

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-10268

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

AARON THOMAS MITCHELL,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES' OPPOSITION TO APPELLANT'S FRAP 9(A)
MEMORANDUM REGARDING PRETRIAL DETENTION

Defendant-Appellant Aaron Mitchell faces federal and state charges for kidnapping and raping a 15-year-old schoolgirl while working as a law enforcement officer. Given his alleged violent and predatory offenses, both the federal magistrate judge and the district court ordered that Mitchell remain detained in federal custody pending trial. Those fact-bound rulings correctly applied the federal Bail Reform Act, which presumes detention when the charged kidnapping offense involves a minor victim. This Court should thus affirm the district court's finding that no set of conditions will reasonably assure the safety of the community and deny Mitchell's request for release.

BACKGROUND

1. *Factual Background*¹

a. *Mitchell's Kidnapping And Rape Of A Middle-School Student*

One morning earlier this year, a 15-year-old girl walked her usual route from her home in Mexico to her school in Arizona. Doc. 24, at 2. While waiting for school to start, she was approached by defendant Aaron Mitchell, a U.S. Customs and Border Protection agent. U.S. App. 1; Doc. 24, at 2. Mitchell, wearing police attire, told the girl he was a police officer and asked to see her documents. Doc. 24, at 2-3. After she complied, Mitchell ordered her to get in his car, saying they needed to go to the police station. Doc. 24, at 2-3. But Mitchell did not drive her to the police station—he drove her an hour away to his apartment. Doc. 24, at 3. Along the way, he pulled over and cuffed the girl's hands and restrained her legs. Doc. 24, at 3. He also questioned her during the drive, and in response she told him her age (15) and the names of her family members. U.S. App. 1; Doc. 24, at 3.

¹ This section details the alleged facts based on the evidence the United States proffered during the proceedings below. Citations to “Doc. ___” refer to the docket number in the District of Arizona; “Mem. ___” refers to Mitchell’s Memorandum in this appeal; “Def. App. ___” refers to the page number in the Appendix Mitchell filed in this appeal; and “U.S. App. ___” refers to the page number in the United States’ Appendix attached to this response. The two Pretrial Services Reports referenced below were submitted by Mitchell to this Court under seal.

When they arrived at Mitchell's apartment complex, Mitchell briefly left the girl alone in the car, instructing her not to make any noise and to stay there. Doc. 24, at 3. Mitchell returned with a jacket, which he draped over her shoulders to hide the handcuffs he had placed on her. Doc. 24, at 3. After Mitchell led her inside, he told her not to be afraid because he was a police officer, assuring her that he would not hurt her if she did everything he said. Doc. 24, at 3. Over the next several hours, Mitchell repeatedly and violently assaulted her: vaginally raping her, anally raping her, forcing her to masturbate him, rubbing his penis on her body, and squeezing her neck so hard that she thought she would die. Doc. 24, at 3; Doc. 22-1, at 3-8.

Following his brutal assault on the girl, Mitchell returned her to a spot near her school, though he kept her backpack, telling her it had his fingerprints on it. Doc. 24, at 3. After the girl was safely away from Mitchell, she reported what happened to her friends, family, and the police. Doc. 24, at 4.

b. Mitchell's Arrest, Threats, And Lies

The day after the assault, local police officers arrived at Mitchell's apartment to execute a search warrant. Doc. 24, at 4, 6. Mitchell happened to be driving home at that time, and when he saw the police, he sped away. Doc. 24, at 6. The police caught and arrested him, and he provided a voluntary statement at the police station. Doc. 24, at 4; Def. App. 10a. Mitchell denied any wrongdoing,

