is/was the victim's spouse. is/was living with the victim as a spouse, parent, or guardian. is/was a parent or guardian of the victim. is a person who is like a spouse, parent, or guardian of the victim. has a child in common with the victim. has none of the above connections to the victim.

Complainant (who appears before Magistrate):
Mark Trump Complainant Name (Full Name)
PO Box 670 Address
Dellslow, WV 26531 City, State & Zip Code
304-284-0060 Phone Number(s)
Task Force Officer, Mon Metro Drug Task Force Office or Title, if any
1/20/2023 Date
[Signature] Complainant Signature

On this complaint, sworn or affirmed before me and signed in my presence on this date by the complainant, the item(s) checked below apply:
Finding No probable cause found Probable cause found
Issuance Summons issued Warrant issued Warrantless arrest
1-20-23 Date
[Signature] Magistrate Signature

Case No.

23F-30

IN THE MAGISTRATE COURT OF Monongalia COUNTY, WEST VIRGINIA

CRIMINAL COMPLAINT (CONTINUATION PAGE)

On January 19, 2023, investigators with the Mon Metro Drug Task Force served a search warrant at 1028 River Road Morgantown, Monongalia County, WV for the purpose of locating evidence that Dorian MYLES, Nolan EICKLEBERRY, and others conspire to and possess with the intent to deliver methamphetamine. During the execution of the search warrant, officers and investigators encountered Dorian MYLES, Shakur JONES, and Nolan EICKLEBERRY at the residence. During the search, investigators located a sum total of more than 1 kilogram of methamphetamine as seized from multiple locations in the residence, bulk US Currency in the pockets of EICKLEBERRY and JONES, and devices to weigh controlled substances for packing for distribution. The substance seized as methamphetamine presumptively tested positive to the presence of methamphetamine.

TFO Mark Trump, January 20, 2023



FILED COPY
COPY
1-20-23

From:

01/20/2023 03:39 #180 P.001/002

State of West Virginia COURT DISPOSITION REPORTING						<input checked="" type="checkbox"/> Live Scan <input type="checkbox"/> Non Live Scan	
Court Case Number WVSP Form 29 Electronic Version 3						116000009151 CASE ID NUMBER	
TYPE OR PRINT LEGIBLY COMPLETED BY ARRESTING OFFICER WITH FINGERPRINTS AS REQUIRED BY LAW							
FULL NAME		Last Name	First Name	Middle Name	Alias	Juv. charged as adult	
Myles		Dorian	Kristopher			<input type="checkbox"/>	
Address		Street	City	State	Zip	+4	Weight
19568 Hamburg Street		Detroit	MI	48205			240
							Height
							6 ft. 0 in.
Date of Arrest		Date of Birth		Social Security Number		Sex	Race
01/20/2023		07/21/1998		376-23-4598		Male	Black
Arresting Officer			Officer ID/PID	Law Enforcement Agency			
M.K. Trump			2263	MON METRO DRUG TASK FORCE / WV0311500			
Court of Jurisdiction:		<input type="checkbox"/> MUNICIPAL <input checked="" type="checkbox"/> MAGISTRATE <input type="checkbox"/> CIRCUIT		COUNTY OF ADJUDICATION		ADDRESS OF COURT	
				Monongalia		75 High Street Morgantown, WV 26505	
TO BE COMPLETED BY OFFICER				TO BE COMPLETED BY COURT OF JURISDICTION			
INITIAL CHARGE Filled out by Officer				Charge Changed/Reduced To		FELONY (Check box)	Date of Disposition MM/DD/YYYY
1.	Possession with Intent - Methamphetamine					<input checked="" type="checkbox"/>	Mo Da Yr
2.	Conspiracy					<input type="checkbox"/>	Mo Da Yr
3.						<input type="checkbox"/>	Mo Da Yr
4.						<input type="checkbox"/>	Mo Da Yr
5.						<input type="checkbox"/>	Mo Da Yr
6.						<input type="checkbox"/>	Mo Da Yr
7.						<input type="checkbox"/>	Mo Da Yr
8.						<input type="checkbox"/>	Mo Da Yr
C H A R G E	NO CONTEST PLEA OF GUILTY FOUND GUILTY FOUND NOT GUILTY DISMISSED PER STATE ASSESSED FINE & COST NO PROBABLE CAUSE FUGITIVE FROM JUSTICE			IF COURT ACTION IS TO BIND OFFENDER TO A HIGHER COURT, THEN THE CDR FORM SHALL BE FORWARDED TO THE HIGHER COURT FOR FURTHER ACTION.			
SENTENCE IMPOSED							
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION ONE

STATE OF WEST VIRGINIA,
Plaintiff,

v.

CASE No. 23-M31F-00030

DORIAN MYLES,
Defendant.

**ORDER APPOINTING COUNSEL
FOLLOWING ELIGIBILITY DETERMINATION BY PUBLIC DEFENDER**

An affidavit has been filed herein reciting that Dorian Myles is financially unable to employ counsel for representation in certain proceedings before this Court. After reviewing the eligibility determination made by the Public Defender pursuant to W. Va. Code §29-21-1, et seq., the Court is of the opinion the eligibility requirements of West Virginia Code §29-21-1, et seq., are satisfied. However, the Public Defender has informed this Court of a conflict of interest within his office. Accordingly, the Court

ORDERS that Ramsey Jurgensen, a member of the Bar of this Court, whose phone number is 304-247-5800, be appointed as attorney for Dorian Myles in the above-entitled proceeding. A hearing is set for _____.

The attorney's representation shall continue through any applicable appeal process. Appointed counsel has no obligation to represent the Defendant in any *habeas corpus* proceeding. The Defendant is obligated to request representation with regard to any *habeas corpus* proceeding.

The Clerk of the assigned Court shall provide true copies of this Order to the appointed counsel, Seventeenth Judicial Circuit Public Defender Corporation, the Monongalia County Prosecuting Attorney, and to the Defendant.

ENTERED January 31, 2023

Susan B. Tucker
Honorable Susan B. Tucker
Judge, Seventeenth Judicial Circuit

SUPREME COURT OF APPEALS OF WEST VIRGINIA
AFFIDAVIT: ELIGIBILITY FOR APPOINTED OR PUBLIC DEFENDER COUNSEL

NAME: Dorian Myles
ADDRESS: 19569 Hambourg St
Albort MT 26205

CONTACT PHONE: (586) 360-0312
DATE OF BIRTH: 07-21-98
SOCIAL SEC. #: 4598

Conflict
1-30-23
JMH

CASE NO.(S) _____ COURT: MAGISTRATE [] CIRCUIT [] COUNTY [] SUPREME []

CHARGES: _____
CASE TYPE: FELONY [] MISDEMEANOR [] PROBATION/REVOC [] JUVENILE [] MENTAL HYGIENE []
ABUSE & NEG [] EXTRADITION [] CONTEMPT [] OTHER-SPECIFY: _____

BOND AMOUNT: \$ _____
DO YOU PLAN TO HIRE PRIVATE COUNSEL? YES [] NO []
WERE YOU ABLE TO MAKE BOND? YES [X] NO []
HAVE YOU TRIED TO HIRE PRIVATE COUNSEL? YES [] NO [X]
RESULT: _____

GROSS MONTHLY INCOME from ALL Sources:

Employer \$ _____
Spouse's Employment \$ _____
2nd Job \$ _____
Self-employment \$ _____
Public Assistance \$ _____
Food Stamps \$ _____
Unemployment Benefits \$ _____
Disability Benefits \$ _____
(Workers' Comp/VA/Social Security)
Social Security/SSI \$ _____
Alimony/Child Support Recvd \$ _____
Pensions \$ _____
Rental Income \$ _____
Interest \$ _____
Dividends \$ _____
Annuities \$ _____
Odd Jobs \$ _____
Other \$ _____
(Explain) Unemployed

TOTAL ASSETS:

Cash \$ _____
Checking/Savings Accounts \$ _____
Monies Owed to You \$ _____
Tax Refunds Due \$ _____
Value of Real Estate \$ _____
(other than your residence)
Stocks \$ _____
Bonds \$ _____
Notes \$ _____
Other \$ _____
(Explain) Unemployed
TOTAL ASSETS \$ _____

TOTAL MONTHLY EXPENSES:

Rent/Mortgage \$ _____
Car Payments \$ _____
Loan Payments \$ _____
Utilities \$ _____
(gas/elect/phone/water/sewage/heat)
Job-Related Expenses \$ _____
(uniform/transportation/protective
equipment/insurance premiums/
child care/health care)
Alimony \$ _____
Child Support \$ _____
TOTAL MONTHLY EXPENSES \$ _____

ONE - TIME EXPENSES:

Other One-Time Debts
You Currently Owe \$ _____
(medical bills/Car/Home Repairs)
(Explain) None

MONTHLY TOTAL (all Sources) \$ 0

NAMES OF DEPENDANTS SUPPORTED BY YOU:

LAST NAME	FIRST NAME	RELATIONSHIP	AGE	DISABILITIES
<u>Daniels</u>	<u>Takeulsson</u>	<u>M. Gr</u>		

TOTAL NUMBER OF DEPENDANTS YOU SUPPORT: _____

WARNINGS!

(1) False Swearing may Result in Criminal Prosecution; (2) The Information in This Affidavit is NOT Confidential and May Be Made Available To Other Persons!

I understand that by Court Order as a condition of probation or otherwise, I may be held responsible for repayment of court costs and the cost of my attorney to the extent determined to be reasonable in relation to my financial circumstances, and that such court order will become a valid judgement against me until paid.

DATE: 1-30-23

SIGNATURE: _____

Taken, subscribed, and sworn or affirmed before me by Dorian Myles this 30 day of January in MM County, WV

1/30/23 JMH

IN THE MAGISTRATE COURT OF MONONGALIA COUNTY, WEST VIRGINIA

State of West Virginia

Case No.: 23-M31F-00030

v.

DORIAN K MYLES

Defendant (Full Name)

Misdemeanor / Felony

XXX-XX-4598

07/21/1998

M F

Social Security Number

Date of Birth

Gender

MAGISTRATE COURT JAIL RELEASE ORDER

The Court ORDERS release of the defendant from the WV Division of Corrections and Rehabilitation (WVDCR) for the following reason:

Bail has been posted on the following charges:

Hearing Date: _____

1) POSSESSION WITH INTENT (METII.) 2) CONSPIRACY

Charges dismissed as to Case No.(s):

[List dismissed case number(s) and charge(s)]

To be released to:

SSEF
Individual/Agency Name

on

1/27/23
Date

at

4:00
Time

a.m. / p.m.

Other (specify):

The Magistrate, Magistrate Assistant and /or Magistrate Court Clerk shall provide a copy of this Temporary Jail Release Order to the appropriate WVDCR Facility by facsimile and /or e-mail.

1/27/23
(Date)

3:40 P
(Time)

[Signature]
Magistrate's Signature

Received and executed by

Officer Taking Custody / Jail Officer

Date

Time

MAGISTRATE COURT OF MONONGALIA COUNTY, WEST VIRGINIA

Out-of-County Warrant:

State of West Virginia

Case No.: 23-M31F-00030

v.

DORIAN K MYLES

Defendant (Full Name)

XXX-XX-4598

07/21/1998

Social Security Number

Date of Birth

19568 HAMBURG ST

MI M420149478574

Address

Driver's License / Identification Number

DETROIT MI 48205

313-523-8209

City, State, & Zip Code

Phone Number(s)

CRIMINAL BAIL AGREEMENT: CASH OR RECOGNIZANCE

WV Code: Cash Bond [§ 62-1C-12], P.R. [§ 62-1C-1a and 4], 10% Cash Bond [Trial Ct. Rule 31.01], Surety Company [§ 62-1C-4]

A. AMOUNT OF BAIL: The defendant having been charged with the Misdemeanor Felony Offense of 1) POSSESSION WITH INTENT (METH.) 2) CONSPIRACY

and having a right to bail, this Court hereby sets bail for the defendant as follows: \$50,000 / 5% \$12.00 L.F.

If real property is used as security, a justification of surety IS or IS NOT required.

B. TERMS AND CONDITIONS FOR RELEASE ON BAIL

If admitted to bail, the defendant understands and agrees

1. to be present in person in the Magistrate Court of Monongalia County on the 30th day of JANUARY, 2023, at 10:30 N a.m. / p.m.,

or to be set as specified in a Notice of Hearing that will be mailed to the above address;

2. to be present in person at any other proceeding(s) concerning the above charge(s) and to obey any notice, process, or order issued by this Court, or the Circuit Court, until either Court has disposed of all matters with respect to the bail granted;

3. to appear and begin serving jail or prison time as ordered by the disposing Court if that Court renders a judgment of guilt on the offense(s) charged and imposes a penalty of incarceration;

4. to inform the Court immediately of any change of name, address, or telephone number;

5. may may not leave the State of West Virginia without written approval by this Court;

6. not to violate any state or federal laws;

7. to have no direct or indirect physical or verbal contact with _____ in this matter; alleged victim(s)

8. to comply with the following additional condition(s) of this bail: _____

The defendant also understands and agrees that, if he or she is admitted to bail and does not fulfill the terms and conditions above, the full bail amount is subject to forfeiture and may be increased; that other penalties for violation of such terms and conditions may be imposed; and that, if the defendant fulfills the terms above, the surety will be released and the cash deposit returned, if appropriate, or the recognizance satisfied.

01/20/2023

Date

Defendant's Signature

Date

Magistrate's Signature

MCCRBA Rev. 10/2020 (previously SC1-M105) Criminal Bail Agreement: Cash or Recognizance

WVSCA Approved: 04/18/2013; Docket Code(s): MBOND / MBONI

Case No.: 23-M31F-00030

C. CONSENT TO APPLY DEPOSIT:

By signing below, I acknowledge that bail I have posted or secured may be subject to forfeiture if the defendant willfully fails to appear.

I agree or do not agree that the funds I have deposited may be used to cover restitution, court costs, fees, and fines if the Court renders a judgment of guilt against the defendant or the payment of restitution, court costs, fees, and fines are otherwise lawfully required.

Other Depositor or Surety Information:

Willards Bail Bonding
Depositor / Surety (Full Name)
214 Adams Street
Address
Fairmont, WV 26554
City, State, & Zip Code
301367-9190
Phone Number(s)
XXX-XX-
Social Security Number

01/20/2023

Date

Jack Hadohy
Other Depositor or Surety Signature(s), if any

Other Depositor or Surety Signature(s), if any

D. ADMISSION TO BAIL

Accordingly, the Court hereby approves bond for the defendant and ORDERS the defendant's continued freedom or release from custody.

Acknowledged before me this

1/25/23 3:30P
(Date and Time)

[Signature]
Magistrate's Signature

01/20/2023

Date

Defendant's Signature

TX Result Report

P 1
 01/27/2023 16:26
 Serial No. A79M011034352
 TC: 159458

Addressee	Start Time	Time	Prints	Result	Note
913048732957	01-27 16:25	00:00:16	001/001	OK	

Note TMR:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX, DPE:page separation TX, MIX:Nixed Original TX, CALL:Manual TX, CSAC:CSAC, FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, Sp:Special Original, FCODE:F-code, RTX:RTX, RLV:Relay, MEX:Confidential, BUL:Bulletin, SIP:SIP Fax, IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF, TEL: AX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer, RSP: Receipt Refused, BUS: Busy, M-Full: Memory Full, LOUR: Receiving length over, POU: Receiving page over, FIE: File Error, DC: Decode Error, MDN: MDN Response Error, DSN: DSN Response Error, PRINT: Compulsory Memory Document Print, DEL: Compulsory Memory Document Delete, SEND: Compulsory Memory Document Send.

IN THE MAGISTRATE COURT OF MONONGALIA COUNTY, WEST VIRGINIA

State of West Virginia

Case No.: 23-M31F-00030

v.

DORIAN K MYLES

Defendant (Full Name)

XXX-XX-4598

07/21/1998

M / F

Misdemeanor / Felony

Social Security Number

Date of Birth

Gender

MAGISTRATE COURT JAIL RELEASE ORDER

The Court ORDERS release of the defendant from the WV Division of Corrections and Rehabilitation (WVDCR) for the following reason:

Bail has been posted on the following charges:

Hearing Date: _____

1) POSSESSION WITH INTENT (METH.) 2) CONSPIRACY

Charges dismissed as to Case No.(s):

[List dismissed case number(s) and charge(s)]

To be released to: S&F on 1/27/23 at 4:00 a.m. / p.m.

Individual/Agency Name

Date

Time

Other (specify):

The Magistrate, Magistrate Assistant and /or Magistrate Court Clerk shall provide a copy of this Temporary Jail Release Order to the appropriate WVDCR Facility by facsimile and/or e-mail.

1/27/23
 (Date)

3:40 P
 (Time)

[Signature]
 Magistrate's Signature

Received and executed by

Officer Taking Custody / Jail Officer

Date

Time

FILED

**IN THE UNITED STATES DISTRICT COURT FOR THE MAY 02 2023
NORTHERN DISTRICT OF WEST VIRGINIA**

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

UNITED STATES OF AMERICA,

Criminal No. 1:23 Cr 21 TSK/mJA

v.

Violations: 18 U.S.C. § 2
21 U.S.C. § 841(a)(1)
21 U.S.C. § 841(b)(1)(C)
21 U.S.C. § 846

**DORIAN MYLES,
JOHN THOMAS,
SHAKUR JONES, and
NOLAN EICKLEBERRY,**

Defendants.

INDICTMENT

The Grand Jury charges that:

COUNT ONE

(Conspiracy to Distribute Controlled Substances)

From in or about September of 2022, to on or about January 20, 2023, in Monongalia County, in the Northern District of West Virginia, and elsewhere, defendants, **DORIAN MYLES, JOHN THOMAS, SHAKUR JONES, and NOLAN EICKLEBERRY**, and others did knowingly and intentionally combine, conspire, confederate, agree and have a tacit understanding to violate Title 21, United States Code, Section 841(a)(1). It was a purpose and object of the conspiracy to possess with intent to distribute and to distribute methamphetamine, cocaine base, also known as “crack,” and fentanyl, all Schedule II narcotic controlled substances, in violation of Title 21, United States Code, Sections 841(b)(1)(C), and 846.

