

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-20350-CR-MARTINEZ

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHANNA MICHELY GARCIA,

Defendant.

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**MOTION FOR RECONSIDERATION AND REHEARING  
ON THE ISSUE OF PRETRIAL DETENTION**

Johanna Michely Garcia, through undersigned counsel, respectfully files this motion to reconsider the order of detention and requests that the Court consider her new bond proposal in fashioning release conditions that are the “least restrictive” means of reasonably assuring her appearance in court. She states the following in support thereof.

**I. Relevant Factual Background and Procedural History**

Ms. Garcia is charged by way of indictment with conspiracy to commit wire fraud and mail fraud, wire fraud, mail fraud, and money laundering, relating to alleged conduct from June 2020 to August 2021. (DE 1). At her initial appearance, the government moved for pretrial detention based on “risk of flight.” (DE 6). Following a hearing, Magistrate Judge Becerra ordered that Ms. Garcia be detained. (*See* DE 13).<sup>1</sup>

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<sup>1</sup> It appears as though a written order of detention was not docketed.

At the detention hearing, Judge Becerra specifically noted that her decision regarding detention was without prejudice, and that Ms. Garcia could come back with a different bond proposal for the Court to consider. In other words, Judge Becerra found that—though a close call—the combination of conditions presented at the hearing were insufficient to reasonably assure Ms. Garcia’s appearance, but did *not* conclude that no combination of conditions could.

## **II. Requested Relief**

Ms. Garcia, through counsel, now requests that the Court release her on a high personal surety bond, accompanied by a percentage bond or corporate surety bond, with stringent conditions, including home detention supported by GPS monitoring, and cosigned by over a dozen family members and close friends, including several who own property that would serve to collateralize the bond.

Ms. Garcia has the support of numerous family members and friends who are willing to serve as cosigners on a bond, including: Ms. Garcia’s mother and father, Digna and Giovanni Martinez, who own their home; Ms. Garcia’s brother, Miguel Redondo; Ms. Garcia’s brother, Giovanny Martinez Jr., who owns his home; Ms. Garcia’s brother and sister-in-law, Alex and Marlana Martinez; Ms. Garcia’s cousin and his wife, Jose and Amanda Rodriguez, who own their own home; Ms. Garcia’s uncle, Modesto Canales, who is a homeowner; Ms. Garcia’s ex-husband and father of her children, Javier Garcia, as well as his mother Ana Garcia; Ms. Garcia’s friend, Andrew Perrault; and several other family members and close family friends.

Taken together, this is a powerful demonstration of Ms. Garcia’s substantial

ties to the community and the fact that those people who know Ms. Garcia the best are willing to put their own lives, homes, and financial futures on the line because of their confidence that Ms. Garcia will make her court appearances and does not pose a flight risk let alone a serious risk of flight.

In addition, Ms. Garcia is willing to submit to any other conditions of pretrial release that the Court deems necessary or appropriate, including what is perhaps the most restrictive condition: home detention supported by GPS monitoring. As the Court may recall, Ms. Garcia has already surrendered her passport and of course would be prohibited from seeking to obtain any travel documents, and the Court can restrict Ms. Garcia's employment and prohibit any contact with potential witnesses and/or alleged victims. In sum, Ms. Garcia is willing to submit to any conditions the Court deems appropriate.

### **III. Legal Argument**

The Bail Reform Act was enacted to create a presumption of liberty—specifically release with the least restrictive conditions that will reasonably assure the defendant's appearance in court—and to ensure that pretrial detention is a narrowly-tailored exception to that presumption. *See generally* 18 U.S.C. § 3142; *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”).

In a case like this one, involving an alleged non-violent economic offense, the government cannot even seek pretrial detention unless it demonstrates a *serious*

risk of flight. Ordinary risk of flight is insufficient. In any criminal case, some degree of risk of non-appearance will exist. Congress and the United States Supreme Court have been clear that such ordinary risk is insufficient; liberty is the presumption and an ordinary risk of non-appearance is insufficient to jail a person who is presumed innocent. Put simply, “serious risk” requires something more. Detaining a defendant as a “serious risk of flight” is only appropriate in extreme and unusual circumstances involving a heightened risk of intentional flight.

Those circumstances are not present here.