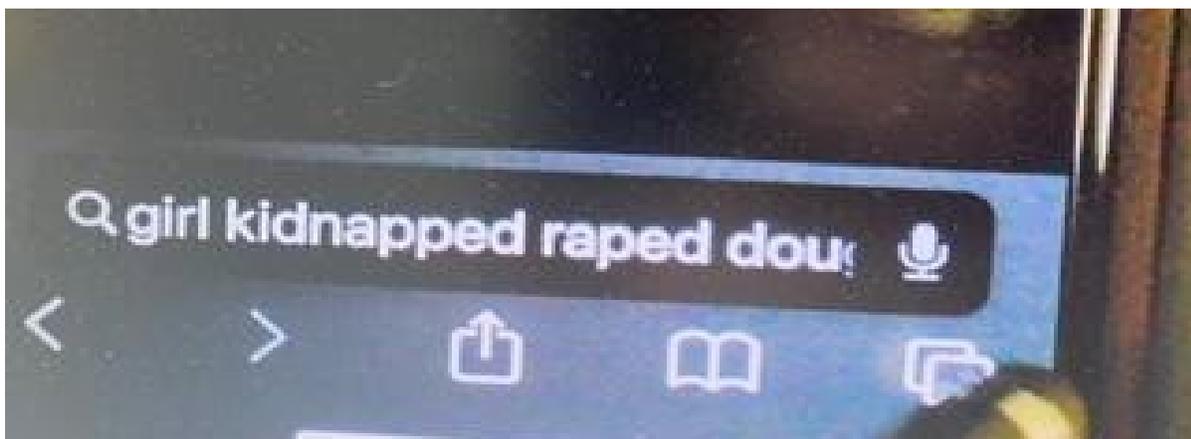
saying that he took the girl to his apartment because she wanted to ditch school and that they did not have any sexual relations. Doc. 24, at 4; Def. App. 10a. After the police ended their interview, they left the room but did not turn off the video recorder. Doc. 24, at 7. That video recorder caught Mitchell muttering to himself, “I cannot believe this shit. Fucking little bitch. Bitch is claiming rape. That’s so fucking crazy. That’s crazy, man. She better hope I don’t get out of here.” Doc. 24, at 7.

Further investigation showed that Mitchell lied to the police about what happened. For example, when police asked him if the girl stayed in his car for a little while after they arrived at his apartment complex, Mitchell denied leaving her alone and said that they got out of the car together. Doc. 24, at 5. But video from the apartment complex confirms the girl’s account, showing that Mitchell parked his car, went alone to his apartment, returned with what appears to be a jacket, and then led the girl inside with the jacket draped over her shoulders. Doc. 24, at 5. Likewise, when the police asked Mitchell about the girl’s backpack, Mitchell claimed that he did not know where it was and denied getting rid of it. Doc. 24, at 5. But video evidence from that morning showed Mitchell wearing a backpack walking toward the dumpster and then returning without a backpack:



Doc. 24, at 5.

Other evidence also corroborates the victim's account. First, medical exams found blood in her underwear and signs of vaginal and anal trauma. Doc. 24, at 4. Second, DNA recovered from the girl's genitalia was consistent with Mitchell's DNA (or a male in his family). Doc. 24, at 7. Finally, Mitchell's phone showed that he conducted the following internet search in "private" mode before he was arrested and before the media reported the incident:



Doc. 24, at 6. (The letters “doug” above likely spell out “Douglas,” the town where Mitchell abducted the schoolgirl).

2. *Procedural History*

a. *State Proceedings*

Three days after the encounter, Mitchell was indicted in Cochise County (Arizona) Superior Court on 18 charges: one count of kidnapping; six counts of sexual assault; six counts of sexual conduct of a minor; one count of unlawful sexual conduct by a peace officer; two counts of sexual abuse; one count of fraudulent schemes and artifices; one count of obstructing a criminal investigation; and one count of luring a minor for sexual exploitation. Doc. 22-1, at 3-9. On the state parties’ stipulation, the state court allowed Mitchell to be released on bond and live with his parents in Florida with electronic monitoring. U.S. App. 2; Doc. 22-1; Doc. 22-3. Because of the parties’ stipulation, the state court did not conduct a hearing or make any findings about whether Mitchell would be a danger to the community before allowing him to live with his parents. Def. App. 12a.

b. *Federal Proceedings*

Nearly three months after Mitchell was released on bond for the state charges, he was federally indicted in the District of Arizona on one count of kidnapping a minor in violation of 18 U.S.C. 1201(a)(1) and (g). Doc. 3, at 1-2. Mitchell surrendered to federal authorities in Florida, where he was living with his parents, and consented to a detention hearing in the Southern District of Florida.