COUNT TWO

(Distribution of Methamphetamine)

On or about September 28, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **JOHN THOMAS**, did unlawfully, knowingly, intentionally, and without authority distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in exchange for a sum of United States currency, in violation of Title 21, United States Code, Sections 841(a)(1), and 841(b)(1)(C).

COUNT THREE

(Possession with Intent to Distribute Fentanyl)

On or about November 10, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **JOHN THOMAS**, did unlawfully, knowingly, intentionally, and without authority possess with intent to distribute a mixture and substance containing a detectable amount of fentanyl, a Schedule II narcotic controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1), and 841(b)(1)(C).

COUNT FOUR

(Possession with Intent to Distribute Cocaine Base)

On or about November 10, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **JOHN THOMAS**, did unlawfully, knowingly, intentionally, and without authority possess with intent to distribute a mixture and substance containing a detectable amount of cocaine base, also known as “crack,” a Schedule II narcotic controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1), and 841(b)(1)(C).

COUNT FIVE

(Distribution of Fentanyl)

On or about November 30, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **DORIAN MYLES**, did unlawfully, knowingly, intentionally and without authority distribute a mixture and substance containing a detectable amount of fentanyl, a Schedule II narcotic controlled substance, in exchange for a sum of United States currency, in violation of Title 21, United States Code, Sections 841(a)(1), and 841(b)(1)(C).

COUNT SIX

(Distribution of Fentanyl)

On or about December 2, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **DORIAN MYLES**, did unlawfully, knowingly, intentionally and without authority distribute a mixture and substance containing a detectable amount of fentanyl, a Schedule II narcotic controlled substance, in exchange for a sum of United States currency, in violation of Title 21, United States Code, Sections 841(a)(1), and 841(b)(1)(C).

COUNT SEVEN

(Aiding and Abetting the Distribution of Fentanyl)

On or about December 22, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **JOHN THOMAS**, aided and abetted by defendant **DORIAN MYLES**, did unlawfully, knowingly, intentionally, and without authority distribute a mixture and substance containing a detectable amount of fentanyl, a Schedule II narcotic controlled substance, in exchange for a sum of United States currency, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT EIGHT

(Aiding and Abetting the Distribution of Methamphetamine)

On or about December 22, 2022, in Monongalia County, in the Northern District of West Virginia, defendant **JOHN THOMAS**, aided and abetted by defendant **DORIAN MYLES**, did unlawfully, knowingly, intentionally, and without authority distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in exchange for a sum of United States currency, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT NINE

(Aided and Abetting the Distribution of Methamphetamine)

On or about January 19, 2023, in Monongalia County, in the Northern District of West Virginia, defendant **DORIAN MYLES**, aided and abetted by defendant **NOLAN EICKLEBERRY**, did unlawfully, knowingly, intentionally, and without authority distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in exchange for a sum of United States currency, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT TEN

(Possession with Intent to Distribute Methamphetamine)

On or about January 19, 2023, in Monongalia County, in the Northern District of West Virginia, defendants **DORIAN MYLES, SHAKUR JONES, and NOLAN EICKLEBERRY**, did unlawfully, knowingly, intentionally, and without authority possess with intent to distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

A true bill,

/s/ _____
Grand Jury Foreperson

/s/ _____
WILLIAM IHLENFELD
United States Attorney

Zelda E. Wesley
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

Case No. 23-30272
Originating No. 23CR21

DORIAN KRISTOPHER MYLES,

Defendant.

_____ /

GOVERNMENT'S PETITION
FOR TRANSFER OF DEFENDANT TO
ANOTHER DISTRICT AND SUPPORTING BRIEF

Pursuant to Rule 5(c)(3)(D) of the Federal Rules of Criminal Procedure, the United States of America hereby petitions the Court for an order transferring defendant **DORIAN KRISTOPHER MYLES** to answer charges pending in another federal district, and states:

1. On **June 29, 2023**, the defendant was arrested in the Eastern District of Michigan in connection with a federal arrest warrant issued in the **Northern District of West Virginia based on an Indictment. The defendant is charged in that district with violating 21 USC Sections 846 and 841(a)(1) – Conspiracy to Distribute Controlled Substances, Distribution of Fentanyl,**

**Aiding and Abetting Distribution of Fentanyl, Aiding and Abetting
Distribution of Methamphetamine and Aiding and Abetting Possession with
Intent to Distribute Methamphetamine.**

2. Rule 5 requires this Court to determine whether the defendant is the person named in the arrest warrant, Fed. R. Crim. P. 5(c)(3)(D)(ii); whether the defendant is entitled to a preliminary hearing, Fed. R. Crim. P. 5(c)(3)(C); and whether the defendant should be detained, Fed. R. Crim. P. 5(d)(3).

WHEREFORE, the government requests this Court to conduct transfer proceedings in accordance with Rule 5 of the Federal Rules of Criminal Procedure.

Respectfully submitted,

Dawn N. Ison
United States Attorney

s/ Michael Taylor
MICHAEL TAYLOR
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
(313) 226-9100

Dated: June 29, 2023

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,
Plaintiff,

-v-

Case No. 23-30272

Dorian Myles,
Defendant.

DETENTION HEARING
June 30, 2023

BEFORE THE HONORABLE ANTHONY P. PATTI
United States Magistrate Judge

Theodore Levin United States District Courthouse
231 West Lafayette Boulevard
Detroit, Michigan

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL TAYLOR
United States Attorney's Office
211 West Fort Street, Suite 2001
Detroit, Michigan 48226

FOR THE DEFENDANT: RHONDA BRAZILE
Federal Community Defender
613 Abbott Street, Fifth Floor
Detroit, Michigan 48226

TRANSCRIBED BY: Rene L. Twedt, CSR-2907, RDR, CRR, CRC
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Transcript produced from digital recording.)

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1 Detroit, Michigan

2 June 30, 2023

3 1:55 p.m.

4 * * *

5 THE CLERK: Court calls Case Number 23-30272,
6 United States of America versus Dorian Myles.

7 MR. TAYLOR: Thank you. Michael Taylor on behalf
8 of the United States.

9 MS. BRAZILE: Good afternoon, your Honor. Rhonda
10 Brazile, appearing on behalf of Mr. Dorian Myles.

11 THE COURT: Okay. And you're Dorian Myles?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. We met yesterday.

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Let me start -- I know we're going
16 to have a detention hearing today, but I want to start with
17 recognizing that I have received a written waiver which
18 indicates that the identity hearing has been -- is being
19 waived and that the defendant has been advised that he has
20 no right to a preliminary hearing.

21 So is that correct?

22 MS. BRAZILE: That is correct, your Honor.

23 THE COURT: Okay. All right.

24 Mr. Myles, is that correct that you're waiving your
25 right to an identity hearing?

1 THE DEFENDANT: Yes.

2 THE COURT: And is that your signature where it says
3 "defendant" on that waiver?

4 THE DEFENDANT: Yes.

5 THE COURT: And you conferred with Ms. Brazile and
6 got whatever advice you thought was necessary in making that
7 decision?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. Okay. So the record will reflect
10 that the identity hearing was waived. I will go on, then, to
11 the detention hearing.

12 So how does the government wish to proceed?

13 MR. TAYLOR: Your Honor, I would proceed by proffer.

14 First and foremost, I would submit the indictment
15 issued by a grand jury in the Northern District of West
16 Virginia and the Pretrial Services report that I'm sure the
17 Court has in front of it.

18 I would start by noting that because of the nature of
19 the offenses, distribution of fentanyl and methamphetamine and
20 the aiding and abetting charges, that this is a presumption of
21 detention case.

22 THE COURT: All right. And you agree it's a
23 presumption, Ms. Brazile?

24 MS. BRAZILE: Yes, your Honor.

25 THE COURT: Okay. All right.

1 MR. TAYLOR: I obviously understand that there are a
2 number of factors that go into considering that presumption,
3 but the facts, I'm going to start with the Pretrial Services
4 report outlining why I think there are some concerns that
5 should be noted there and then --

6 THE COURT: Let me -- can I just stop you for one
7 second? Because I just want to get two clarifications on the
8 Pretrial Services report before I forget.

9 MR. TAYLOR: Yes.

10 THE COURT: And then we will have that as a base.
11 So the Pretrial Services officer, could you identify
12 yourself? I just have two quick questions.

13 PRETRIAL SERVICES OFFICER: Yes, sir. David Clifford
14 with Pretrial Services.

15 THE COURT: All right. Mr. Clifford, the last
16 offense in the criminal history, which is for a matter that
17 occurred January 20, 2023, in Monongalea County Magistrate
18 Court, is that the instant offense or is that something else?

19 PRETRIAL SERVICES OFFICER: I'm not sure, your Honor.
20 Looking at the federal charges, it could be or could not.
21 I think the government might have a better understanding
22 of that.

23 THE COURT: Okay. Then I'll ask the government to
24 clarify that.

25 My other question for you, Mr. Clifford, is at the

1 time of the instant offenses was the defendant on probation or
2 supervised release of some sort?

3 PRETRIAL SERVICES OFFICER: Yes, it appears he was,
4 your Honor.

5 THE COURT: Okay. Probation?

6 PRETRIAL SERVICES OFFICER: Yes.

7 THE COURT: Okay. Thank you.

8 PRETRIAL SERVICES OFFICER: Thank you.

9 THE COURT: Okay. Government may proceed.

10 MR. TAYLOR: So just to clarify those two points,
11 your Honor, first, the indictment, I don't know if the Court
12 has a copy. Maybe it would be meaningful.

13 THE COURT: Yes.

14 MR. TAYLOR: Okay. The offense dates listed in the
15 federal indictment encompass from September of 2022 through
16 the January 20th date, so I believe that the state charges
17 there in the Pretrial Services criminal history report
18 encompasses behavior that is not all-inclusive of the federal
19 charges, but may be part of that string of activities that the
20 federal government has charged and also is actively pending in
21 the state of West Virginia.

22 THE COURT: So some of the charged activity occurred
23 while on probation?

24 MR. TAYLOR: Yes.

25 THE COURT: Okay.

1 MR. TAYLOR: So the -- the Count 1 of the indictment
2 alleges conspiracy to distribute controlled substances from
3 September 2022 to January 20, 2023. And so I suppose that
4 does answer both of the Court's questions as to that point.

5 THE COURT: Okay. Well, it doesn't answer my
6 question as to whether the last offense listed in the
7 report is the instant offense. In other words --

8 MR. TAYLOR: It's -- so the instant offense
9 encompasses from that date range, and so I believe the state
10 charged offense there is where Mr. Myles was initially
11 apprehended in West Virginia before he was released by the
12 state, and then he hasn't been in contact with the federal
13 authorities yet, so this is his initial appearance in federal
14 court.

15 THE COURT: Okay. But that West Virginia state court
16 charge is a pending charge, it's not something that got turned
17 into the federal charge, is what I'm trying to understand.
18 The same activity or different activity?

19 MR. TAYLOR: I believe it's overlapping activities,
20 but because of the expansive nature of the federal charges I
21 don't know that the state is dismissing their charges in favor
22 of federal prosecution or anything like that.

23 THE COURT: You say overlapping, meaning some of it
24 is the same?

25 MR. TAYLOR: I think so, based on my information

1 and based on what's in the indictment, yes.

2 THE COURT: All right. I was just trying to
3 understand whether those state charges are just a completely
4 different set of events and then there is this federal set of
5 events or those are the same.

6 MR. TAYLOR: I hope to be able to clarify that when I
7 get through the rendition of the sort of attendant facts of
8 this case so that it chronologically will flow.

9 THE COURT: Because very often when I'm looking at
10 one of these reports, the last offense charged, there is a
11 line that says this relates to the instant offense.

12 MR. TAYLOR: For instance, carrying a concealed
13 weapon in Third Circuit Court would be our felon in possession
14 charge.

15 THE COURT: Exactly.

16 MR. TAYLOR: I think that that is probably what has
17 happened here, but my understanding is that the State of
18 West Virginia is maintaining their charges at this point in
19 time as it pertains to the offense listed on that date. I
20 don't --

21 THE COURT: Okay.

22 MR. TAYLOR: I'm not aware of that being dismissed in
23 favor of federal prosecution.

24 THE COURT: Okay. Thank you.

25 MR. TAYLOR: So I'll begin with the Pretrial Services

1 report. I note that they recommend a bond with conditions.
2 The government is maintaining its request for detention here.

3 And in light of the presumption, I think there are
4 some facts here that are -- should be noteworthy.

5 Just following through the report as it's written,
6 first I noted that the defendant is unemployed but indicates
7 that he can make up to \$500 selling music on YouTube some
8 months.

9 I think that not having stable employment or
10 verifiable employment and having a cash income when the
11 allegations are participating in a drug-trafficking
12 organization is not a type of employment that would assuage
13 the Court's concerns if there is sort of a legitimate basis
14 for employment going on that's going to occupy his time in
15 a way that will keep him out of criminal activity.

16 Next --

17 THE COURT: Okay. So if I required in a bond that
18 he has certifiable third-party employment --

19 MR. TAYLOR: That might be something that would
20 assist with that issue, but again, I'm just pointing it out to
21 note that it's not as though, for instance, if somebody has a
22 verified, established place of employment that they have a
23 tie to the community in that fashion that would be in danger
24 should they flee or commit an offense or violate bond in any
25 way.

1 When you're just getting cash income, that's not the
2 type of stakes that would represent an incentive to maintain
3 compliance with bond conditions.

4 THE COURT: Okay.

5 MR. TAYLOR: I think more importantly to the Court's
6 ultimate determination of bond as it pertains to danger or
7 risk of flight and dangerousness, I note that Mr. Myles's
8 criminal history is not very long, although I think that's
9 probably attributable to the fact that he is a relatively
10 young man. But what I did note is that his criminal history
11 is replete with failing to appear in court.

12 So again, his 2015 case when he was 17, you know, I
13 think that some of that might be understandable when you're
14 17, not having a great grasp on the importance of making it to
15 court. But he failed to appear in that case, picked up on a
16 bench warrant, and then failed to appear for a pretrial after
17 he was picked up on a bench warrant.

18 That case was ultimately dismissed because the
19 complaining witness failed to appear, but it doesn't bode well
20 for his compliance.

21 THE COURT: Sure. I saw that, and we have got four
22 failures to appear between 2016 and 2018 and none since;
23 correct? So none in the last five years.

24 MR. TAYLOR: So what is more concerning --

25 THE COURT: I mean, is that correct?

1 MR. TAYLOR: I think that is correct.

2 THE COURT: Okay.

3 MR. TAYLOR: And what is more concerning about the
4 last five years is that beginning in 2017 he was arrested for
5 carrying a concealed weapon.

6 He received Holmes Youthful Trainee Act probation and
7 was sentenced to 18 months of probation starting on November
8 27, 2017. He wasn't discharged from that term of probation
9 until February 27, 2020, which is obviously more than 18
10 months, indicating that he either was extended on that
11 probation or had absconded.

12 THE COURT: But we don't have any indication of that.

13 MR. TAYLOR: We don't have any indication, but what
14 we do see from his criminal history is that following the
15 imposition of that sentence he had a failure to appear in that
16 driving while license suspended case, which is the next case.

17 But more importantly, the offense date of the last
18 box on that case, another carrying concealed weapons arrest,
19 was on December 9, 2020, which obviously did predate his
20 discharge from probation on that prior carrying a concealed
21 weapon case.

22 That was pled down to a misdemeanor in April of 2022,
23 and he was sentenced to 18 months probation for that offense
24 in April 2022.

25 And as the Court I think heard earlier, the offense

1 conduct in the West Virginia indictment began in September,
2 five months later. So he would have been on that term of
3 probation to the Third Circuit Court at the time he was in
4 West Virginia and distributing and conspiring to distribute
5 those controlled substances, as the grand jury there found
6 there was probable cause to believe.

7 So that sort of leads us into how Mr. Myles came to
8 the attention of federal authorities. And so I corresponded
9 with the United States Attorney's Office for the Northern
10 District of West Virginia to learn that information.

11 Essentially, Mr. Myles came to the attention of
12 authorities because the groups that he was confederating with
13 were involved in a violent conflict that took place here in
14 the City of Detroit.

15 Mr. Myles, which was verified by audio recordings of
16 calls he participated in from jail, was attendant or present
17 in a vehicle when a retaliatory shooting took place that took
18 the life of a four-year-old here in the City of Detroit.

19 From there, federal investigators began surveilling
20 the group and tailed them to West Virginia, where they were
21 able to start surveilling their drug-trafficking organization,
22 and by using confidential informants and law enforcement
23 sources, began to surveil, follow, and identify and locate the
24 drug-trafficking organization and the residence that Mr. Myles
25 was using as a base.

1 From there the undercover federal agent arranged
2 with and met with Mr. Myles and purchased 114 grams of
3 methamphetamine from him directly. Then the agents followed
4 Mr. Myles to the stash house where they set up surveillance
5 and obtained a federal search warrant for that residence.

6 However, when the agents attended -- attempted to
7 execute that search warrant they -- they learned that Mr.
8 Myles actually had a countersurveillance camera system set up
9 to detect the officers that were outside. He utilized that
10 system to essentially forecast the execution of the search
11 warrant and attempted to escape out of a back door and had to
12 be pursued on foot where he was ultimately captured and
13 returned.

14 From there, the agents searched the residence that
15 Mr. Myles was using and located 1,046 grams of methamphetamine
16 in the residence.

17 Throughout the course of that, those months of
18 surveillance and purchases, Mr. Myles and others that he was
19 working with and were working out of that residence also sold
20 fentanyl and methamphetamine, as is charged in the indictment
21 there.