And even when the government is able to meet that high threshold burden of demonstrating a serious risk of flight, the Court *must still* release a defendant unless it finds that *no* combination of conditions can be fashioned to reasonably assure her appearance in court. *See* 18 U.S.C. § 3142(c)(1). In other words, a defendant cannot be detained based on a serious risk of flight when that risk can be mitigated by conditions of release.

Such conditions exists here.

As noted above, Ms. Garcia has strong ties to the community—most importantly her family, including her two young children, her parents, siblings, in-laws, and numerous other family members and close friends. The strength of these ties are illustrated by the long list of people who are willing to serve as cosigners—people who are actively demonstrating their support not through mere words but through action: putting their own livelihoods, homes, and financial futures on the line for Ms. Garcia; people who are confident that Ms. Garcia will comply with any

bond conditions and make all of her court appearances—and who are personally motivated to ensure the same.

It goes without saying that for Ms. Garcia’s family, including her young children, her detention has been extremely difficult; Ms. Garcia’s absence has taken a toll on her entire family. Detention in these circumstances is not only legally unsupported, it is unnecessary and harmful—not only to the individual, but to families, communities, and taxpayers.

The data bears this out. Studies conducted by the Administrative Office of the Courts (“AO”) have found that high rates of federal pretrial detention can cause housing instability, break community ties, and push people toward criminal activity. *Report of the Proceedings of the Judicial Conference of the United States* 10 (September 12, 2017), at 61, archived at <https://perma.cc/B7RG-5J78>. For low-risk defendants, pretrial detention can actually *increase* the risk of recidivism. Amaryllis Austin, *The Presumption for Detention Statute’s Relationship to Release Rates*, 81 FEDERAL PROBATION 52, 54 (2017), archived at <https://perma.cc/9HGU-MN2B> (citing Christopher T. Lowenkamp, Marie VanNostrand, & Alexander Holsinger, *Investigating the Impact of Pre-trial Detention on Sentencing Outcomes* (The Laura and John Arthur Foundation 2013), archived at <https://perma.cc/8RPX-YQ78>); *see also* Paul Heaton, *et al.*, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 718 (2017), archived at <https://perma.cc/5723-23AS> (“[D]etention is associated with a 30% increase in new felony charges and a 20% increase in new misdemeanor charges, a finding consistent with other research

suggesting that even short-term detention has criminogenic effects.”). In addition, federal pretrial detention is itself associated with increased likelihood of a prison sentence and with increased sentence length, even after controlling for criminal history, offense severity, and socioeconomic variables. James C. Oleson, et al., *The Sentencing Consequences of Federal Pretrial Supervision*, 63 *Crime and Delinquency* 313, 325 (2017), archived at <https://perma.cc/QAW9-PYYV>. In sum, pretrial detention inflicts enormous costs on criminal defendants, their loved ones, and the community, not to mention taxpayers, in a counterproductive attempt to prevent new crimes, flight, and non-appearance that—as detailed below—are extremely unlikely to happen in the first place.

Put differently, these stark revelations must also be considered in light of the fact that *almost all* federal defendants make their court appearances while on pretrial release. Recent studies have shown that it is extremely rare for individuals released on bond to flee or to reoffend; 99% of people in the federal system who are released appear for court as required and 99% were not arrested for new crimes while on bond. AO Table H-15 (Sept. 30, 2022) (available via J-NET). This is the case across the country, even in districts with the highest release rates. *Id.*; see also AO Table H-14A (Sept. 30, 2021), available at <https://perma.cc/CYV5-3TZ6>.

In sum, the data supports the fact that defendants like Ms. Garcia can be safely released pending trial without creating a risk, let alone a serious risk of flight.

**IV. Conclusion**

Ms. Garcia respectfully submits that, for the above reasons, the Court can and should fashion a bond with stringent conditions that reasonably assure Ms. Garcia's appearance in court. She therefore respectfully requests that Court the hold a hearing and grant Ms. Garcia's request for pretrial release.

Respectfully Submitted,

MICHAEL CARUSO  
FEDERAL PUBLIC DEFENDER

By: /s/ Kate Taylor

Kate Taylor  
Assistant Federal Public Defender  
Special Bar No. A5502484  
150 West Flagler Street, Suite 1700  
Miami, Florida 33130  
Tel: 305-530-7000  
Email: kate\_taylor@fd.org

**CERTIFICATE OF SERVICE**

I HEREBY certify that on **November 2, 2023**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

*/s/ Kate Taylor*\_\_\_\_\_

Kate Taylor