Def. App. 20a-57a. During that hearing, the magistrate judge heard testimony from the FBI case agent and Mitchell's mother. Def. App. 20a-57a. The court also considered the Pretrial Services Report, which recommended that Mitchell be detained. Doc. 17.

The Southern District of Florida magistrate judge ordered Mitchell detained, rejecting Mitchell's argument that his intervening compliance with the state-court conditions of release weighed in favor of release pending trial in federal court. U.S. App. 4-5. First, the magistrate judge found that Mitchell "abused his position of trust against one of the most vulnerable members of society." U.S. App. 5. Second, the magistrate judge observed that the video evidence corroborated the victim's account and that Mitchell lied about the details of what happened. U.S. App. 5. The magistrate judge thus concluded that no condition or combination of conditions would reasonably assure the safety of the community. U.S. App. 5 (citing 18 U.S.C. 3142(e)).

Mitchell was transferred to the District of Arizona, where he sought review of the bond determination. Doc. 22. A new Pretrial Services Report again recommended that Mitchell remain detained. Doc. 18. The district court held a hearing, which included testimony from the victim's mother, who stated that she is "really afraid" of Mitchell hurting her daughter again or even killing her. Def. App. 15a-16a. The victim's mother also expressed her daughter's continued fear

that Mitchell may be released. Def. App. 15a-16a. At the end of the hearing, the district court denied Mitchell's request for bond. Def. App. 14a.

The district court based its decision to deny bond on all filings, the victim's account, the charges, the potential sentence, the weight of the evidence, the pretrial services reports, and Mitchell's proposed conditions of release. Def. App. 13a. Ruling from the bench, the court stated that no conditions of release can "prevent or ameliorate the risk of danger to the community." Def. App. 13a. The court also rejected Mitchell's argument that the risk to the community would dissipate if he lived in Florida with his parents under electronic monitoring. Def. App. 13a-14a.

DISCUSSION

This Court should affirm the district court's pretrial detention order because the district court correctly determined that Mitchell remains a danger to the community no matter the condition or combination of conditions attached to his release. A district court's factual finding concerning dangerousness is reviewed under a "deferential, clearly erroneous standard." *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990)). And as to whether that factual determination justifies the detention order, this court exercises de novo review. *Id.* at 1086-1087. As explained below, the district court did not err in its factual determination on

dangerousness or in its legal conclusion that no condition or combination of conditions will reasonably ensure the safety of the community.²

A. The District Court Properly Determined That Mitchell Remains A Danger To The Community

In ordering Mitchell detained, the district court faithfully followed the Bail Reform Act, which empowers federal courts to detain defendants pending trial where the government establishes by clear and convincing evidence that the defendant is a danger to the community. 18 U.S.C. 3142(e); see also *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). The Bail Reform Act also creates a rebuttable presumption of detention in cases like Mitchell's, where probable cause exists that the defendant kidnapped a minor in violation of 18 U.S.C. 1201. 18 U.S.C. 3142(e)(3)(E).

When a defendant proffers evidence to rebut the presumption of detention, as Mitchell has done, “[t]he presumption is not erased * * * [and] remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence.” *Hir*, 517 F.3d at 1086 (internal quotation marks and citation

² Although the government argued below that Mitchell could also be detained as a flight risk—as the Arizona Pretrial Services Report recommended (Doc. 18)—the district court based its detention order solely on Mitchell's danger to the community. Because danger to the community is alone sufficient to justify pretrial detention, as Mitchell does not contest, the government does not address Mitchell's potential flight risk in this response.

omitted). Specifically, a court should consider four factors to determine whether the government can show that the defendant remains a danger to the community:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the defendant; and
- (4) the danger posed by the defendant's release.

Ibid.; see also 18 U.S.C. 3142(g). Here, all four factors support pretrial detention for Mitchell even accepting his claim that he lived with his parents in Florida without incident after posting bond in state court.