22 And so the concerns, obviously, in this case, given
23 his previous history of noncompliance and the dangerousness
24 of distributing methamphetamine and fentanyl, I think
25 particularly heightened in Morgantown, West Virginia, where I

1 think the Court has probably seen countless indictments that
2 discuss drug-trafficking operations between Detroit and
3 Morgantown --

4 THE COURT: The amazing thing is, I have been on
5 vacation there. I didn't know about this --

6 MR. TAYLOR: Yes.

7 THE COURT: -- underworld of drugs there.

8 MR. TAYLOR: It's -- I don't know that I have seen
9 the words Morgantown and Detroit on a piece of paper that also
10 didn't mention drug trafficking in quite some time.

11 But obviously to that community where these types
12 of drugs are coming in is viewed with a heightened sense of
13 dangerousness.

14 The quantities, the amounts that are being
15 distributed or possessed with intent to distribute here are --
16 you know, in the residence alone, not counting what the --
17 what he sold to the undercover agents is more than two pounds
18 of methamphetamine on hand, ready for distribution.

19 Coupled with the fentanyl that was also included in
20 some of the previous purchases, we're talking about very
21 lethal drugs that are being distributed to that community.

22 The law enforcement officers, through their
23 surveillance and interviewing the sources that are attendant
24 to the purchases and the controlled purchases that were used,
25 also indicate that Mr. Myles is routinely observed by those

1 law enforcement sources to carry firearms during his
2 drug-distribution activities.

3 Although obviously he was not caught with a firearm
4 on the date that he was arrested, I think that that is a
5 concern given some of his, at least, tertiary involvement in
6 some of the retaliatory shootings that we discussed earlier.

7 So primarily, in this case, I think we have a
8 track history of poor attendance at scheduled court dates,
9 overlapping violations and crimes while under supervision,
10 and violation of the terms of those supervisions.

11 Not -- I recognize, residentially, strong ties to
12 the Detroit community, but as far as anchors in terms of
13 employment, really, none there.

14 And obviously he was in West Virginia long enough for
15 them to surveillance him for the months of September through
16 January of this year where he maintained a drug-trafficking
17 operation down there, and so I don't know that the ties to
18 this community are so strong that he could not be expected to
19 flee despite some of the concerns that I have already raised.

20 And so, obviously, both for under the preponderance
21 standard for risk of flight and the clear and convincing
22 standard, given the -- I think the unique dangerousness and
23 the shear quantities of the types of drugs that are being
24 used here represents an unreasonable risk of danger to the
25 community at large, and so the government is requesting

1 detention pending Mr. Myles's transfer to the Northern
2 District of West Virginia.

3 THE COURT: Okay. Thank you.

4 Ms. Brazile?

5 MS. BRAZILE: Thank you, your Honor. I do want to
6 start with your Honor's questions, particularly the question
7 about whether the state matter that is reflected in the
8 Pretrial Services report is related to this federal matter.
9 It is, your Honor.

10 In fact, Mr. Myles was detained and he was released
11 by the state court for the very similar conduct and for the
12 conduct that supported the state charges which also support
13 the federal warrant.

14 It is -- as we commonly know, the feds picked up the
15 state case. And yes, we do not know whether or not the state
16 case is going to be dismissed, dismissed in lieu of this, but
17 we do know that the state court did give Mr. Myles a bond.
18 They did review the history that this Court has before it as
19 well and gave him a bond for which Mr. Myles reported as
20 directed for the past five, six months.

21 Mr. Myles does have stable residence and was
22 employed, your Honor, just as recently as April of 2023 when
23 his employment ended. He is very confident that he is able to
24 secure employment if the Court directs that, of course. He
25 would do that anyway.

1 He does have the ability to support himself when
2 he creates content for other users, what the young people
3 commonly refer to as making beats. He makes soundtracks for
4 other people and sells those soundtracks.

5 But he is able to gain other employment. He was
6 working as a bathtub glazer, I don't know how to describe it,
7 where he was laminating bathtubs in residences and in other
8 businesses or other areas that needed that reglazing taking
9 place, and he was working with a family member at that time.
10 Mr. Myles, as I have already said, is able to secure
11 employment.

12 He also has a very stable residence here in the
13 City of Detroit. In fact, that is where they found him,
14 your Honor. When they arrested him on this matter, they
15 went to his home. That's exactly where he was, which was the
16 bond address that he had given to the courts in West Virginia.
17 So they knew exactly where to get him and he was there. He
18 had not been in any manner indicating that he would flee, and
19 he had been reporting as directed on that bond.

20 I think that that information is consequential to
21 looking at his past history which dates all the way back to
22 when he was a teenager, your Honor. 2015 is over seven years
23 ago.

24 And here you have Mr. Myles's history reflecting
25 mostly misdemeanor allegations and convictions. The one that

1 was cited by the government in 2017 when he was 19 where he
2 received HYTA probation, it says he was discharged from that
3 probation. There is no indication of what his status was or
4 how he conducted himself on that probation, but Mr. Myles
5 indicates that his court date kept getting adjourned.

6 And if you note that date, your Honor, that was about
7 the time of the beginning of our pandemic. And so he had had
8 extended court dates, and it was finally discharged in
9 February of 2020.

10 After that, your Honor --

11 THE COURT: He was discharged in February 2020?

12 MS. BRAZILE: He was discharged.

13 THE COURT: Right. But his court dates --

14 MS. BRAZILE: Were before that, your Honor. They
15 were --

16 THE COURT: They would have had nothing to do with
17 COVID, then, because COVID shutdown didn't happen until March
18 or March or April.

19 MS. BRAZILE: Yeah, about that time. About February
20 or March.

21 But he had been on probation. There's no indication
22 that he had violated, no indication he was not reporting. And
23 Mr. Myles indicates that his court date kept getting adjourned
24 for the final disposition of his HYTA matter, not that he
25 absconded or did anything of any sort.

1 In addition, your Honor, was he on probation during
2 the time of any of the alleged conduct here? It indicates in
3 the report that he was arrested in 2020 and about two years
4 later was finally adjudicated on the felony weapons carrying
5 concealed. It was reduced to a misdemeanor, your Honor, and
6 that probation was a nonreporting probation.

7 So he also did not -- there is no indication that
8 he did not report as directed. And that, the status of that
9 probation case is unknown.

10 But again, all of this was taken into consideration
11 by the judge in the state court matter that was picked up on
12 this very conduct and he was granted a bond at that particular
13 time.

14 Your Honor, we do believe that Mr. Myles has
15 established that there are conditions that can be set. The
16 Pretrial Services report agrees that there are conditions that
17 can be set.

18 We do believe that's sufficient to overcome the
19 presumption that Mr. Myles be able to have a bond with
20 these conditions, he is willing to submit to these conditions,
21 and be allowed to go back to West Virginia on his own
22 recognizance, your Honor.

23 THE COURT: Okay.

24 MS. BRAZILE: Thank you.

25 THE COURT: Thank you.

1 All right. Rebuttal by the government?

2 MR. TAYLOR: Your Honor, based on the Court's
3 questions, I can tell that the Court was able to glean sort of
4 the pattern I was sort of focusing on, which is the violations
5 on a term of probation, not necessarily whether he failed to
6 report as directed.

7 I think that the sort of balancing test the Court has
8 to do here is compare the force of the conditions that you
9 could impose with his willingness to comply with those
10 conditions. And if he is under probation on a conviction and
11 committing new crimes, that's evidence of the likelihood that
12 he may continue to do that behavior here under the Court's
13 conditions.

14 And so then when you're weighing whether there are
15 any types of conditions that could ensure his compliance,
16 seeing a history of unwillingness to comply and unwillingness
17 to stop committing crimes while under supervision is evidence
18 against the force of those conditions, and I think that that
19 weighs in favor of the presumption here that no combination of
20 conditions could ensure his appearance or ensure the safety of
21 the community.

22 With that, I don't have anything else to add.

23 THE COURT: Okay. Thank you.

24 It appears that this indictment came down on May 2 --
25 right? -- 2023?

1 MR. TAYLOR: Yes.

2 THE COURT: Okay. So at that point Mr. Myles had
3 been under supervision or at least on bond with the State of
4 West Virginia court system for a number of months. There is
5 no reported violations.

6 And I think let me just start with making the finding
7 that although there is a presumption in favor of detention in
8 this case, the presumption has been successfully rebutted.

9 That doesn't end the story, of course. We have
10 certain factors we look at.

11 Mr. Myles, I'm going to address you. It's under
12 the Bail Reform Act, Title 18 of the United States Code,
13 Section 3142(g). I look at four factors.

14 Those are, first, the nature and circumstances of the
15 offense charged. I'll just say without -- without berating
16 the point that those are very serious charges, very serious
17 charges, that on arraignment you would learn that you stand to
18 face very seriously long sentences should you be convicted or
19 plead guilty.

20 And the circumstances are -- also weigh against you,
21 because the circumstances indicate large amounts of these
22 drugs being distributed by you. And although you're not
23 charged with having a weapon, the evidence is that you had a
24 weapon when you were distributing the drugs and that you were
25 selling them to undercover individuals as well. So the first

1 factor goes against you.

2 The second factor is the weight of the evidence,
3 and it's the weight of the evidence as to your risk of
4 nonappearance and the weight of the evidence as to
5 dangerousness.

6 I'm going to start with nonappearance. You do have,
7 as I noted, four failures to appear in court, but I also note
8 that they are all between 2016 and 2018, when you were of the
9 ages of 15 to 20, and the last of those was five years ago.
10 So I'm not terribly concerned about your failure to appear
11 in court, because you have had contact with the legal system
12 since then and there has been no indication that you failed to
13 appear.

14 And as your attorney has pointed out, you were right
15 where you were supposed to be when they came to pick you up at
16 the bond address, and you have no failures to appear in the
17 pending West Virginia case, notwithstanding that that's in
18 West Virginia and you are here in Detroit.

19 So I think that while there was a history of you
20 failing to appear, I think looking at the pattern it appears
21 to be that that was when you didn't -- I won't say you didn't
22 know any better, but you were, let's say, acting out of youth
23 and it seems like you have matured in that regard that you
24 know enough to show up for court.

25 You did flee when the law enforcement came to get

1 you. The flight apparently was on foot out of the house.
2 That's not good. It's some evidence of a risk of flight. But
3 I also don't see a high-speed chase or any indication that
4 they had to chase you all over God's creation to find you. It
5 sounds like they arrested you immediately after chasing you.

6 And so I see some risk of nonappearance, but I think
7 that there are conditions that can be formulated to deal with
8 that.

9 If you need to talk to your attorney, I'll pause for
10 a moment.

11 (Discussion held off the record.)

12 MS. BRAZILE: Thank you, your Honor.

13 THE COURT: Anything you need to say, Ms. Brazile,
14 or should I go on?

15 MS. BRAZILE: No, your Honor.

16 THE COURT: Okay.

17 MS. BRAZILE: I don't need to say anything, but yes,
18 you should go on.

19 THE COURT: Okay.

20 But then we look at the weight of the dangerousness
21 and there's definitely danger here. Distribution of
22 methamphetamine is extremely dangerous and distribution of
23 fentanyl probably is even more dangerous, although we're
24 probably splitting hairs because they are both so dangerous
25 and they ruin people's lives and they kill people, although

1 fentanyl seems to do it quicker and almost instantaneously
2 in some cases. Very, very serious matter, and it is very
3 dangerous.

4 When we talk about dangerousness we're not just
5 talking about violence or use of weapons, but we also talk
6 about drugs. And there is Sixth Circuit case law that
7 supports detention for being a drug dealer, specifically
8 thinking of U.S. v. Stone on dangerousness grounds. So the
9 second factor, I would say, is a mixed factor for you.

10 The third factor is the history and characteristics
11 of the person. You have some things that go in your favor
12 there.

13 First of all, do you have family here right now in
14 the courtroom? Please acknowledge if you're his family.

15 I appreciate you being here. That shows that he has
16 got family support, and I'm sure he appreciates that, and it's
17 good to know that you're loved especially when you're in
18 difficult circumstances. So that, that helps.

19 Also, you have strong ties to Detroit. You're not
20 running around the world. That's a good thing.

21 Your employment history is a little spotty lately. I
22 understand you can sell music on YouTube for some months, but
23 \$500 a month is not enough to support some -- support oneself,
24 and, of course, it's also non-verifiable. But you have worked
25 in other jobs, including in security at Ford Field in 2020 and

1 a part-time job at a Whole Foods store in 2018 to 2020. So
2 you definitely have some employment history, and I appreciate
3 that, because I see a number of people here who are your age
4 who have not done anything.

5 We also look at your criminal history. I also note
6 that you had -- do have a history of using some drugs. I
7 think that that can be dealt with with bond conditions through
8 treatment.

9 You do have a failure to appear on a license while
10 suspended from 2018 and these other ones that I have
11 mentioned, but they are remote.

12 As to your criminal history, your attorney is correct
13 that it appears that all of your convictions up to this point
14 have been for misdemeanors. Even though you may have been
15 charged with felonies, they have been reduced down to
16 misdemeanors, except for the HYTA, but the HYTA was discharged
17 from probation. I look at that.

18 And while the prosecutor is correct that the
19 probation seems to have gone longer than it should have, there
20 is no explanation as to why. There is no indication that you
21 in any way violated your probation. I think it would have
22 been noted in this report if you had, and there is no finding
23 by a Court that you violated probation.

24 I don't buy the explanation that COVID had anything
25 to do with it, because you were discharged on February 27,

1 2020, and I can remember very well that I was attending a
2 funeral on -- right around exactly that date, because you
3 still could because we weren't shut down for COVID. That
4 came later.

5 However, there may well have been lots of
6 adjournments that were done by the Court, and as you say, and
7 I'll accept that explanation, just not that it's related to
8 COVID.

9 At any rate, there's no explanation as to why and
10 there is no indication that you were violated with probation.

11 You do have the pending charges in West Virginia, and
12 I asked that question initially about whether they were the
13 same as the federal charges, because if they were different
14 that would count against you. But since they are the same,
15 it's this matter that we're looking at in terms of -- in
16 terms of that. And that's something that the Court finds
17 particularly persuasive.

18 So let me just say this: The third factor, the
19 history and characteristics of the person is a mixed factor
20 for you as well, but you definitely have some things in your
21 favor there.

22 The fourth factor is the dangerous -- danger to the
23 community that would be posed by your release. And one of the
24 things that I'm blessed with in this case is that I have some
25 history of you being on bond, and the history of you being on

1 bond indicates -- first of all, there is no indication of a
2 bond violation in any case you have ever had.

3 In this particular case you were on in -- from
4 January until you were indicted in May and then you were
5 arrested more recently. There is no indication of a bond
6 violation. There is also no indication that you failed to
7 report. You were found where you were supposed to be. And
8 so that all cuts in your favor.

9 I am going to release you on bond. I find that there
10 are conditions that can reasonably assure your appearance and
11 reasonably assure the safety of the community. I'm going to
12 go over with you what the bond conditions will be.

13 First, you are to report to Pretrial Services. That
14 means that you're going to have a Pretrial Services officer
15 who is going to want to communicate with you from time to time
16 or meet with you. You need to meet with them and be in touch
17 as they want you to be, and if you're not, you're going to be
18 picked up, and likely your bond will be revoked.

19 It's a \$10,000 unsecured bond, I should note, which
20 means you owe the government \$10,000 if you violate bond, but
21 you don't have to put up any cash today. But if you violate
22 bond it's going to be reported to the Court and then your bond
23 could be revoked and then you'd be placed in custody through
24 trial. And on top of that, you can be separately charged with
25 an additional federal crime of violating your bond.

1 And I should also add, should you plead guilty or be
2 found guilty and you've violated bond, that will be taken
3 into consideration at sentencing as well and can enhance the
4 sentence. So I hope you've got enough incentive to follow
5 your bond conditions very carefully.

6 Second, you're not to unlawfully possess a narcotic
7 drug or other controlled substance. You have got to stop
8 with the ones you have been using. You can't -- and don't
9 do something you think is more minor like marijuana, because
10 that's illegal under federal law. It will be counted against
11 you as a bond violation notwithstanding that it may be legal
12 here, and I don't know what its status is in West Virginia.

13 Third, you're not to possess a firearm or other
14 dangerous weapon. Stay away from guns and other dangerous
15 weapons.

16 Fourth, you are to submit to drug testing, and I'm
17 going to add the word "mandatory" to treatment, because you
18 do apparently have a drug problem and that needs to be dealt
19 with.

20 Fifth, you are to maintain or continue to seek
21 employment or stay enrolled in school. I'm going to modify
22 that as well. It needs to be employment with a third-party
23 employer, not yourself. I don't want you to be self-employed
24 and have something we can't verify and something that's
25 kind of half in and half out. You need to have an outside

1 employer, and preferably with W-2 wages that we can verify,
2 and/or stay enrolled in school, but I don't see any indication
3 that you're in school right now.

4 Your travel is going to be restricted to the state
5 of -- I'm going to modify that as well. It's going to be
6 Eastern District of Michigan.

7 Are you getting all of this, Mr. Clifford?

8 PRETRIAL SERVICES OFFICER: Yes, sir.

9 THE COURT: Okay. It's going to be Eastern District
10 of Michigan, not the whole state. And the Eastern District
11 of Michigan has certain boundaries that you need to find out
12 about. Ms. Brazile will help you. Your Pretrial Services
13 officer will tell you where they are.

14 But I'll just tell you, you can go a pretty short
15 distance from here and be in bond violation because you would
16 be in the Western District of Michigan. So Lansing is in the
17 Western District of Michigan. Battle Creek is in the Western
18 District. The entire Upper Peninsula is in the Western
19 District. So you need to know where the boundaries are.

20 Don't -- I don't want to get a call saying that you
21 are in Kalamazoo and then you say, "Well, I didn't know that
22 that was outside the Eastern District of Michigan." And I'm
23 going to say, "Tough, you should have known before you moved."
24 But you're not going to be going very far, as you'll see in
25 a minute, because of the tether conditions I'm going to put

1 on you.

2 You're allowed to be in West Virginia for court
3 purposes only, and you're allowed to be at points in between
4 the Eastern District and West -- of Michigan and West Virginia
5 only for purposes of getting to and from court.