1. The Nature And Circumstances Of The Offense Support Detention

As even Mitchell acknowledges (Mem. 13), the allegations here are “serious.” Identifying himself as a police officer, Mitchell kidnapped a 15-year-old girl who was waiting for school, handcuffed her, drove her over an hour away to his apartment, and then brutally assaulted her for several hours, including raping her, gagging her, and choking her. The penalties Mitchell faces for his offense also reflect the seriousness of the offense: a mandatory minimum of 20 years’ imprisonment and a statutory maximum of life imprisonment. See *Townsend*, 897 F.2d at 995 (considering the potential penalties when examining the nature of the offense). Thus, in the words of the magistrate judge, the “horrific nature of the allegations” supports detention. Def. App. 41a.

2. *The Weight Of The Evidence Supports Detention*

Although Mitchell “vigorously asserts his innocence” (Mem. 14), the evidence overwhelmingly shows otherwise. As the magistrate judge remarked, Mitchell cannot “meaningfully dispute” the salient facts. Def. App. 40a. First, Mitchell does not dispute that he took a child from her school to his apartment. Def. App. 41a. Second, objective video evidence “meaningfully contradict[s]” Mitchell’s account that (1) he never left the girl in the car alone, and (2) he didn’t keep or discard her backpack. Def. App. 41a. Finally, DNA evidence found in the victim’s genitalia is consistent with Mitchell’s. Doc. 24, at 7. To be sure, as Mitchell notes (Mem. 14), the weight of the evidence is the least important factor, but the substantial evidence against Mitchell still weighs heavily in favor of detention.

3. *Mitchell’s History And Characteristics Support Detention*

Mitchell’s brazen conduct, where he abused his knowledge and training as a federal law enforcement officer, also supports detention. Using his law enforcement skills, Mitchell targeted, intimidated, and threatened a vulnerable schoolgirl. Mitchell does not address this abuse of power in his Memorandum, arguing instead that he has no prior criminal history, no prior history of violence, and strong family ties. Mem. 14. Maybe so, but that is not enough. As this Court explained when denying bond in another case, the defendant’s “history as a law-

abiding citizen and his significant ties to the local community do not outweigh the extremely serious nature of the offenses with which he is charged.” *Hir*, 517 F.3d at 1091. So too here.

4. *The Danger To Both The Community And The Victim Support Detention*

Lastly, Mitchell presents a clear danger to the victim and to the community. First, the victim faces danger if Mitchell is released: Mitchell was caught on tape repeatedly calling her a “bitch” and muttering to himself, “She better hope I don’t get out of here.” Doc. 24, at 7. This threat represents the most compelling reason to detain Mitchell because the Bail Reform Act’s legislative history “repeatedly emphasizes that defendants who have threatened witnesses pose a significant danger and should be detained prior to trial.” *United States v. Delker*, 757 F.2d 1390, 1400 (3d Cir. 1985) (denying bond to a defendant with strong community ties because he threatened witnesses against him).

Not only does Mitchell pose a danger to the victim, but to the community too—no matter where he lives. First, Mitchell has already shown his willingness to deploy his law enforcement skills to trick a schoolchild into believing that she must accompany him, and that specialized experience makes him especially dangerous. Second, because Mitchell faces a guidelines sentence of life and the evidence is strong, Mitchell may decide that he has nothing to lose by committing another violent or predatory offense. Indeed, the district court noted the minimum

mandatory sentence when finding that he posed a danger if released. Def. App.

13a. Thus, the government has demonstrated by clear and convincing evidence that Mitchell remains a danger to the community.

B. The District Court Properly Determined That No Set Of Conditions Could Reasonably Assure The Safety Of The Community From Mitchell

Because the government met its burden on dangerousness, the only question is whether Mitchell's proposed conditions of release rebutted the statutory presumption that no conditions of release could reasonably assure the safety of the community. The district court correctly concluded that they did not.

1. Mitchell's Proposed Conditions Would Not Reasonably Assure The Safety Of The Community

Mitchell remains a danger no matter what conditions are attached to his release, and his short freedom on stipulated bond for the state charges does not change the outcome. Although Mitchell argues otherwise, his "best evidence" is a snippet from the detention hearing transcript that omits crucial context. Mem. 9. According to Mitchell, the government purportedly conceded Mitchell's lack of dangerousness by acknowledging that Mitchell's parents "kept a good eye on him." Mem. 9. But as the transcript reflects, before making that comment, the government highlighted Mitchell's threat to the victim—that "she better hope I don't get out of here"—and then explained that "the fact that he was later released and in Miami for 90 days and his parents kept a good eye on him, that's a fact, *but*

that does not and would not make the average person that heard that threat feel better.” Def. App. 11a (emphasis added to show omitted quotation). Indeed, the victim’s mother advised the district court that the victim (justifiably) worries about what may happen if Mitchell goes free. Def. App. 16a. Thus, the government made no concession that Mitchell’s parents could reasonably assure the safety of the community from their son.

In any event, Mitchell’s proposed conditions (living with his parents, electronic monitoring, and a substantial bond) all suffer from the same fatal flaw: they depend on his good-faith compliance. This Court has held that even the strictest conditions of release may be inadequate to protect the community when they depend on a defendant’s good-faith compliance with those conditions. See *Hir*, 517 F.3d at 1087. Here, like in *Hir*, the crimes are not susceptible to effective monitoring and thus do not mitigate the danger to the community. *Ibid.* After all, neither Mitchell’s parents nor electronic monitoring could prevent Mitchell from trying to lure another young victim into his car. Especially considering Mitchell’s previous deception and dishonesty, “there is an unacceptably high risk” that he would not comply in good faith with any conditions of release. *Ibid.*

In similar circumstances, the Eighth Circuit ordered the detention of a defendant charged with committing criminal sexual activity with a teenager, even though the defendant’s parents were willing to serve as third-party custodians and

even though the defendant had no prior criminal history. See *United States v. Abad*, 350 F.3d 793, 797 (8th Cir. 2003). That court explained that “[o]ne of the fundamental duties of government is public safety, including protecting children from sexual predators.” *Ibid.* So too here. As the magistrate judge correctly concluded, commitment to a third-party custodian does not mitigate against the “very significant risk that Mr. Mitchell presents to the community.” Def. App. 55a.

2. *The District Court Properly Considered And Rejected Mitchell’s Arguments*

Mitchell fares no better in his procedural argument that the district court failed to properly consider his proposed release conditions. Mem. 9-10. First, the court explicitly acknowledged that it had reviewed “all the filings.” Def. App. 3a. Second, at the hearing, the court heard Mitchell’s counsel argue why the proposed conditions of release rebutted the government’s showing of dangerousness. Def. App. 5a-7a. That the court denied bond does not mean that the court ignored his arguments; the court simply found them unpersuasive.

At bottom, what matters is not whether the district court listed each and every argument proposed by Mitchell in its order, but whether this Court can “effectively and efficiently review” that order. *United States v. Wheeler*, 795 F.2d 839, 841 (9th Cir. 1986) (remanding when a district court did not provide *any* explanation for its detention order). This Court can effectively and efficiently

review the order here based on the parties' filings and the extensive record before the district court, which included the Southern District of Florida magistrate judge's detention order and related transcript, reports from two different Pretrial Services offices recommending detention, and the concerns expressed by the victim's mother about her daughter's safety. In short, the "substance is there, and the court articulated its reasoning in sufficient detail to allow for meaningful appellate review." *United States v. Smith*, 647 F. App'x 863, 866 (10th Cir. 2016) (affirming pretrial detention order even though the district court's analysis did not track the statutory factors).

The district court's imprecise language also provides no reason to reverse, as Mitchell contends (Mem. 10), because this Court conducts an "independent examination of the facts, the findings, and the record to determine whether an order of pretrial detention may be upheld." *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). To be sure, the district court twice verbally stated that the proposed conditions may not "guarantee" the safety of the community (Def. App. 14a), even though the Bail Reform Act requires only a reasonable assurance against danger to the community. See *Hir*, 517 F.3d at 1092 n.9. But that mistaken word choice—which the court itself corrected at one point (Def. App. 14a)—does not change the outcome given this Court's de novo review.

In sum, this Court should affirm because the overall record shows that the district court applied the right standards and reached the right result. After all, if Mitchell was bold enough to kidnap a girl near her school, depraved enough to violently and sexually assault her, cunning enough to dispose of incriminating evidence, and careless enough to threaten her while in police custody, then none of Mitchell's proposed conditions of release would reasonably assure the safety of the community or the victim.