6 So if you fly to West Virginia, that's not an issue.
7 If you drive to West Virginia you obviously have to go through
8 Ohio and Pennsylvania. Well, actually, you don't necessarily
9 have to go through Pennsylvania depending on where you enter.

10 But we know when you need to be in court. So, you
11 know, if you're in Pennsylvania and you don't have a court
12 appearance right around that time, there is a problem, unless
13 given consent by Pretrial Services.

14 Seventh, you have to surrender your passport to
15 Pretrial Services by July 31, 2023, and you're not to obtain a
16 new -- any new travel documents. And actually, let's add
17 that, not to obtain any new international travel documents.

18 Eighth, you are to participate in location monitoring
19 of home detention with discretionary leave.

20 I'm going to explain what that means. You are
21 restricted to your residence at all times except for
22 employment, education, religious services, medical, substance
23 abuse, or mental health treatment, attorney visits, court
24 appearances, and court-ordered obligations.

25 Discretionary leave consists of officer-approved

1 schedules that are considered above and beyond what is
2 authorized by the releasing authority that may fall within
3 an officer's discretion.

4 Examples are social and family activities, prosocial
5 activities, events, activities, gym membership, funeral,
6 library, et cetera, but that's up to Pretrial Services. So
7 there is discretion, but the general rule is, you are -- you
8 are restricted to your home except for the things I said,
9 unless you get permission, and that will be spelled out in
10 your bond conditions.

11 Ninth, you are to submit to location monitoring as
12 directed by Pretrial Services and pay all or part of the costs
13 based on your ability to pay, and that will be worked out with
14 Pretrial Services.

15 Tenth, actually, we didn't -- tenth is about not
16 applying for new passports, so I guess we already had that
17 in there.

18 PRETRIAL SERVICES OFFICER: Sorry, your Honor. I --

19 THE COURT: That's okay. They're usually right
20 next to each other, but that's fine. I missed it.

21 Is there anything else the government thinks needs
22 to be added to that?

23 MR. TAYLOR: No other conditions, your Honor.

24 THE COURT: Okay. And Ms. Brazile, are these
25 acceptable to you?

1 MS. BRAZILE: They are, your Honor.

2 THE COURT: Okay. All right. That's going to be
3 the order of the Court. But let me ask you -- well, it's
4 going to be the order of the Court if you tell me first that
5 you understood all these conditions.

6 Did you understand them all?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Can you tell me that you will follow them
9 all?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. I'm going to add one more.

12 You're not to have any contact with the co-defendants
13 in this matter, John Thomas, Shakur Jones, or Nolan
14 Eickleberry.

15 None of them are related; correct, Ms. Brazile?

16 MS. BRAZILE: I don't think so. No.

17 THE COURT: No?

18 MS. BRAZILE: No.

19 THE COURT: Okay. You're not to have any contact
20 with them. This seems to be the source of the trouble that's
21 indicated in the indictment and contact with them will likely
22 result in more trouble or could put you in that position, and
23 I don't want you to be in that position. I want you to be
24 legitimately functioning as a member of society that's not
25 involved in anything that might be drug dealing.

1 If you haven't figured it out already, let me make it
2 clear, the federal government is obviously watching you. So
3 if you think you're going to get away with contact with these
4 people on the sly, it's not going to happen. You are going to
5 get turned in.

6 And when I say contact, I mean direct or indirect.
7 So you can't send messages to them through others. You can't
8 text with them. You can't communicate with them through
9 social media. You can't communicate with them through code.
10 You can't have other people do it, et cetera. It's not just a
11 question of face-to-face contact. I mean any and all contact.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you understand everything I just
15 discussed?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Okay. And can you tell me that you will
18 abide by all of it?

19 THE DEFENDANT: I will abide by all my rules.

20 THE COURT: Okay. All right. And you have proven
21 yourself good to follow bond conditions up to this point.

22 You got that, Mr. Clifford, no contact?

23 PRETRIAL SERVICES OFFICER: Yes, your Honor.

24 THE COURT: Okay. I will add victims to that as
25 well. No contact with co-defendants or victims, since

1 there would be known recipients of the drugs in this case.

2 Do you understand that, Mr. Myles?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Okay. All right. Then you'll sign the
5 bond, and when you do, I'll sign the necessary papers for your
6 release.

7 MR. TAYLOR: Your Honor, I appreciate the Court's
8 complete and considered rendition of bond conditions.

9 I have been asked by the case AUSA in West Virginia
10 to request a stay of the Court's order releasing the defendant
11 on bond pending a 3145(a) review by a District Judge in the
12 Northern District of West Virginia.

13 THE COURT: Is there any kind of a time component
14 on that?

15 MR. TAYLOR: I indicated to them, given the --

16 THE COURT: The holiday weekend.

17 MR. TAYLOR: -- the holiday weekend that the first
18 court date back would be Wednesday and that if the Court were
19 to grant a stay, that would be the longest that I would feel
20 comfortable asking for the Court to stay its order.

21 THE COURT: One moment.

22 (Pause in the proceedings.)

23 THE COURT: Do you want to be heard on that,
24 Ms. Brazile?

25 MS. BRAZILE: Yes, your Honor.

1 As I stated, and I did state this to brother
2 counsel -- thank you, Mr. Taylor -- Mr. Myles had been
3 vetted for bond previously in the state court and reported
4 as directed.

5 There was no indication in this case that I saw that
6 Mr. Myles was implicated in the shooting that the government
7 discussed; that there are at least three charges of him aiding
8 and abetting the other primary people in this case, and
9 because they are so closely related, that state charge and
10 this federal one, the fact that he was given a bond and has
11 been compliant on that weighs heavily that he will be
12 compliant with the federal bond.

13 Having him to remain in custody while his family is
14 here, the holiday is coming up, to me, is rather egregious
15 when he was already on bond before.

16 We would object to a stay to no longer than the end
17 of today. They can go ahead and let the Court know. The
18 Court, if they want to revoke it, can do so by 5:00.

19 THE COURT: Okay. Well, I might agree with you but
20 for some things, one of which is, because it is a holiday
21 weekend, I suspect that things in West Virginia may not move
22 as quickly as that. I'm probably one of the few federal
23 judges who is still sitting right now.

24 But the other thing is that this is a presumption
25 case, and I take that into account as well, and other judges

1 may see it differently.

2 Obviously, I agreed with you about his performance on
3 bond or I wouldn't have released him now, but I will stay the
4 case until next Wednesday, July 5, at 5:00 p.m.

5 MR. TAYLOR: I will relay that to the AUSA in
6 West Virginia and let them know they have a timeline.

7 Could I provide the Magistrate Judge's contact
8 information to court staff to secure a report date should
9 that order be sustained?

10 THE COURT: Of course. He is going to need a report
11 date; right?

12 MR. TAYLOR: Right. So my understanding is, based
13 on the way that the West Virginia court does it is, they
14 will only give a court date to this court, not through the
15 attorneys, and so they would want court staff to contact them
16 and go from that date.

17 So should the Court's order not be overturned and the
18 marshals not have to transport him down there, I would like
19 to have that in advance so that he is not in custody longer
20 than is necessary.

21 THE COURT: I'll let Ms. Hosking speak to this,
22 because it's beyond my pay grade.

23 MR. TAYLOR: I understand.

24 THE CLERK: Just send me an email, please.

25 MR. TAYLOR: Oh, sure. Thank you.

1 (Discussion held off the record.)

2 THE COURT: Ms. Hosking just pointed out to me what I
3 figured out moments after it came out of my mouth. I didn't
4 mean to say the case is stayed. The bond -- the bond decision
5 is stayed.

6 And so -- and so it's the Court's ruling that I just
7 made that bond is stayed pending review by West Virginia.

8 THE CLERK: And July 5 at a certain time?

9 THE COURT: 5:00 p.m., I said, yeah. And he will
10 be -- remain in the Marshal's custody, obviously, through
11 then, until we get further order.

12 MR. TAYLOR: Thank you. I appreciate that,
13 your Honor.

14 THE COURT: Okay. Thank you.

15 MR. TAYLOR: I am going to contact them right away
16 to ensure that they understand that they have until 5:00 on
17 Wednesday to get that review done; otherwise, the order will
18 go into effect.

19 THE COURT: All right.

20 MR. TAYLOR: Thank you.

21 THE COURT: Thank you.

22 THE CLERK: Mr. Myles, I'll need two signatures
23 right in front of you. And you can sign now.

24 And one more signature.

25 MS. BRAZILE: Right now?

1 THE CLERK: Mm-hmm.
2 Okay. You're all set.
3 Court is in recess until 3:00 p.m.
4 (Proceedings concluded at 2:40 p.m.)

5 * * *

6
7 **CERTIFICATE OF TRANSCRIBER**

8
9 I certify that the foregoing is a correct transcription
10 from the official electronic sound recording from the record of
11 proceedings in the above-entitled matter.

12
13 s/ Rene L. Twedt
14 RENE L. TWEDT, CSR-2907, RDR, CRR, CRC
15 Federal Official Court Reporter

August 17, 2023
Date

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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

v.

Criminal No. 1:23CR21

DORIAN MYLES,

Defendant.

UNITED STATES' MOTION TO SEEK REVIEW OF RELEASE ORDER

Now comes the United States of America and William Ihlenfeld, United States Attorney for the Northern District of West Virginia, by Zelda E. Wesley, Assistant United States Attorney for district, and moves this court to review the Magistrate Court's decision granting bond in the Eastern District of Michigan. The government further moves this court to revoke that order pursuant to 18 U.S.C. Section 3145(a)(1) and for a stay of defendant's release pending review. In support of said motion, the government asserts the following:

(1) On May 2, 2023, a Federal grand jury named Defendant and three other individuals with various drug-related offenses. Defendant was charged with Conspiracy to Possess with Intent to Distribute and Distribution of Controlled Substances (Count One), Distribution of Fentanyl (Counts Five and Six), Aiding and Abetting the Distribution of Fentanyl (Count Seven), Aiding and Abetting the Distribution of Methamphetamine (Counts Eight and Nine), and Possession with Intent to Distribute Methamphetamine (Count Ten). A warrant was issued for Defendant's arrest based upon the indictment.

(2) The government's evidence will establish that the government utilized a confidential informant who was able to obtain undercover recorded controlled buys from Defendant. Based

upon the controlled buys, law enforcement obtained a search warrant for the residence utilized by the drug traffickers that Defendant had returned to following a controlled buy. As officers approached the residence, they noted a sophisticated camera system that provided real time visuals of the surrounding areas of the residence. Defendant and another occupant in the residence fled out of the back door as officers executed the search warrant. Defendant and his co-defendant were apprehended approximately 60 feet from the residence by law enforcement.

(3) During the execution of the warrant, officers seized approximately 1046 grams of methamphetamine from the living room and the money the government used to purchase methamphetamine on the person who fled with Defendant.

(4) Following Dorian Myles' arrest in Michigan pursuant to the warrant issued from the indictment. The government moved to detain him as a flight risk as well as a danger to the community.

(5) Defendant's detention hearing was conducted before a Magistrate Judge on June 30, 2023. The Magistrate Judge released defendant on a 10,000.00 unsecure bond, but provided the government a stay of the release order until July 5, 2023, at 5:00pm. (See Exhibit 1)

(6) The government objects to the Magistrate Judge's order releasing defendant on bond and moves this court to (1) review the Magistrate Judge's decision granting defendant bond; (2) revoke defendant's bond; (3) grant a stay of defendant's release until this court has reviewed the Magistrate Judge's decision granting bond.

Respectfully submitted,

WILLIAM IHLENFELD
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I, Zelda E. Wesley, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that on July 5, 2023, I electronically filed the foregoing UNITED STATES' MOTION TO SEEK REVIEW OF RELEASE ORDER, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all participants registered in CM/ECF in the above-referenced matter.

Respectfully submitted,
WILLIAM IHLENFELD
UNITED STATES ATTORNEY

By: /s/ Zelda E. Wesley
Assistant United States Attorney

2:23mj30272, United States of America v. Myles

US District Court Criminal Docket
United States District Court, Michigan Eastern
(Detroit)

This case was retrieved on **07/05/2023**

Header

Date Filed: 06/29/2023
Other Docket: Other court case number: 23cr21 Northern
District of West Virginia

Class Code: Open
Closed:

Participants

Defendant

Name

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Charges

Complaints: Rule 5(c)(3)

Pending: none

Terminated: none

Case Assigned To: Magistrate Judge Unassigned

Disposition

U.S. Attorneys

Michael Taylor

2:23mj30272, United States of America v. Myles

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Proceedings

#	Date	Proceeding Text	Source
1	06/29/2023	PETITION for Transfer under Rule 5(c)(3) by United States of America as to Dorian Kristopher Myles (1). (LHos) (Entered: 06/29/2023)	
	06/29/2023	Minute Entry for in-person proceedings before Magistrate Judge Anthony P. Patti: Initial Appearance in Rule 5(c)(3) Proceedings as to Dorian Kristopher Myles held on 6/29/2023. Disposition: Defendant temporarily detained. Defendant requests an Identity Hearing. Detention Hearing set for 6/30/2023 at 01:00 PM and Identity Hearing set for 6/30/2023 at 01:00 PM.(Court Reporter: Digitally Recorded) (Defendant Attorney: Elizabeth Young) (AUSA: Michael Taylor) (LHos) (Entered: 06/29/2023)	
2	06/29/2023	Public Audio File of Initial Appearance in Rule 5(c)(3) Proceedings as to Dorian Kristopher Myles held on 6/29/2023 before Magistrate Judge Anthony P. Patti. AUDIO FILE SIZE (2.6 MB) (NAhm) (Entered: 06/30/2023)	
3	06/29/2023	ORDER APPOINTING FEDERAL COMMUNITY DEFENDER as to Dorian Kristopher Myles. Signed by Magistrate Judge Anthony P. Patti. (NAhm) (Entered: 06/30/2023)	
4	06/29/2023	ORDER Regarding Brady Materials as to Dorian Kristopher Myles. Signed by Magistrate Judge Anthony P. Patti. (NAhm) (Entered: 06/30/2023)	
6	06/29/2023	ORDER SCHEDULING A DETENTION HEARING AND FOR TEMPORARY DETENTION as to Dorian Kristopher Myles Signed by Magistrate Judge Anthony P. Patti. (NAhm) (Entered: 06/30/2023)	
5	06/30/2023	NOTICE OF ATTORNEY APPEARANCE: Rhonda R. Brazile appearing for Dorian Kristopher Myles (Brazile, Rhonda) (Entered: 06/30/2023)	
	06/30/2023	Minute Entry for in-person proceedings before Magistrate Judge Anthony P. Patti: Identity Hearing Not Held as to Dorian Kristopher Myles. Defendant waived the hearing on the record and presented a written waiver. (Court Reporter: Digitally Recorded) (Defendant Attorney: Rhonda Brazile) (AUSA: Michael Taylor) (LHos) (Entered: 06/30/2023)	
	06/30/2023	Minute Entry for in-person proceedings before Magistrate Judge Anthony P. Patti: Detention Hearing as to Dorian Kristopher Myles held on 6/30/2023. Magistrate Judge's decision is stayed until July 5, 2023 at 5:00 p.m. pending Government appeal to the District Judge in the Northern District of West Virginia. Disposition: Defendant released on \$10,000 unsecured bond with conditions. (Court Reporter: Digitally Recorded) (Defendant Attorney: Rhonda Brazile) (AUSA: Michael Taylor) (LHos) (Entered: 06/30/2023)	
7	06/30/2023	Public Audio File of Detention Hearing as to Dorian Kristopher	

2:23mj30272, United States of America v. Myles

#	Date	Proceeding Text	Source
		Myles held on 6/30/2023 before Magistrate Judge Anthony P. Patti. AUDIO FILE SIZE (21.2 MB) (NAhm) (Entered: 06/30/2023)	
8	06/30/2023	WAIVER of Rule 5 Hearings by Dorian Kristopher Myles. (NAhm) (Entered: 06/30/2023)	



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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 1:23CR21
(Chief Judge Kleeh)

DORIAN MYLES,

Defendant.

ORDER GRANTING-IN-PART THE GOVERNMENT'S MOTION
FOR REVIEW OF RELEASE ORDER [ECF NO. 10]

On July 5, 2023, the Government moved the Court under 18 U.S.C. § 3145(a)(1) to stay, review, and revoke the order releasing the defendant, Dorian Myles ("Myles"), on bond pending trial issued by the Honorable Anthony Patti, a United States Magistrate Judge for the United States District Court for the Eastern District of Michigan [ECF No. 10] (see E.D. Mi. Case No. 2:23mj21).

Finding good cause, the Court **GRANTS-IN-PART** the Government's motion, **STAYS** the release order, and **DETAINS** Myles until the Court holds a hearing and rules on the merits of the motion. The Court **SCHEDULES** a hearing on the motion for **July 25, 2023, at 1:00 PM**, at the **Wheeling, West Virginia, point of holding court (South Courtroom)**.¹ The Government shall file a supplement to its motion,

¹ See Case No. 1:23-MC-34.

USA V. MYLES

1:23cr21

**ORDER GRANTING-IN-PART THE GOVERNMENT'S MOTION
FOR REVIEW OF RELEASE ORDER [ECF NO. 10]**

if any, **no later than July 12, 2023**, and the defendant shall his response **no later than July 19, 2023**. The Court further **DIRECTS** the United States Marshal, or his authorized deputy, to transport Myles to this District for the motion hearing.

The Clerk shall provide a copy of this Order to counsel of record and all appropriate agencies by electronic means.

Dated: July 5, 2023



THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

-----x	
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
vs.	: CRIMINAL ACTION NUMBER:
	: 1:23-CR-21
	:
DORIAN MYLES,	:
	:
Defendant.	:
-----x	

Proceedings had in the arraignment and motion hearing of the above-styled action on July 25, 2023, before the Honorable Thomas S. Kleeh, Chief District Judge.

- - -

APPEARANCES:

FOR THE UNITED STATES OF AMERICA:

Zelda E. Wesley, Esq.
U.S. Attorney's Office
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Clarksburg, WV 26301
zelda.wesley@usdoj.gov

FOR THE DEFENDANT:

Sean Blythe Shriver, Esq.
Federal Public Defender Office
230 West Pike Street, Suite 360
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sean_shriver@fd.org

The Defendant was present in person.