CONCLUSION

This Court should affirm the district court's pretrial detention order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this response:

(1) complies with the length limits permitted by Ninth Circuit Rule 9-1, Ninth Circuit Rule 27-1(1)(d) and Ninth Circuit Rule 32-3(2) because the response contains 3626 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f), if applicable;

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman 14-point font.

s/ Brant S. Levine
BRANT S. LEVINE
Attorney

Date: November 10, 2022

APPENDIX

PAGE

Detention Order, Doc. 12, No. 1:22-mj-03273 (S.D. Fla. Aug. 3, 2022)*1

* The government filed this detention order as part of the record in the federal Arizona proceedings (Doc. No. 16).

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 22-mj-03273-DAMIAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

AARON THOMAS MITCHELL,

Defendant.

_____ /

DETENTION ORDER

THIS CAUSE comes before the Court pursuant to the Government’s Motion to hold Defendant Aaron Thomas Mitchell in custody pending trial for charges of kidnapping, pursuant to 18 U.S.C. §§ 1201(a) & (g)(1). The Court conducted a hearing on the Motion on August 1, 2022. Having considered the factors enumerated in 18 U.S.C. §§ 3142(e)(3)(E) & (g), the Court finds that there is no condition or combination of conditions that will reasonably assure the safety of the community and the appearance of Defendant. Therefore, it is hereby ordered that Defendant be detained prior to trial and until the conclusion thereof.

In accordance with the provisions of 18 U.S.C. § 3142(g), the Court hereby makes the following findings of fact and statement of reasons for the detention:

1. The nature of the offense involves a crime of kidnapping a minor in violation of 18 U.S.C. §§ 1201(a) & (g)(1). The Government proffers that on the morning of April 25, 2022, Defendant, then-employed as a Customs and Border Patrol Officer (“CBPO”), encountered a 15-year-old female Minor Victim (“M.V.”) who was waiting by her middle school. Defendant allegedly asked to see M.V.’s documents, ordered her into his car, and told her he was taking her to a police station. Defendant then handcuffed her, drove an hour to his apartment, sexually

assaulted her, and brought her back to school several hours later. M.V. was interviewed on April 25, 2022 and a SANE exam was conducted. Defendant was arrested on April 26, 2022 in Sierra Vista, Arizona.

2. Defendant faces eighteen counts in Cochise County Superior Court in Cochise County, Arizona. On May 4, 2022, Defendant was arraigned in Cochise County Superior Court and the court set a \$200,000 10% bond with conditions. Defendant was also required to remain in Arizona. Defendant's family posted a \$20,000 bond and Defendant was released. Defendant moved to modify the conditions of his release and on May 17, 2022, the Superior Court granted Defendant's motion. The court permitted Defendant to leave Arizona and live with his parents in Florida with electronic monitoring remaining in effect. On July 13, 2022, Defendant was indicted in the District of Arizona and on July 27, 2022, he voluntarily surrendered at the FBI Miami Division office.

3. Defendant's history and characteristics show a trained former federal law enforcement officer with strong family support who had been a CBPO for less than a year at the time of his arrest. Prior to moving to Arizona to work as a CBPO, Defendant resided in the Southern District of Florida, where he graduated from Miami-Dade College with a degree in criminal justice and previously worked at the Port of Miami as a terminal agent. Defendants' parents, both retired police officers, presently live in Miami-Dade County and are willing to act as third-party custodians and co-signers. Defendant has no criminal history nor history of drug or alcohol abuse.

4. Defendant appeared at the hearing in person. FBI Special Agent Russel Jewell of the Phoenix Field Office and Defendant's mother, Thomasena Mitchell ("Mrs. Mitchell") testified.

- a. Special Agent Jewell, an agent with the FBI for the last twelve years, stated that M.V. was interviewed on April 25, 2022 and that there were two SANE exams conducted: one on April 25, 2022 and the other on May 10, 2022. Special Agent Jewell indicated that M.V. outcried to her family following the alleged assault and her family members reported the incident to police. Special Agent Jewell testified that M.V. was concerned about reporting this incident because she believed it had been committed by a law enforcement officer, thus she feared reporting it to the police.