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

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I N D E X

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TFO MARK TRUMP

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1 Tuesday Afternoon Session

2 July 25, 2023, 1:43 PM

3 - - -

4 THE COURT: Madam Clerk, would you be kind enough to
5 call our next case, please.

6 THE CLERK: United States of America versus
7 Dorian Myles; Criminal Case Number 1:23-CR-21, Defendant
8 Number 1. Mr. Myles is present in person.

9 Will counsel please note their appearance for the record.

10 MS. WESLEY: Zelda Wesley for the Government.

11 MS. SHRIVER: Good morning. Sean Shriver on behalf
12 of Dorian Myles.

13 THE COURT: Good afternoon, counsel.

14 Good afternoon, Mr. Myles.

15 Thank you all for finding your way to Wheeling. My
16 continued apologies for the inconvenience. We remain homeless,
17 for lack of a better term, in terms of a courthouse to operate
18 out of in Clarksburg.

19 We've convened for a hearing on the Government's motion to
20 detain. It's the usual burden-shifting quagmire where the
21 Government has filed a motion for detention that's a de novo
22 review and rebuttable presumption case. So I'm not sure who
23 gets to go first, but I'll leave it to Ms. Wesley. You go
24 ahead and go first.

25 MS. WESLEY: I -- that's right, Your Honor. I don't

1 mind. Thank you, Your Honor.

2 THE COURT: Go right ahead.

3 MS. WESLEY: May I call my witness to begin, Your
4 Honor?

5 THE COURT: Yes.

6 MS. WESLEY: Your Honor, we call DEA Task Force
7 Officer Mark Trump.

8 THE COURT: Understood.

9 Sir, if you wouldn't mind, you're going to pause with
10 Madam Clerk so she can swear you in. Then we'll ask you to
11 take the stand. Thank you.

12 **TFO MARK TRUMP, GOVERNMENT'S WITNESS, SWORN**

13 MS. WESLEY: Your Honor, in this courtroom, do you
14 want us to take --

15 THE COURT: Wherever you're most comfortable. Just
16 be near a mic.

17 MS. WESLEY: Okay.

18 THE COURT: I've been assured Madam Court Reporter
19 can hear you fairly well from there. But just remain close to
20 a mic.

21 Thank you, Special Agent.

22 I'll let counsel know we do have -- we did have access to
23 the recording from the underlying detention hearing. We've had
24 a chance to review that. But with that, go right ahead,
25 Ms. Wesley.

TFO Mark Trump - Direct Examination (Ms. Wesley)DIRECT EXAMINATION

1

2 BY MS. WESLEY:

3 Q. Where do you presently work?

4 A. I'm employed by the City of Morgantown Police Department.

5 Q. How long have you worked with the police department?

6 A. About 17 1/2 years.

7 Q. And how long have you worked drug investigations?

8 A. I was assigned to the DEA task force in 2016.

9 Q. Okay. And you're presently a DEA task force officer.

10 A. Yes, ma'am.

11 Q. And in the course of those duties, sir, were you and other
12 officers investigating Mr. Myles and others for distributions
13 and trafficking in the Morgantown area?

14 A. Yes, ma'am.

15 Q. Initially, sir, how did Mr. Myles first come on your
16 radar?

17 A. We had multiple sources, confidential sources, provide
18 information. It wasn't so much surrounding a person but an
19 apartment, a location at Bon Vista Apartments in Morgantown.
20 We then used those sources, I believe, and another source to
21 start making controlled buys, which is how we start to develop
22 intel and identify the people involved. Usually it starts out
23 as a street name or a nickname, and those investigations lead
24 to identifying their true, you know, name and identifiers.

25 Q. And let me ask you this. So specifically, let's start

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 with November the 30th of 2022. Was there -- working with a
2 confidential informant, was there a purchase of fentanyl from
3 Mr. Myles?

4 A. Yes, ma'am.

5 Q. And approximately how many grams of fentanyl did you
6 purchase from him?

7 A. It was about 12 grams.

8 Q. Okay. Was there a discussion about the fentanyl prior to
9 the distribution?

10 A. Our informant relayed to us that Mr. Myles had relayed
11 different prices for different levels of potency. Certain
12 fentanyl was more expensive because of its strength compared to
13 other fentanyl that was -- had been altered with other
14 substances.

15 Q. So he was selling different grades of fentanyl.

16 A. Yes.

17 Q. And some of them would have been stronger, meaning more
18 pure and more deadly, and that would cost more money.

19 A. Yes, ma'am.

20 Q. Now I want to direct your attention to December the 12th
21 of 2022. Was there another purchase of fentanyl from
22 Mr. Myles?

23 A. I don't -- I believe it was a little earlier than the
24 12th. It was just a few days into December, the 2nd or 3rd
25 maybe.

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 Yes. There was a second controlled buy, with a different
2 confidential source, where we bought approximately 31 grams of
3 a substance that presumptively tested positive for fentanyl.

4 Q. And these two transactions that we've previously
5 discussed, are they both recorded with audio and video
6 recording?

7 A. Yes, ma'am.

8 Q. Now, sir, I want to talk to you about approximately right
9 before Christmas in 2022. Was there a situation where
10 Mr. Myles aided and abetted another individual in the
11 distribution of fentanyl as well as methamphetamines?

12 A. Yes, ma'am.

13 Q. Okay. And did Mr. Myles advise the CI that he was going
14 to send someone else to make the transaction?

15 A. Yes, ma'am.

16 Q. Did it become -- do you have an opinion, based upon your
17 investigation, if Mr. Myles was a leader within this
18 conspiracy?

19 A. Yes, ma'am. Absolutely.

20 Q. Absolutely that he was a leader?

21 A. Yes, ma'am.

22 Q. Sir, I want to talk to you now about January the 19th of
23 2023. Was there another controlled purchase of Mr. Myles
24 involving a CI for methamphetamines?

25 A. Yes, ma'am.

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 Q. And following that purchase of methamphetamine, did the
2 officers conduct surveillance of Mr. Myles and where he went to
3 after the transaction?

4 A. We did, yes.

5 Q. And where did he go to?

6 A. It was a residence on River Road; 1028 River Road I
7 believe was the exact address.

8 Q. Okay. And do you know who resided at that residence?

9 A. Nolan Eickleberry.

10 Q. Was Mr. Eickleberry someone else who you had identified in
11 the course of this conspiracy?

12 A. Yes, ma'am.

13 Q. And let me ask you this. Earlier you talked about
14 Bon Vista. So this is a second residence that was utilized by
15 members in this organization?

16 A. Our investigation at Bon Vista contained information that
17 Mr. Myles and others were involved in the conspiracy to sell
18 multiple drugs. Once you get to the end of January, it
19 seems -- which has happened several times throughout our
20 investigations -- that the group had either dissolved or
21 splintered or broke up, for lack of better words. And late
22 January, where the investigation had taken us at that point, we
23 believe that he was operating either by himself or with a
24 smaller group of people.

25 Q. And so going back to late January, when officers conducted

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 surveillance and followed him back to this residence -- on
2 River Run Road?

3 A. River Road. Yes, ma'am.

4 Q. River Road. I'm sorry, sir.

5 -- did officers obtain a search warrant for that
6 residence?

7 A. Yes, ma'am.

8 Q. Okay. And please explain to the Court what happened when
9 officers went to execute the search warrant.

10 A. So based on several factors we used the West Virginia
11 State Police's special response team to effect the warrant and
12 the safe securing of the apartment.

13 What we did not know, because of how fluid the case became
14 that day, we did not know that there was a pretty substantial
15 security system that showed the perimeter -- the entire
16 perimeter of not just the apartment contained in this one
17 building, but the entire building.

18 Q. And when you say a sophisticated camera system, who had
19 the sophisticated camera system?

20 A. I perceive it was Nolan Eickleberry's due to it being his
21 residence.

22 Q. But it was the residence where Mr. Myles had entered.

23 A. Yeah. Oh, yes, ma'am. Yes.

24 What we learned after the fact was that in the living room
25 of the residence there was an approximately 50-inch TV screen

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 that had four or five camera feeds to it showing the perimeter
2 of the house. As our guys -- as our coworkers were approaching
3 to knock on the door, Mr. Myles and Mr. Eickleberry both fled
4 on foot out of the back of the door, and a perimeter team
5 actually had to collapse to contain them and not allow them to
6 escape.

7 Q. Okay. And what did officers find upon executing the
8 search warrant on the residence?

9 A. A little over a kilogram of crystal methamphetamine -- or
10 a substance that has presumptively tested positive to be
11 crystal methamphetamine.

12 Q. Okay. So more than a thousand grams of meth.

13 A. Yes, ma'am.

14 Q. And was the buy money from the prior transaction located
15 anywhere in the residence?

16 A. Yes, ma'am, it was.

17 Q. And in addition to that, were phones seized from the
18 residence?

19 A. Yes, ma'am.

20 Q. Did you find anything noteworthy on the phones that you
21 examined?

22 A. Yes, we did.

23 Q. And what did you discover on the phones?

24 A. So a newly identified co-conspirator in the case through
25 that search warrant, his name was Shakur Jones, his phone was

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 the only phone that we were able to successfully extract the
2 data from. And there was a substantial amount of
3 communications between he and Mr. Myles that, as I read it, I
4 perceive it as them discussing traveling into West Virginia by
5 vehicle with a substantial amount of drugs in the vehicle.

6 There was also a photograph that was shared to our
7 informant from Mr. Myles a few days to a week prior to the
8 search warrant, indicating to the -- to our confidential source
9 that they intended to bring about 10 pounds of meth with them.
10 That vide- -- there was actually a video, I believe, that that
11 photo that was shared with, was screen-grabbed from. That
12 video was on Mr. Jones' phone, and it was shared between
13 Mr. Myles and he.

14 Q. Okay. So prior to the execution of the search warrant,
15 did you and other officers have communications with the violent
16 crimes group in Detroit?

17 A. Yes, ma'am.

18 Q. And what was the basis of those conversations?

19 A. So --

20 Q. And let me ask you this. Did it -- two questions. First,
21 the basis of the conversations. And two, did it impact your
22 investigation regarding Mr. Myles?

23 A. Yes, ma'am. So we identified Mr. Myles through a social
24 media account that was provided to us by a confidential source.
25 Once we gained his lawful identity, our computer programs

TFO Mark Trump - Direct Examination (Ms. Wesley)

1 through federal law enforcement deconflict, or share
2 information, through the system. A deconfliction was made with
3 the group in Detroit. They were actively investigating him
4 for -- or actively investigating a violent crime in which they
5 wanted to interview him regarding that crime. They were at a
6 loss. They had a -- it was explained to me as a drive-by style
7 homicide of a young child. And they essentially asked us,
8 through all means necessary, if we can arrange an interview or
9 the potential to interview through our investigation. They
10 asked if we could, for lack of better words, play ball with
11 them.

12 So knowing that, we furthered our investigation along
13 slightly quicker than we normally would have, which is why on
14 the day we -- I believe it was the 19th of January we bought
15 approximately a quarter pound of meth. We decided that our
16 evidence was substantial enough for a search warrant of the
17 residence that -- we relayed that information to them, and they
18 left to come down and meet us that evening.

19 Q. Okay. Based upon your investigation, did it appear that
20 Mr. Myles was a source of narcotics for individuals in the
21 Morgantown, West Virginia, area?

22 A. Absolutely.

23 MS. WESLEY: I have nothing further of this witness,
24 Your Honor.

25 THE COURT: Understood.

TFO Mark Trump - Cross-Examination (Ms. Shriver)

1 Ms. Shriver, any questions for the officer?

2 MS. SHRIVER: Yes, Your Honor. Thank you.

3 May I approach the podium, Your Honor?

4 THE COURT: You may.

5 MS. SHRIVER: Thank you.

6 CROSS-EXAMINATION

7 BY MS. SHRIVER:

8 Q. Task Force Officer Trump, we met briefly outside, didn't
9 we?

10 A. Yes, ma'am.

11 Q. I just have a few questions for you.

12 The search warrant that you were present for the execution
13 of on January 19th, 2023, it was a search warrant for the
14 River Road residence; right?

15 A. Yes, ma'am.

16 Q. It was -- it was not an arrest warrant of a person.

17 A. Correct.

18 Q. Okay.

19 A. If I may add: Mr. Eickleberry, the leaseholder of the
20 residence, he did have an active arrest warrant, and we
21 intended to deal with he in that cause. But we did not go
22 there with an arrest warrant that originated from the drug
23 investigation.

24 Q. Okay. Thank you.

25 I want to ask you about this 60-foot -- you testified that

TFO Mark Trump - Cross-Examination (Ms. Shriver)

1 my client fled when officers arrived --

2 A. Yes, ma'am.

3 Q. -- at the River Road residence; correct?

4 A. Yes, ma'am.

5 Q. And did you say how far, approximately?

6 A. It was not far.

7 Q. Okay. What -- this flight, was it a high-speed chase?

8 A. So we had a perimeter set up around the residence.

9 Q. I see.

10 A. We had -- on the back side of the structure, which is
11 the -- where the door was that Mr. Myles and Mr. Eickleberry
12 ran out of, there were at least three uniformed law enforcement
13 officers back there, one of which was a K9 handler with his
14 dog. So it wasn't necessarily a chase. I mean, we had the
15 guys that were going into the front door as Mr. Eickleberry and
16 Mr. Myles fled out the back door, but it wasn't so much of a
17 chase as they were roadblocked.

18 Q. I didn't hear the last word you said. I'm sorry.

19 A. It wasn't so much of a chase as it was they hit a
20 roadblock.

21 Q. I see. Thanks.

22 Okay. TFO Trump, did you -- were you wearing body camera?

23 A. I was not.

24 Q. Okay. And the state police officers that assisted you
25 that day, were they wearing body camera?

TFO Mark Trump - Cross-Examination (Ms. Shriver)

1 A. They were not.

2 Q. Okay. You testified that you later learned that there was
3 surveillance inside the residence.

4 A. Yes.

5 Q. And so I take that to mean that you didn't observe
6 surveillance from outside of the residence?

7 A. Correct.

8 Q. And you were not aware that there was surveillance inside
9 the residence prior to your arrival there that day?

10 A. Correct.

11 Q. Okay. And you testified that it was Nolan Eickleberry's
12 surveillance equipment; correct?

13 A. Yes, ma'am.

14 Q. All right. And just so we're clear, it's your testimony
15 that Dorian Myles fled on foot when officers appeared; is that
16 correct?

17 A. Yes, ma'am.

18 Q. You've been a police officer for almost 20 years; correct?

19 A. Getting there. Yes, ma'am.

20 Q. Do people ever run for you -- from you for curious
21 reasons?

22 A. Yes.

23 Q. People ever run because they're surprised?

24 A. Absolutely.

25 Q. People ever run because they are worried they're going to

TFO Mark Trump - Redirect Examination (Ms. Wesley)

1 be part of a misunderstanding?

2 A. Probably.

3 MS. SHRIVER: I have nothing further for TFO Trump.

4 Thank you, sir.

5 THE COURT: Thank you, Counsel.

6 Ms. Wesley, any further questions of the officer?

7 MS. WESLEY: Just briefly.

8 REDIRECT EXAMINATION

9 BY MS. WESLEY:

10 Q. Do people run because they recognize that they're engaged
11 in criminal crimes, including distributions of drugs?

12 A. Yes, ma'am.

13 Q. And just briefly, the very sophisticated camera system
14 that you encountered, based upon your experience and your
15 interviewing of witnesses who have -- and defendants who have
16 possessed them, what's the point of having such a detailed,
17 sophisticated surveillance system?

18 A. The reasons are typically to thwart any attempt at
19 robberies or theft of their proceeds or product from rivals or
20 anybody that wished to steal it and/or to be aware that law
21 enforcement are present.

22 MS. WESLEY: I have nothing further, Your Honor.

23 THE COURT: Ms. Shriver, anything further of the
24 officer?

25 MS. SHRIVER: It occurs to me yes, if I may.

TFO Mark Trump - Recross-Examination (Ms. Shriver)

1 THE COURT: Go ahead.

2 MS. SHRIVER: Thank you.

3 RE CROSS-EXAMINATION

4 BY MS. SHRIVER:

5 Q. TFO Trump, you wrote the criminal complaint in this -- in
6 the underlying state case; correct?

7 A. Yes, ma'am.

8 MS. SHRIVER: Your Honor, if I may introduce
9 Defendant's Exhibit 1, I'd like to go through that.

10 THE COURT: Certainly. And that's basically the Mon
11 County police file?

12 MS. SHRIVER: That's right. Correct.

13 THE COURT: Okay.

14 MS. SHRIVER: That's right.

15 THE COURT: Ms. Wesley, you've seen that; correct?

16 MS. WESLEY: I have, Your Honor.

17 THE COURT: All right. Any objection to the Court
18 receiving that for today's purposes?

19 MS. WESLEY: No objection, Your Honor.

20 THE COURT: All right. We'll receive the entirety of
21 Exhibit 1, if that's okay with you, Counsel.

22 (Defendant's Exhibit 1 received in evidence.)

23 MS. SHRIVER: And can I approach?

24 THE COURT: You may.

25 MS. SHRIVER: Your Honor, may I approach the witness

TFO Mark Trump - Recross-Examination (Ms. Shriver)

1 to pass him a copy of this exhibit?

2 THE COURT: You may.

3 MS. SHRIVER: Thank you.

4 BY MS. SHRIVER:

5 Q. All right. TFO Trump, if you wouldn't mind flipping along
6 with me. We're going to flip page one, two, three, four, five,
7 six, seven. Seven pages in. Are you with me?

8 A. Page 7? Is that the --

9 Q. Yes, the seventh page.

10 A. -- one that says page 3 of 3 on the bottom right corner?

11 Q. No. It says page 1 on the bottom right corner.

12 A. Oh, okay.

13 Q. And not too far down that page it says "Criminal
14 Complaint." Are we on the same page, sir?

15 A. I do believe, yes, ma'am. It is the -- just the
16 conventional state criminal complaint from Monongalia County
17 Magistrate Court?

18 Q. That's right. That's right.

19 And your name is on this piece of paper, isn't it?

20 A. Yes, ma'am.

21 Q. It's right down here under "Complainant."

22 A. Yes.

23 Q. Okay. And you wrote this narrative that is on the
24 following page.

25 A. Yes, ma'am.

TFO Mark Trump - Redirect Examination (Ms. Wesley)

1 Q. Okay. Would you read this narrative to yourself.

2 A. Uh-huh.

3 Q. I just want to ask you a few questions about it.

4 A. Yep.

5 Okay.

6 Q. Anything in there about surveillance?

7 A. No, ma'am.

8 Q. Anything in there about flight on foot?

9 A. No, ma'am.

10 MS. SHRIVER: Thank you.

11 THE WITNESS: You're welcome.

12 THE COURT: Ms. Wesley?

13 REDIRECT EXAMINATION

14 BY MS. WESLEY:

15 Q. What was he charged with in that criminal complaint, sir?

16 A. Possession with intent to distribute crystal

17 methamphetamine and conspiracy to do the same.

18 Q. Is flight or the surveillance system elements of the

19 offense that you need to prove for that criminal complaint?

20 A. No, ma'am.

21 MS. WESLEY: I have nothing further of this witness,

22 Your Honor.

23 THE COURT: Ms. Shriver, anything else?

24 MS. SHRIVER: Thank you.

25

RECROSS-EXAMINATION

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BY MS. SHRIVER:

Q. TFO Trump, part -- the criminal complaint is part of what makes part of the record that magistrates use to decide whether or not someone is eligible for a bond; correct?

A. I am not a hundred percent certain of everything that goes into their decision and their bond application.

Q. But your criminal complaint goes in front of the magistrate, doesn't it?

A. It does, yes.

Q. Okay. And so it's fair to say that it forms part of the consideration with respect to bond eligibility; correct?

A. I believe that it could, yes.

MS. SHRIVER: Thank you.

Nothing further, Your Honor.

THE COURT: Okay. Ms. Wesley, anything else?

MS. WESLEY: I don't have any questions of him, Your Honor. But I would like to address the bond report.

THE COURT: No. Understood.

I have a question. Officer, back in January of 2023, what would the street value of the thousand grams of methamphetamine have been?

THE WITNESS: That would be dependent upon the increments in which it was sold.

THE COURT: Okay.

1 THE WITNESS: Methamphetamine on the west coast of
2 the United States is extremely cheap now. Obviously, the
3 farther it travels from there, the more expensive it becomes.
4 I believe we bought approximately a quarter pound that day,
5 which is 4 ounces, for somewhere in the area of \$700. So there
6 would be eight --

7 THE COURT: If you're going to ask me to do math,
8 you're --

9 THE WITNESS: I'm sorry.

10 THE COURT: Okay. Go ahead.

11 THE WITNESS: I'm sorry. At the quantity and the
12 approximate cost that we bought it on the day of the search
13 warrant --

14 THE COURT: Yes.

15 THE WITNESS: -- it would be eight times -- \$5,600
16 is -- would -- if we would have bought all of it at that rate,
17 that's what we would have paid for it.

18 THE COURT: The thousand grams would have been about
19 \$5,600?

20 THE WITNESS: Roughly. But it could also be broken
21 down into -- you know, the smaller the quantity, the more it
22 costs.

23 THE COURT: Yeah. Understood.

24 THE WITNESS: So on and so forth.

25 THE COURT: Understood. Thank you.

1 Any other questions of the officer?

2 MS. WESLEY: Nothing, Your Honor.

3 THE COURT: Okay. Ms. Shriver?

4 MS. SHRIVER: No, Your Honor.

5 THE COURT: All right. Thank you very much, sir.

6 You can grab a seat back with Ms. Wesley.

7 THE WITNESS: Yes, sir. Thank you, Your Honor.

8 THE COURT: Thank you.

9 Ms. Wesley, may I ask, any other evidence in the form of
10 witnesses you'd like to present?

11 MS. WESLEY: Just briefly, Your Honor, I want to
12 direct the Court's attention to the bond report that was
13 prepared by a probation officer in --

14 THE COURT: Before we do that.

15 Ms. Shriver, do you have those?

16 Because there are two; right? One from the Eastern
17 District of Michigan and one here in the Northern District of
18 West Virginia.

19 MS. SHRIVER: I -- Your Honor, I have the one that's
20 in front of me from this district, which I understand is
21 substantially based on the one from the Eastern District of
22 Michigan. I don't have the Eastern District of Michigan's bond
23 report.

24 THE COURT: Okay.

25 Do you have one, Officer Berger?

1 OFFICER BERGER: They both should have been attached
2 to that.

3 (Pause in proceedings.)

4 THE COURT: All right. Thank you, Officer Berger.
5 Okay. I'm sorry, Ms. Wesley. Now that everyone has the
6 same universe of documents, go right ahead.

7 MS. WESLEY: Yes, Your Honor. And I'm referring to
8 the Northern District of West Virginia Pretrial Services
9 Report.

10 THE COURT: Understood.

11 MS. WESLEY: And on page 3 and 4 of this bond report,
12 starting with page 3, there's a loitering on public/private
13 property, trespassing, where Mr. Myles failed to appear.

14 And then there is -- two sections down, there's a stolen
15 property, receiving and concealing arrest; and, again, he
16 failed to appear. There was a warrant issued. He was
17 arraigned. Then he failed to appear again. And then there was
18 another warrant issued.

19 And then if we come down to the last block on that page,
20 there's a violation of city marijuana code where he failed to
21 appear. And there was another warrant issued.

22 And if we turn the page to page 4, third block down, there
23 was no operator's license on person. Mr. Myles failed to
24 appear, and there was a warrant issued.

25 If we come two blocks down, there's drove while license

1 suspended. Mr. Myles again failed to appear, and there was a
2 warrant issued.

3 And if we come to the last block, there's a drive while
4 license suspended, drive unregistered on untitled vehicle, and
5 Mr. Myles failed to appear. Notice to appear generated, and
6 then he failed to appear again.

7 And so I just wanted to bring to the Court's attention
8 Mr. Myles' numerous failures to appear, which is consistent
9 with what he attempted to do in this situation when he
10 attempted to flee out the back door.

11 And the Government has no other evidence to present to
12 Your Honor.

13 THE COURT: All right. Understood. Let me ask this:
14 Any objection to the Court making part of our record both
15 pretrial services reports, first the initial one from the
16 Eastern District of Michigan and then the one from the Northern
17 District?

18 Yes, Ms. Shriver.

19 MS. SHRIVER: No, Your Honor. I won't object to the
20 bond report in general, but I do wish to put it on the record
21 that I have not been able to independently verify the records
22 that are referred to herein.

23 THE COURT: Uh-huh.

24 MS. SHRIVER: And so I just want to make that
25 notation for the record.

1 THE COURT: No. Understood.

2 MS. SHRIVER: Apart from the Monongalia County record
3 that forms part of the record in this hearing, I have not been
4 able to independently verify those records. Thank you.

5 THE COURT: No. Understood. Understood. Thank you.

6 Any other evidence, Ms. Wesley? I know you said it, but
7 I'll ask.

8 MS. WESLEY: Nothing, Your Honor. Thank you.

9 THE COURT: Okay. Ms. Shriver, any witnesses or
10 evidence you would wish to present on Mr. Myles' behalf?

11 MS. SHRIVER: Yes. Yes, Your Honor. If I may
12 proceed by way of proffer with the exception of a witness.

13 If I can return first to the bond report issue, I have
14 some questions about the pretrial services report. And I
15 wonder if I could call Ms. Berger --

16 THE COURT: Sure.

17 MS. SHRIVER: -- to answer a few of those.

18 THE COURT: Certainly.

19 Officer Berger, if you wouldn't mind making your way to
20 the stand. Pause with Madam Clerk so she can swear you in.
21 Thank you so much.

22 **NIKKI BERGER, DEFENDANT'S WITNESS, SWORN**

23 THE CLERK: Thank you.

24 THE COURT: All right. You may proceed, Counsel.

25 MS. SHRIVER: Thank you, Your Honor.

Nikki Berger - Direct Examination (Ms. Shriver)DIRECT EXAMINATION

1

2 BY MS. SHRIVER:

3 Q. Ms. Berger, we know each other; right?

4 A. Yes.

5 Q. We've met before.

6 A. We have.

7 Q. I just have a couple of questions about the pretrial
8 services report. You didn't prepare this report, did you?

9 A. No, I didn't.

10 Q. Okay. I just want to ask a couple of -- but you're
11 familiar with how these reports are prepared?

12 A. Yes, I am.

13 Q. And you're familiar with this report.

14 A. Yes.

15 Q. Okay. I wonder if you have a copy of the bond report with
16 you right there.

17 A. I do. I brought a copy of it.

18 Q. Okay. Wonderful.

19 A. I have the one that Ms. Scolapio prepared. Is that the
20 one you're referring to?21 Q. It is. It is. So at this time I want to ask you to turn
22 to page 2.23 MS. SHRIVER: And with the indulgence of the Court,
24 I'd like to go through these one by one if possible. I just
25 have a few questions.

Nikki Berger - Direct Examination (Ms. Shriver)

1 THE COURT: Go ahead.

2 MS. SHRIVER: Well, okay.

3 THE COURT: No. Go ahead.

4 BY MS. SHRIVER:

5 Q. The first notation that I want to ask you about is
6 actually on the following page. And Ms. Wesley asked you about
7 this charge down here for invasion of privacy, warrant
8 requested for --

9 A. Okay. Yes.

10 Q. Do you see that one there?

11 And then do you see the no- -- sorry. She asked you about
12 the loitering on public/private property. And then below that
13 one is the invasion of privacy?

14 A. I see what you're referring to, yes.

15 Q. Okay. Great. And then there's a notation below that;
16 right?

17 A. Uh-huh.

18 Q. And it says, "This arrest appears on the Defendant's RAP
19 sheet and was not included in a collateral report provided by
20 the Eastern District of Michigan." Right?

21 A. Yes. I see that.

22 Q. Have you independently reviewed the records from these --
23 from these cases?

24 A. I have not independently reviewed these records.

25 Ms. Scolapio reviewed the records.

Nikki Berger - Direct Examination (Ms. Shriver)

1 Q. Okay. So Ms. Scolapio --

2 Okay. New question. Has Ms. Scolapio independently
3 reviewed all of the records that are referred to here?

4 A. Yes, she has.

5 Q. Okay. I want to go through a few of these. Let's --
6 well, let's start with the first one. 2015.

7 A. What page? Page 2?

8 Q. Yeah. Going back to page 2.

9 A. Okay.

10 Q. Mr. Myles at that time would have been 17 years old;
11 right?

12 A. Uh-huh.

13 Q. And you see on dis- -- over at disposition that it was
14 dismissed.

15 A. Yes.

16 Q. The next one down, also dismissed.

17 A. Yes.

18 Q. The next one down, also dismissed.

19 A. Uh-huh.

20 Q. Correct?

21 A. Yes.

22 Q. Following one, also dismissed; correct?

23 A. Correct.

24 Q. Following one, default judgment entered?

25 A. Correct.

Nikki Berger - Direct Examination (Ms. Shriver)

1 Q. And that was a parking meter violation?

2 A. Yes.

3 Q. Okay. Following one down, dismissed by party; correct?

4 A. Correct.

5 Q. And that was a moving violation?

6 A. Yes.

7 Q. Okay. Let's go down to -- so this first failure to appear
8 down here, loitering on public/private property where you
9 were -- you were asked about by Ms. Wesley --

10 A. Yes.

11 Q. -- we know that was dismissed as well.

12 A. Yes.

13 Q. Okay. And the one below that, we don't know that it was
14 dismissed; we just know that a collateral report pertaining to
15 that was not provided by the Eastern District of Michigan.

16 A. That's correct.

17 Q. Okay. Thanks.

18 Below that notation, then the stolen property, receiving
19 and concealing, less than 200. Mr. Myles was age 18 at that
20 time; correct?

21 A. Correct.

22 Q. And that was dismissed as well.

23 A. Yes.

24 Q. And that would have been a misdemeanor?

25 A. I believe so, yes. Less than \$200, I believe that would

Nikki Berger - Direct Examination (Ms. Shriver)

1 be a misdemeanor.

2 Q. Okay. I want to go down two more entries. Failed to
3 appear for trial. This was a violation of a city ordinance, it
4 appears?

5 A. Yes.

6 Q. Okay.

7 A. Marijuana code it says.

8 Q. Okay. And it appears that a warrant was entered according
9 to which Mr. Myles could be picked up anywhere within 25 miles?

10 A. Yes. And give me one second. I'm verifying this. Yes,
11 it -- the collateral response we received from the Eastern
12 District of Michigan does say that it's an in-state pickup only
13 within 25 miles of the agency.

14 Q. Not a felony.

15 A. Not to my knowledge.

16 Q. Okay. I want -- actually, if I may direct your attention
17 to the first -- if I can refer to the first exhibit.

18 MS. SHRIVER: TFO Trump, can I trouble you? Thank
19 you.

20 THE WITNESS: Thank you.

21 BY MS. SHRIVER:

22 Q. Ms. Berger, would you turn to the -- one, two, three --
23 fourth -- fifth page, rather, of this document.

24 A. Yes.

25 Okay. What --

Nikki Berger - Direct Examination (Ms. Shriver)

1 Q. This is a -- this is a Monongalia County Magistrate Court
2 record.

3 A. Okay. Is it the page that has page 1 of 3 at the bottom?

4 Q. Yes.

5 A. Okay.

6 Q. Absolutely.

7 A. I'm there.

8 Q. Okay. Can you see, below the name Dorian Myles, an
9 address?

10 A. Yes.

11 Q. And would you turn, then, to the very last -- second to --
12 sorry. One, two, three. If you can turn to the bail
13 agreement, which is the third-to-last page of this package.

14 A. Does it say "Consent to Apply Deposit" at the top of the
15 page? Is that correct? Or...

16 Q. Well, sure. No. Sorry. It's the page before that.

17 A. Okay. All right. I'm there.

18 Q. And do you see that the same address that pretrial
19 services has for Mr. Myles is there, on Hamburg Street?

20 A. I -- do you happen to have a copy of the Michigan -- I
21 gave you my copy of the Eastern District of Michigan. We don't
22 have an address listed on our bond report, because he was
23 interviewed in the Eastern District of Michigan.

24 Thank you.

25 Yes, that's the same address that Mr. Myles reported to

Nikki Berger - Direct Examination (Ms. Shriver)

1 the pretrial services officer in the Eastern District of
2 Michigan.

3 Q. Okay. Finally, can you go down to item number 5 under
4 terms and conditions of release on bail.

5 A. Yes.

6 Q. And can you -- can you -- can you read there's a little
7 pen change there?

8 A. Uh-huh.

9 Q. Do you see that it says that Mr. Myles may not leave the
10 state of West Virginia, and then there's a pen change above
11 that?

12 A. Yes.

13 Q. What does that look --

14 A. Yes.

15 Q. Does that look like "or MI" to you?

16 A. "Or MI," which I would believe would be Michigan.

17 Q. Okay. Thanks. And in fact, Mr. Myles was -- when he was
18 apprehended in Michigan, he was apprehended at that Hamburg
19 Street address; correct?

20 A. I'm not aware of the location of his apprehension. I
21 apologize.

22 MS. SHRIVER: Okay. Okay. Thank you very much.

23 THE WITNESS: Uh-huh.

24 THE COURT: Ms. Wesley, any questions for Officer
25 Berger?

Nikki Berger - Cross-Examination (Ms. Wesley)

1 MS. WESLEY: Just briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. WESLEY:

4 Q. Ms. Berger, as a probation officer, of course, you explain
5 to individuals who are placed on pretrial services the terms of
6 their release conditions; correct?

7 A. Yes, that's correct.

8 Q. And when it comes to court appearances, they are told to
9 appear regardless of whatever else is going on in their lives;
10 correct?

11 A. Yes, that's correct.

12 Q. And it ultimately doesn't matter if the charges were
13 dismissed at a later date, does it, if they fail to appear?

14 A. From our perspective as a probation officer, no, that
15 would not matter.

16 Q. Yes. And so basically what they are told that they are
17 required to do is to abide by their release conditions, which
18 one is to show up for court appearances; is that correct, sir?

19 A. That --

20 Q. I'm sorry. Correct, ma'am?

21 A. Yes, that's correct.

22 MS. WESLEY: Okay. I have nothing further, Your
23 Honor.

24 THE COURT: Ms. Shriver, anything further?

25 MS. SHRIVER: Nothing further, Your Honor. Thank

Nikki Berger - Cross-Examination (Ms. Wesley)

1 you.

2 THE COURT: All right. Thank you.

3 Officer Berger, thank you, ma'am.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: Next witness, Ms. Shriver?

6 MS. SHRIVER: At this time I'd call Takeysha Daniels.

7 And she's seated outside.

8 THE COURT: Okay.

9 MS. SHRIVER: I can go get her.

10 THE COURT: Ma'am, you sort of volunteered. Yes,
11 whomever. Y'all are free to get up and move. Thank you so
12 much.

13 (Pause in proceedings.)

14 THE COURT: Thank you so much, ma'am.

15 Be careful, Ms. Daniels. Those doors are heavy. Ma'am,
16 if you wouldn't mind making your way all the way to the front.
17 You've got to pick a direction through a side door. It's a
18 peculiar layout. Thank you. I'm going to ask you to come all
19 the way to this front desk. You're going to pause with Madam
20 Clerk. She's going to swear you in. Then we'll ask you to
21 take a seat here. Okay? Thank you so much.

22 **TAKEYSHA DANIELS, DEFENDANT'S WITNESS, SWORN**

23 THE CLERK: Thank you.

24 THE WITNESS: Sit right here?

25 THE COURT: Yes, ma'am. Right here. Thank you so

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 much. Once you're seated and comfortable, if you wouldn't mind
2 adjusting that microphone so everyone can hear you.