- b. Mrs. Mitchell testified that she is a retired police sergeant and served 30 years with the Miami-Dade Police Department. She stated that she lives in Miami Gardens, FL with her husband, who is Defendant's father and a retired Miami Beach police officer for 28 years. Mrs. Mitchell provided information regarding Defendant's background as having been born in Miami and educated in local Catholic schools, having no history of arrest, and no history of drug or alcohol abuse. Defendant received a degree in criminal justice from Miami-Dade College and previously worked at Buffalo Wild Wings, as a security guard at Ross, and for the Port of Miami. She stated that prior to moving to Arizona, the only time Defendant had lived away from home was during a summer semester at Florida Agricultural & Mechanical University in Tallahassee, FL, before returning home to assist his parents with his grandmother and sisters. Mrs. Mitchell indicated that Defendant could live at home with her and her husband should he be given a bond.

5. Defendant avers that there is no evidence that he poses a risk of flight or a danger to the community. In support, Defendant emphasizes his lack of criminal history and compliance with the conditions of his state bond. Defendant argues that a combination of conditions exist that will reasonably assure his appearance and the safety of the alleged victim and the community including, among others: a \$250,000 personal surety bond co-signed by his parents; surrender of all passports and travel documents; report to pretrial services as directed; avoid all contact with M.V. and her family; refrain from possessing a firearm; not visit any commercial transportation establishment; and be subject to location monitoring. Both parents were proffered as third-party custodians.

6. The Government contends that each of the § 3142(g) factors weigh in favor of Defendant's detention pending trial. Specifically, the Government notes the nature and circumstances of the offense where Defendant allegedly sexually assaulted M.V. and destroyed evidence. The Government highlights the mandatory minimum of 20 years and a statutory maximum of life imprisonment for this offense. Furthermore, the Government cites the overwhelming evidence against Defendant, Defendant's conduct, and the similarities between the particularly vulnerable communities present in both Miami-Dade County and where the alleged assault occurred in Arizona.

7. The Court's inquiry is two-fold: weighing whether there is a preponderance of evidence of risk of flight and clear and convincing evidence of danger to the community. The Court recognizes that while Defendant does pose a significant risk of flight, there are adequate conditions available to ensure his appearance. The proposed conditions are stringent and the Court heavily considers the testimony of Defendant's mother, a retired Miami Dade Police Officer of 30 years, in its calculation. Nevertheless, even with a third-party custodian, there is not enough to

provide a reasonable assurance of safety to the community. Defendant's argument that he has complied thus far with the conditions of his state bond therefore he should receive a federal bond is, frankly, unavailing. Moreover, Defendant's lack of criminal history is similarly unpersuasive. Based on Defendant's background, training, and placement in a position of public trust, there is an obvious absence of indicators that criminal activity was likely afoot. While Defendant's innocence is presumed, the Court cannot disregard his willingness to lie about minor details when confronted with the accusation that Defendant had M.V. in his apartment, especially in light of the video evidence of her backpack and whether Defendant departed his vehicle by himself.

8. Defendant had indicia of his status as a law enforcement officer displayed on his person when he took a child from her middle school to his home. Traveling only on the facts that are not meaningfully disputed (or based on objective evidence), Defendant abused his position of trust against one of the most vulnerable members of society. Although video evidence corroborates the victim's account, Defendant then lied about details of the encounter. Having considered the facts and circumstances of the offense, nature, and characteristics of the Defendant and being otherwise apprised of the circumstances, I find that there are not any conditions or combination of conditions that would reasonably assure the safety of the community as required by statute. 18 U.S.C. § 3142(e). Accordingly, the Court hereby directs:

- a. That Defendant be committed to the custody of the Attorney General for the confinement in a corrections facility separate, to the extent practical, from persons awaiting or serving sentences or being held in custody pending appeal;
- b. That Defendant be afforded reasonable opportunity for private consultation with counsel; and

- c. That, on the order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which Defendant is confined deliver Defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of August, 2022.



LAUREN FLEISCHER LOUIS
UNITED STATES MAGISTRATE JUDGE

Copies to:
Counsel of Record
Pretrial Services (Miami)