3 THE WITNESS: Okay.

4 THE COURT: Don't worry, you can't break it. And you
5 can scooch that chair up a little bit.

6 THE WITNESS: All right.

7 THE COURT: There you go.

8 THE WITNESS: Can you hear me?

9 THE COURT: Yeah, I think so.

10 Go ahead, Ms. Shriver.

11 MS. SHRIVER: Yes. Thank you.

12 DIRECT EXAMINATION

13 BY MS. SHRIVER:

14 Q. Ms. Daniels, would you spell your first and last name for
15 the record.

16 A. Yes. It's Takeysha, T-A-K-E-Y-S-H-A; Daniels,
17 D-A-N-I-E-L-S.

18 Q. Thank you. Ms. Daniels, you know this young man here,
19 don't you?

20 A. Yes.

21 Q. Who is he to you?

22 A. That's my son, Dorian.

23 Q. You have known him all his life; right?

24 A. Yes.

25 Q. Okay. Can you tell me who Mr. Myles lives with?

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 A. He lives with me, his mother.

2 Q. Okay. Okay.

3 A. And his sister, Aliyah.

4 Q. And can you tell me where you live? Tell me about the
5 home where you-all live together.

6 A. Okay. We live in my home. We live in Detroit, on Hamburg
7 Street. 19568 Hamburg. And we bought our home in 2020, during
8 the pandemic. And Dorian helped -- we fixed the house up
9 together.

10 Q. Okay.

11 A. So he lives with me and his sister.

12 Q. Ms. Daniels, what do you do for a living?

13 A. I'm an educator for early childhood at Detroit Community
14 School District. So I work with the little babies in
15 preschool.

16 Q. Thank you for your service.

17 THE COURT: That's a good way to describe that,
18 Ms. Shriver.

19 BY MS. SHRIVER:

20 Q. Ms. Daniels, Dorian graduated high school, didn't he?

21 A. Yes.

22 Q. Okay. And he has -- you mentioned his sister. She's 14,
23 isn't she?

24 A. Yes.

25 Q. And he has an older brother.

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 A. Yes.

2 Q. Tell me about his older brother.

3 A. Curtis. That's the oldest, and that's my biggest son.

4 He's a workaholic, Curtis. And I have three -- I just had a
5 grandbaby. So I've got three grandchildren total from Curtis.

6 Q. Congratulations.

7 A. Thank you.

8 Q. Curtis is how old?

9 A. Curtis is -- he'll be 28 in October.

10 Q. Okay.

11 A. Uh-huh.

12 Q. Thank you.

13 And he does not reside in the home.

14 A. No.

15 Q. Okay. He resides somewhere else with his family.

16 A. Yes.

17 Q. Okay. And Mr. Myles is his younger brother by three
18 years; is that right?

19 A. Yes.

20 Q. Okay. All right. Can you tell me about -- I want you to
21 tell me about the -- a day that you came to West Virginia in
22 January.

23 A. Yes. We came down here because Dorian had a court date.

24 And when we got here, the court date was postponed. It was

25 rescheduled or postponed. So we constantly was, like, checking

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 up to see when the next court date was, and it was just being
2 told to us that it would be rescheduled.

3 Q. I see. Did you -- did you drive down to West Virginia to
4 help Dorian secure bail -- secure a bond, rather?

5 A. Yes.

6 Q. Okay. Tell me about that.

7 A. Okay. We came down here because he had posted for bond.
8 So it was me and his girlfriend and my cousin. She had posted
9 the bond in her name, and we drove back. And then he had a
10 court date, like, I want to say two to three days later. And
11 we came back down here for that court date. And, yeah, that's
12 when we was told it was going to be rescheduled. So now we
13 here.

14 Q. Okay. And so I'm clear, you drove from Detroit, Michigan,
15 to West Virginia --

16 A. Right. Correct.

17 Q. -- on one day, and with a plan to return to Detroit with
18 Dorian.

19 A. Yes.

20 Q. And to return within two or three days for a hearing?

21 A. Yes.

22 Q. Okay. And you did that.

23 A. Yes.

24 Q. Right?

25 Okay. Is there -- you would -- if Mr. Myles was released

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 today on conditions, you would do everything you could to make
2 sure he got to court, wouldn't you?

3 A. Mr. Myles would be at court at every court hearing.

4 Q. Can you tell me who else is here in the gallery?

5 A. Well, I have my sister, Kyra. She's here. My niece,
6 India. His Aunt Roche. His Uncle Mark. My daughter, Aliyah.
7 And his girlfriend, Tianna.

8 Q. Does your son have a passport?

9 A. No.

10 Q. Can you tell me a bit about his work history?

11 A. Yes. Well, he worked, when he was younger, at Whole
12 Foods. He worked at Ford Field. And then he did some, like,
13 concrete and reglazing tubs with my cousin with his concrete
14 business. So, like, during the winter they don't -- he don't
15 do concrete, but he started back up for the summer. So he will
16 be, you know, resuming work doing that again.

17 Q. If Mr. Myles is released today on the condition that he
18 secure employment or continue in employment that he was already
19 engaged in, can he return to that work with Myles Home
20 Improvement?

21 A. Yes.

22 Q. And that's the bathtub glazing job?

23 A. Yes. It's a home improvement company. He does home
24 improvement during the winter. And in the summer he has a
25 concrete business. So he's building porches, building patio

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 decks. That's what they do in the summer.

2 Q. And who owns Myles Home Improvement?

3 A. Aaron Myles.

4 Q. Who's Aaron Myles?

5 A. That's my cousin.

6 Q. Okay.

7 A. That's my big cousin.

8 Q. Okay. Can -- I want you to tell me about the day that
9 Mr. Myles was apprehended on the federal warrant.

10 A. Oh, okay. So that day Tianna, she was sick, his
11 girlfriend, so I had took her to urgent care. So I came back
12 to the house to lay down, and she called and said she was ready
13 to be picked up. So I said, "Well, Dorian, I fitting to go
14 pick Tianna up from urgent care."

15 And he said, "Mom, I'm going to get me something to eat.
16 My cousin is going to take me to Coney Island."

17 I got maybe like two blocks up the road, heading into
18 Seven Mile. And my cousin was, like, pulling up when I was
19 pulling off. I got to turn on Seven Mile, and that's when I
20 got a phone call. And it said I had some bad news, that Dorian
21 is being picked up by the feds.

22 Q. Okay. And when you refer to "my house," you're talking
23 about the Hamburg Street residence.

24 A. Right. Correct.

25 Q. And so it -- to the best of your knowledge, he was

Takeysha Daniels - Direct Examination (Ms. Shriver)

1 apprehended close to that.

2 A. He was apprehended actually maybe two blocks up the street
3 from there.

4 Q. All right. And it's fair to say, though, that Mr. Myles
5 was at the place that he said he was going to be --

6 A. Yes. Sure.

7 Q. -- in terms of his reporting of his address where he would
8 be residing; correct?

9 A. Yes. That was his bond conditions, and that's where he
10 resides is at my house.

11 Q. And it's important to you that when he's on bond
12 conditions that you do everything you can to help him meet
13 those conditions; right?

14 A. Sure. Yes. I am one of his biggest support systems, me
15 and his aunt. So I believe in being responsible and doing
16 things right. And, yes, that's why we made it back down here
17 to that court date.

18 Q. And you'd do it again, wouldn't you?

19 A. Yes, I would do it. I would be here regardless to what
20 the outcome is.

21 Q. I wonder if you can tell me briefly about -- well, let me
22 just ask you this about your son: When he was 17, 18, 19 years
23 old, was he the same as he is today at 25?

24 A. No.

25 Q. Tell me about that.

Takeysha Daniels - Cross-Examination (Ms. Wesley)

1 A. When he was 17, 18, 19, he got his driver's license.
2 Okay? When he got that driver's license, it was ticket,
3 ticket, ticket. So he had to go to, you know, a lot of court
4 ticket dates and stuff like that. Typical teenager stuff.
5 But, no, he's very much more responsible now from learning from
6 some of those things.

7 MS. SHRIVER: I have no further questions for
8 Ms. Daniels, Your Honor.

9 THE COURT: Thank you, Ms. Shriver.
10 Ms. Wesley, do you have any questions?

11 MS. WESLEY: I do, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WESLEY:

14 Q. Ms. Daniels --

15 A. Yes.

16 Q. -- good afternoon.

17 A. Good afternoon.

18 Q. So Mr. Myles has -- you know, you just said that you
19 believe in being responsible and making court dates.

20 A. Yes.

21 Q. But you recognize, of course, that you can't control
22 everything that Mr. Myles does. You understand that; correct?

23 A. Right. Yes.

24 Q. And that he's a grown man who makes his own decisions.

25 A. Yes.

Takeysha Daniels - Cross-Examination (Ms. Wesley)

1 Q. Did you even realize that he was coming to West Virginia?

2 A. No.

3 Q. So -- and you know, of course, at least from sitting here,
4 that Mr. Myles has not always attended every hearing that he
5 was supposed to attend. Isn't that correct?

6 A. Well, from each court date that we went to in Detroit,
7 some court dates were -- I was on top of every court date that
8 my son has. I believe in that. Some of those court dates that
9 he had, it was not that he was not going to them; they were
10 being postponed. And he went and followed up, and it got
11 handled and settled out.

12 Q. You are familiar with his prior charges, then, are you
13 not?

14 A. Yes.

15 Q. And what about his charge of felony weapons, carrying
16 concealed, when he was 19?

17 A. Okay. That charge was not -- he was not carrying a
18 concealed weapon. He was giving a friend a ride home, and his
19 friend had his mother's CPL gun in the back of his car. And he
20 took the charge for that.

21 Q. So despite the fact that he was sentenced to 18 months'
22 probation and was ultimately discharged from probation, he's
23 not guilty of that offense.

24 A. You said -- could you say that again, please.

25 Q. So despite the fact that he was actually sentenced to

Takeysha Daniels - Cross-Examination (Ms. Wesley)

1 18 months of probation and was actually discharged from
2 probation in 2020 --

3 A. Correct.

4 Q. -- your testimony is he was never guilty of that offense.

5 A. That he was never guilty of it?

6 Q. Yes. Because --

7 A. Well --

8 Q. I'm sorry. What I hear you saying, Your Honor, is -- I'm
9 sorry -- hear you saying, Ms. Daniels, is that he didn't do any
10 of this.

11 A. Well, no, I didn't say that. I said that he was not
12 carrying a concealed weapon. I said that he was giving -- what
13 happened was he was giving someone a ride home. They found the
14 gun underneath his seat. Because the person whose gun it
15 was -- and it was registered to that person's mother -- they
16 charged my son with it because he was driving that car. He
17 owned up to that. He got into the HYTA probation program, and
18 we completed it. And I made sure that he went to all of his
19 conditions and everything with that program to complete that.

20 Q. So that was in 2017. And three years later, in 2020,
21 again he's charged with a felony weapon of carrying a concealed
22 weapon.

23 A. Okay. That charge was also the same situation. This time
24 he was riding with someone that had a weapon in they car. He
25 did not possess the weapon on him. And I believe that was

Takeysha Daniels - Cross-Examination (Ms. Wesley)

1 dismissed too.

2 Q. Is it not fact that he pled guilty to that and it was
3 reduced to a misdemeanor, not dismissed?

4 A. I believe that was the conditions to get it reduced to a
5 misdemeanor, because he had -- that was his choice he had to
6 make at the time.

7 Q. Okay. So twice within three years your son was either --
8 in some fashion in possession of a firearm.

9 A. Well, I mean, if that's -- if that's what the case is.
10 But people make choices, and some people make poor choices.
11 And in those, both cases, he did not have a firearm in his
12 possession. He was around someone that had a firearm. He gave
13 someone a ride that had a firearm. He was riding with somebody
14 that had a firearm. So if he pled it to that misdemeanor,
15 that's what he had to do so he wouldn't get charged with a
16 felony. He'd just completed that HYTA probation program.

17 MS. WESLEY: I have nothing further of this witness,
18 Your Honor.

19 THE COURT: Understood.

20 Ms. Shriver, anything further of Ms. Daniels?

21 MS. SHRIVER: No, Your Honor, nothing further for
22 Ms. Daniels.

23 THE COURT: All right. Thank you.

24 Ma'am, thank you so very much.

25 THE WITNESS: Thank you.

1 THE COURT: You can go ahead and step down. You can
2 sit back there behind your son. Thank you.

3 THE WITNESS: All right. I can sit here?

4 THE COURT: Yes, ma'am. You can stay in the
5 courtroom if you'd like. You don't have to, but you're more
6 than welcome to. Thank you.

7 Ms. Shriver, any other witnesses on the detention
8 question?

9 MS. SHRIVER: No. No other witnesses, Your Honor.
10 If I can proceed by way of proffer or --

11 THE COURT: Yeah. I was going to take up argument.

12 It dawns on me, this being Mr. Myles' first appearance in
13 this district, that we should probably conduct an arraignment,
14 unless there's any objection to that at this point, Ms. Wesley.

15 MS. WESLEY: No. No objection, Your Honor.

16 THE COURT: Ms. Shriver?

17 MS. SHRIVER: No objection.

18 THE COURT: Okay. And that will give you guys a
19 second, and then we can talk about the detention question.

20 Mr. Myles, sir, can I ask you to please stand so that
21 Madam Clerk can swear you in. Thank you so much, sir.

22 (Defendant sworn.)

23 THE CLERK: Thank you.

24 THE COURT: Thank you, sir. You can be seated.

25 Thank you very much, Mr. Myles.

1 Sir, obviously, Madam Clerk has sworn you in, so you are
2 under oath. Because of that, and I do have a couple questions
3 for you, I do feel obligated to remind you any false statements
4 you may make or false answers you give in response to any of
5 the Court's questions, those can form the basis of a separate
6 criminal action against you for false swearing or for perjury.

7 Do you understand that, sir?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: With that said, if at any time you need
10 to confer with Ms. Shriver for any reason, please let her know
11 or let me know. We'll take a break so the two of you can talk.

12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. Sir, you were detained
15 pursuant to an arrest warrant for this case in the Eastern
16 District of Michigan. And you appeared before a magistrate
17 judge up there. Part of that proceeding that you participated
18 in up in the Eastern District of Michigan, sir, is what we
19 would call an initial appearance and an arraignment. You have
20 a statutory right to be arraigned here in the district in which
21 you've been charged.

22 The questions I'm going to ask you you've heard before,
23 during that prior proceeding, but I think it's important and
24 you certainly have a right to go through this again here in the
25 Northern District of West Virginia.

1 There's nothing unusual about it other than you were
2 arrested in a different district than this one. That's why
3 some of this will sound familiar.

4 Do you understand that, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. And the things I want to cover
7 with you are the charges that you face, the maximum penalties
8 you face for those charges, and then there's a couple other
9 tidbits to cover, including certain obligations the Government
10 has in terms of disclosing evidence to you and your counsel.

11 But first, Mr. Myles, we're here today because the
12 Government has charged you here in the Northern District of
13 West Virginia with the following crimes: Conspiracy to
14 distribute controlled substances, in violation of 21 U.S.C.
15 841(b) (1) (C). That's Count One.

16 Count Five, distribution of fentanyl, in violation of
17 21 U.S.C. 841(a) (1).

18 Count Six, distribution of fentanyl, in violation of
19 21 U.S.C. 841(a) (1).

20 Count Seven, aiding and abetting the distribution of
21 fentanyl, in violation of 21 U.S.C. 841(a) (1).

22 Count Eight, aiding and abetting the distribution of
23 fentanyl, in violation of 21 U.S.C. 841(a) (1).

24 Count Nine, aiding and abetting the distribution of
25 fentanyl, in violation of 21 U.S.C. 841(a) (1).

1 And Count Ten, possession with intent to distribute
2 methamphetamine, in violation of 21 U.S.C. 841(a)(1).

3 Sir, I'm almost positive that you have, but I'll ask:
4 Have you been provided a paper copy, a hard copy of the
5 indictment that was returned in this case stating these
6 charges?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Have you had a chance to read
9 and review that?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you had a chance to review it with
12 your lawyer?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Any objection to waiving reading,
15 Ms. Shriver?

16 MS. SHRIVER: No objection, Your Honor.

17 THE COURT: All right. Well, we'll dispense with
18 that.

19 Mr. Myles, I want to review the maximum penalties you face
20 in light of these charges in Counts One, Five, Six, Seven,
21 Eight, Nine, and Ten; that for each of those counts, the
22 maximum penalties you face are up to 20 years' imprisonment, up
23 to three years of supervised release, and up to a \$250,000
24 fine.

25 Do you understand that, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. One other thing I need to cover,
3 which I presume was discussed in Detroit during your first
4 appearance up there, sir, now that the Government has charged
5 you with a crime in this case, they have certain obligations to
6 turn over evidence and information to you and you lawyer,
7 evidence that is relevant and meaningful and material to the
8 question of guilt or innocence as well as punishment in this
9 case. And that includes anything that may be favorable to you
10 with respect to guilt and innocence or punishment.

11 That right was firmly established by the United States
12 Supreme Court back in 1963. In 2020, Congress made it part of
13 federal law. And there's a provision I'm required to read
14 aloud here in court. In all candor, sir, it's directed for the
15 Government, to remind them of their obligations. Then
16 following this proceeding, this Court will enter an order again
17 reminding the Government of their obligations.

18 But pursuant to the Due Process Protections Act of 2020,
19 the Court reminds the Government and its counsel that under
20 *Brady v. Maryland*, 373 U.S. 83, decided in 1963, and its
21 progeny, failing to disclose favorable evidence to the accused
22 violates due process where the evidence is material either to
23 guilt or punishment. Further, consequences for a so-called
24 *Brady* violation can include, but are not necessarily limited
25 to, a vacated conviction and disciplinary actions against the

1 prosecuting attorneys. And again, the Court will enter an
2 appropriate order with respect to that.

3 Mr. Myles, let me ask this for the record. I know you
4 tendered a plea in the Eastern District of Michigan. But how
5 do you plead to each of the charges against you here in the
6 Northern District, sir? Guilty or not guilty?

7 THE DEFENDANT: Not guilty.

8 THE COURT: The Court will enter a plea of not guilty
9 with respect to each of those charges.

10 Ms. Shriver, anything else you believe we need to cover
11 with Mr. Myles at this point?

12 MS. SHRIVER: No, Your Honor.

13 THE COURT: And he previously completed a financial
14 affidavit; correct?

15 MS. SHRIVER: Yes. I believe I have a -- well, I
16 have a blank one here, and I can have him execute that right
17 now if that works.

18 THE COURT: Okay. Understood. Yeah, if you wouldn't
19 mind doing that, we'll take a moment so you can do that.

20 MS. SHRIVER: We may risk some duplication, but yeah.

21 THE COURT: No. Understood.

22 (Pause in proceedings.)

23 MS. SHRIVER: Your Honor, may I approach?

24 THE COURT: You may, of course. Thank you.

25 Thank you so much. Thank you.

1 Mr. Myles, sir, you just, with the assistance of your
2 counsel, completed this financial affidavit; is that correct,
3 sir?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Is there anything in here
6 that is inaccurate or needs changed in any way, sir?

7 THE DEFENDANT: No.

8 THE COURT: All right. The Court will accept
9 Mr. Myles' financial affidavit, order it filed, and find him
10 qualified to continue to have counsel appointed.

11 With that off the checklist, Ms. Shriver, anything else
12 you believe we need to cover in terms of initial or arraignment
13 here?

14 MS. SHRIVER: No. No, Your Honor. Thank you.

15 THE COURT: All right. Thank you.

16 The motion is yours, Ms. Wesley. So you get to go first.

17 MS. WESLEY: Your Honor, we would ask the Court to
18 revoke the order entered in the Eastern District of Michigan
19 and find that Mr. Myles is not only a flight risk, but a danger
20 to the community.

21 In the course of the investigation, not only was he
22 possessing with the intent to distribute and distributing large
23 quantities of methamphetamine, but also, quite frankly, large
24 quantities of fentanyl. When we make fentanyl buys, normally
25 it's \$100. It's certainly not 31 grams, which is what we

1 purchased from him --

2 THE COURT: Is that the combined quantity between the
3 two controlled buys Officer Trump testified to?

4 MS. WESLEY: Yes, Your Honor.

5 THE COURT: Thirty-one grams?

6 MS. WESLEY: Yes. Well, actually, that was just in
7 one transaction. In Count Six alone it was 31 grams. In Count
8 Five it was approximately 12 grams of fentanyl.

9 But what's really disturbing to me, more than that, is the
10 discussion that occurred associated with Count Five where the
11 Defendant discusses the different types of fentanyl he had that
12 he could sell, and some fentanyl that was cut and some fentanyl
13 that wasn't cut, meaning that it was strong and it was potent.
14 I mean, clearly, fentanyl hurts in any form. But he was
15 negotiating a price to sell fentanyl that was really, really
16 potent, which kills easier and which kills quicker. That is
17 the very essence of someone who is a danger to the community.

18 On top of that, Your Honor, it's really clear based upon
19 what was seized on the phone, observed on the phone, the
20 place -- the residence where we went to after the transaction
21 in Count Nine that this is not some happenstance let's just
22 make a controlled buy here and there and figure it out. They
23 knew what they were doing, and they were organized. There's
24 communications from Detroit with individuals in West Virginia.
25 And there's this surveillance video, which, of course, can

1 alert them to anyone wanting to rob them, but also alerts them
2 to law enforcement, which is the reason why he was able to exit
3 out the back door.

4 It doesn't matter that law enforcement was set up on the
5 back door and -- I believe the word was "roadblock" -- and that
6 he was roadblocked from making an exit. What matters is that
7 he attempted to flee. And that is particularly disturbing when
8 you look at his bond report and there are numerous incidences
9 of his failure to appear.

10 So for all of those reasons, Your Honor, we would ask for
11 him to remain detained. Of course, this is a presumption case.
12 But we would ask for him to be detained pending resolution as a
13 flight risk as well as a danger.

14 THE COURT: Understood. Thank you.

15 Ms. Shriver, ma'am?

16 MS. SHRIVER: Thank you, Your Honor.

17 Well, we ask that Mr. Myles be released from detention to
18 his home and community in the Eastern District of Michigan and
19 that he be allowed to return to the Northern District of
20 West Virginia on his own recognizance for hearings in this case
21 and in compliance with a number -- with a combination of
22 conditions that are reasonably calculated to assure his
23 appearance.

24 Mr. Myles is not an -- is not an individual who is kind of
25 twisting in the wind with no connection to a place and to

1 people. Mr. Myles -- I mean, I look behind me, and it's clear
2 to me that Mr. Myles has connections to a family and a
3 community. And that weighs against flight in my view.

4 Mr. Myles, when he was arrested on this federal warrant,
5 he was exactly where he told Monongalia County he would be.
6 And I may be the only person who knows individuals who did not
7 have their act together when they were 17, 18, 19, but who
8 changed, who can today be relied on to be in the place they say
9 they are going to be at the time they say they are going to be
10 there. And with help, without help, they get there.

11 Mr. Myles is not an international traveler. He certainly
12 would stipulate to a condition that he not -- that he not
13 obtain any international travel documents. He has ties to his
14 community in his work history and in his ongoing capacity to
15 work for the family company, as we heard from Ms. Daniels. And
16 he is welcome to continue in that work.

17 We would ask, if he is released on conditions, that one of
18 the conditions be that he resecure that stable employment and
19 that he do it with a W-2, with a pay stub, with a paycheck, and
20 not informally.

21 Yes, yes, in the bond report there are -- there are
22 failures to appear. There are. I would say this, that I don't
23 think they're unrelated to youthful -- youthful --

24 THE COURT: Exuberance?

25 MS. SHRIVER: Yes. That's the exact word I was

1 looking for. Thank you.

2 And with respect to the -- with respect to flight, we do
3 not at present have materials that would assist us in
4 understanding what that entailed. We have testimony, and that
5 has been very helpful. But I return again to this -- to
6 this -- these questions about why people -- why people run
7 sometimes. It's not always straightforward.

8 I will say for the record, though, that Mr. Myles avers
9 that he did not run. And I think that's important to get it on
10 the record that he avers that he did not run. He avers that
11 when law enforcement approached him, he was standing on the
12 porch and he was smoking a cigarette.

13 I see in this bond report no history of bond forfeitures.
14 I see no history of Mr. Myles being out of compliance with the
15 conditions of probation or bond, including the state bond that
16 he was on when he was arrested in this matter. He resided in
17 the Eastern District of Michigan on a series of conditions
18 successfully, completely in compliance, for seven months. And
19 there he was when he was arrested on this federal warrant.

20 With respect to dangerousness, I -- you -- I will never be
21 heard to say that drugs are not dangerous. Never. Drugs
22 qualify as dangerous. And this speaks to the dangerousness of
23 the conduct that's alleged in the indictment. Mr. Myles has
24 not -- has not faced -- yet faced trial. And weighing the
25 weight of the evidence to the exclusion of other factors that I

1 believe are present here today is as close as I think we can
2 get to an abandonment of the principle of a presumptive
3 innocence.

4 Yes, weight of the evidence is a factor, and it's a factor
5 that should weigh on the Court, no doubt. But there are
6 other -- there are other relevant factors with respect to
7 Mr. Myles' capacity to remain on bond in the pendency of this
8 matter. There are a series of conditions that would reasonably
9 assure both his appearance and the safety of the community.
10 And we ask that he be released from detention and subject to a
11 combination -- a panoply, a combination of conditions. And, I
12 mean, I can list the conditions that we would -- that we would
13 ask for right now if you wish.

14 THE COURT: Go ahead.

15 MS. SHRIVER: We would ask that he be required to
16 report immediately to pretrial services. We would ask that
17 he -- that he sign for an unsecured bond as well of \$10,000.
18 We would also ask that he sign a stipulation that he not obtain
19 new travel documents and that he restrict his travel to the
20 Eastern District of Michigan and/or the Northern District of
21 West Virginia and points in between for the purpose of
22 traveling to court dates.

23 As I mentioned earlier, we would ask that he -- that he be
24 released on the condition that he maintain stable wage
25 employment, the kind that gets you a W-2 and a pay stub. And

1 we would also -- we would also suggest that one of the
2 conditions that would reasonably assure the safety of the
3 community and his -- and that would assure his appearance in
4 the district would be location monitoring so that he can live
5 on home detention and that he can be restricted to that place
6 except for work, except to attend court, and except to attend
7 faith-based services.

8 Finally, we would ask that he be released on the condition
9 that he not have contact with his co- -- with the codefendants
10 in this case, Nolan Eickleberry and Shakur Jones. John Thomas
11 as well.

12 Those are the combination of conditions that I submit
13 would reasonably assure his appearance in this district and
14 that weigh towards his release from detention on conditions and
15 under supervision, Your Honor. Thank you.

16 THE COURT: No. Thank you, Ms. Shriver.

17 Ms. Wesley, you get last word.

18 MS. WESLEY: Your Honor, quite frankly, I really
19 didn't hear Ms. Shriver seriously argue that he's not a danger.
20 She says that the weight of the evidence is a factor, and
21 that's about it. And her argument was to flight. And we would
22 argue that he is a flight risk based upon his bond report and
23 his reaction when the officers addressed him.

24 What she really has not addressed are the factors under
25 3142(g), Title 18, which are the factors to be considered. And

1 that is the nature and circumstances of this offense, the
2 weight of the evidence, the history and characteristics of this
3 person, and the nature and seriousness of the danger to him or
4 the community. She really hasn't addressed it. And I -- Your
5 Honor, and the reason why is because I think that based upon
6 the brief testimony of Officer Trump regarding what the
7 evidence is, that it's clear that he's a danger to the
8 community.

9 I'm not going to keep going into it, because fentanyl is
10 very dangerous. But when you sell different grades of fentanyl
11 at different prices, some of it being more potent than others,
12 it's the very essence of a danger, particularly the quantities
13 that he was selling, in combination with the meth, which is
14 easily probably the most prevalent drug in the Morgantown,
15 Harrison County, 79 Corridor area. It's the powerful drug,
16 which is the reason why the price is coming down, because it's
17 everywhere.

18 And so the circumstances of this case, his history and
19 characteristics, which includes those two convictions for
20 firearm offenses within three years, are all things that this
21 Court should consider. And we would ask you find that not only
22 is he a danger, but he's a flight risk.

23 THE COURT: Understood. Thank you, Counsel.

24 Thank you, everyone, for being here today. I know
25 Ms. Daniels stepped out.

1 I'm going to grant the Government's motion and order
2 Mr. Myles be detained. This, of course, given the nature of
3 the charges, is a rebuttable presumption case.

4 Ms. Shriver, I think you're correct; and if the Court
5 focused exclusively on most of the aspects of Mr. Myles'
6 personal history and characteristics -- in particular, his
7 support system -- I think I would be foolish not to order his
8 release. And my decision here is certainly no reflection on
9 his family and friends and, in particular, his mother. But the
10 Court is not constrained to just the support system and family
11 network, for lack of a better term, that Mr. Myles has at his
12 disposal, because he has had that at his disposal.

13 We also have the remainder of his personal history and
14 characteristics, which has a number of charges. Dismissed or
15 not, they're indicative of making poor choices, to put it
16 politely at this point. In particular, the two firearms
17 charges that Ms. Wesley indicated. They're listed in both
18 pretrial services reports. There's also the failures to
19 appear, which I take quite seriously.

20 Ms. Shriver, I often like to consider myself someone who
21 may have improved judgment as I've gotten older, with plenty of
22 work left to do. But this isn't ancient history from
23 Mr. Myles' standpoint in terms of these multiple failures to
24 appear. Some of those charges were significant, again
25 referring to the firearms charges. There are other controlled

1 substances charges, including, I recognize, a marijuana
2 violation, violating city ordinance.

3 But even with Ms. Daniels' efforts and everyone else's, we
4 have these failures to appear, which again this Court cannot
5 ignore. But if those were in isolation, again, I think we have
6 a different conversation. But they are not.

7 The charges in this case are significant and they are
8 serious. And one of the factors the Court must consider, of
9 course, is the weight of the evidence. Two of the counts there
10 are controlled buys on video and audio recording. Both of
11 those involve fentanyl. Forty-three grams of fentanyl. That's
12 enough to kill 21,500 people just based on not super fentanyl
13 or watered-down fentanyl; run-of-the-mill, average fentanyl.
14 That is enough to kill 21,500 people. That doesn't even
15 include the thousand grams of methamphetamine that were
16 discovered at the -- upon execution of the search warrant, over
17 \$5,000 worth of methamphetamine.

18 The video controlled buys of the fentanyl, the tracking --
19 or surveillance, I should say, of Mr. Myles back to that
20 residence following one of those controlled buys, the execution
21 of the search warrant finding the \$5,600 in meth, coupled with
22 the hidden or covert but sophisticated surveillance equipment,
23 the weight of the evidence is significant at this juncture.
24 Again, it's merely a detention question. But the Court finds
25 it significant in light of the charges. And in trying to

1 balance all of the 3142(g) factors, they cast a significant
2 shadow over, again, Ms. Daniels' valiant and noble efforts.

3 This is a shocking amount of drugs. And, again, it's
4 43 grams of fentanyl. We're not selling weed. We're not even
5 selling coke. We're selling something that 2 grams of which
6 can kill the average person; again, to the tune of 21,500
7 people.

8 Detention is appropriate. The Court would grant the
9 Government's motion on both grounds, given the danger posed by
10 the conduct in this case coupled with Mr. Myles' criminal
11 history. The Court would also find him to be a potential
12 flight risk in light of his history of failing to appear for
13 court-ordered appearances coupled with, in this case, the
14 sophisticated surveillance equipment installed at the stash
15 house, plus what is on the record at this point: his efforts to
16 flee when law enforcement executed that search warrant.

17 But the Court will grant that motion.

18 Objection otherwise noted and preserved, Ms. Shriver. We
19 will enter an order forthwith if any action needs taken on
20 that.

21 MS. SHRIVER: Thank you, Your Honor.

22 THE COURT: No. Understood. Thank you. Anything
23 further we need to take up on Mr. Myles' behalf, then, today,
24 Ms. Shriver?

25 MS. SHRIVER: No, Your Honor. Thank you.

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THE COURT: Thank you.

Ms. Wesley, anything further from the Government?

MS. WESLEY: No, Your Honor. Thanks.

THE COURT: All right. With that, in light of the Court's ruling, Mr. Myles, you'll be remanded to the custody of the United States Marshal Service. And we otherwise stand adjourned. Thank you all very much.

(Proceedings concluded at 3:01 PM.)

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CERTIFICATE

I, Rachel Kocher, a Registered Professional Reporter and Official Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action as reported by me stenographically, all to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 13th day of August 2023.

Rachel Kocher

Rachel Kocher, RPR, CRR

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 1:23CR21
(Kleeh)

DORIAN MYLES,

Defendant.

ORDER GRANTING THE GOVERNMENT'S MOTION
FOR REVIEW OF RELEASE ORDER [ECF NO. 10]

On July 5, 2023, the Government filed a motion pursuant to 18 U.S.C. § 3145(a) (1) asking the Court to stay, review, and revoke the order releasing the defendant, Dorian Myles ("Myles") [ECF No. 10]. Myles had been released on bond pending trial by the Honorable Anthony Patti, a United States Magistrate Judge for the United States District Court for the Eastern District of Michigan [ECF No. 22]. The Court granted in part the Government's motion, stayed the magistrate judge's release order, and detained Myles pending ruling on the merits of the Government's motion [ECF No. 11].

At a hearing on July 26, 2023, the Court conducted a de novo review of the release order and, after hearing evidence and oral argument, for the reasons stated on the record, found as follows:

USA V. MYLES

1:23cr21

**ORDER GRANTING THE GOVERNMENT'S MOTION
FOR REVIEW OF RELEASE ORDER [ECF NO. 10]**

- (1) The factors set forth in 18 U.S.C. § 3142(g) weigh in favor of Myles's detention;
- (2) Myles did not rebut the presumption in favor of detention arising under 18 U.S.C. § 3142(e) (3) based the nature of his offenses; and
- (3) The United States met its burden of proving that no condition or combination of conditions of release would reasonably assure Myles's presence, by a preponderance of the evidence, and reasonably assure the safety of any other person and the community, by clear and convincing evidence.

The Court therefore **GRANTED** the Government's motion [ECF No. 10], **REVOKED** the magistrate judge's release order, and **ORDERED** that Myles be detained pending trial.

The Clerk shall provide a copy of this Order to counsel of record and all appropriate agencies by electronic means.

Dated: July 26, 2023



THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA

**IN THE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 1:23-CR-21

DORIAN KRISTOPHER MYLES,

Defendant.

NOTICE OF APPEAL REGARDING DETENTION IN A CRIMINAL CASE

NOTICE IS HEREBY GIVEN that the defendant in the above-captioned case, Dorian Kristopher Myles, by his counsel, Sean B. Shriver, Esq., seeks to appeal to the United States Court of Appeals for the Fourth Circuit from the order of the district court granting the Government's Motion to Detain Mr. Myles, entered on July 26, 2023 pursuant to Rule 4(b)(1)(A) and Rule 9(a) of the Federal Rules of Appellate Procedure.

Respectfully submitted,

DORIAN KRISTOPHER MYLES

By Counsel,

/s/ Sean B. Shriver

Sean B. Shriver, Esq.

WVSB # 14029

Northern District of West Virginia

230 West Pike Street, Suite 360

Clarksburg, WV 263301

Office - 304-622-3823 | Fax - 304-622-4631

CERTIFICATION OF SERVICE

I hereby certify that on August 7, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of such filing to the following:

Zelda Wesley, Esq.
Assistant United States Attorney
United States Attorney's Office – Clarksburg
300 W. Pike Street
Clarksburg, West Virginia, 26301
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By:

/s/ Sean B. Shriver
Sean B. Shriver, Esq.
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