

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DEMETRIUS HALEY,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

BRIEF FOR THE UNITED STATES AS APPELLEE

REAGAN FONDREN

Acting United States Attorney
Western District of Tennessee

Mary H. Morris

Assistant United States Attorney
167 North Main Street, Suite 800
Memphis, TN 38103
(901) 544-4231
Mary.Morris@usdoj.gov

KRISTEN CLARKE

Assistant Attorney General

ERIN H. FLYNN

BRANT LEVINE

Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station, P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-4373
Brant.Levine@usdoj.gov

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STATEMENT REGARDING ORAL ARGUMENT

The United States believes that oral argument is unnecessary in this bond-denial appeal because the record shows that the district court did not err by denying defendant's request for relief pending sentencing.

INTRODUCTION

This prosecution arises from the violent assault of Tyre Nichols by several Memphis Police Department officers who punched, kicked, tasered, and pepper sprayed him. One of those officers, defendant Demetrius Haley, was recently found guilty of federal civil rights offenses and obstruction of justice for his role in the attack and subsequent coverup. These guilty verdicts prompted the district court to revoke Haley's bond, a decision Haley now challenges on appeal.

This Court should reject Haley's request for release pending sentencing, and it need not address Haley's constitutional challenge to the Bail Reform Act's residual clause. First, Haley was convicted of a crime of violence under the Bail Reform Act's elements clause, which raises no constitutional concerns and independently mandates detention absent circumstances not present here. Second, and regardless of any crime-of-violence determination, detention is separately required under the Bail Reform Act because Haley did not show by clear and convincing evidence that he is not a danger to the community and a flight risk. Accordingly, the district court's decision to detain Haley should be affirmed.

STATEMENT OF THE ISSUES

A jury convicted defendant-appellant Demetrius Haley of civil rights violations, conspiracy to commit witness tampering, and obstruction of justice for his role in violently assaulting Tyre Nichols and for the coverup that followed. After the jury returned these guilty verdicts, the district court revoked Haley's bond. The only issues that this Court need address on appeal are:

1. Whether the district court correctly concluded that the Bail Reform Act mandates detention pending sentencing under 18 U.S.C. 3143(a)(2) because Haley was convicted of a crime of violence under the Act's elements clause.

2. Whether the district court correctly determined that the Bail Reform Act also mandates detention under 18 U.S.C. 3143(a)(1) because Haley failed to provide clear and convincing evidence that he is not a danger to the community or a flight risk.

3. Whether this Court should remand to allow Haley an opportunity to show "exceptional reasons" justifying his release under 18 U.S.C. 3145(c) where he has thus far failed to make that showing.

STATEMENT OF THE CASE

A. Haley violently assaults Tyre Nichols and lies about what happened.

On January 7, 2023, Tyre Nichols was driving his car when Memphis Police Department Officer Demetrius Haley stopped him, pulled him from his car, and began screaming at him: “Get the fuck out of the car, motherfucker, you about to get your ass blowed the fuck up”; and “I’m going to knock you the fuck out.” (Trial Tr., R. 603, PageID# 8449-8454 (Ex. 8)). Haley then pepper-sprayed Nichols, and another officer used his taser, but Nichols ran away. (Trial Tr., R. 603, PageID# 8449-8454 (Ex. 8); Trial Tr., R. 674, PageID# 11932-11944).

What Nichols did not know was that Haley and his fellow officers imposed a “street tax”—a beating—on suspects who ran away from the police. (Trial Tr., R. 676, PageID# 12819; Trial Tr., R. 677, PageID# 12564-12565). And that they did. Other officers caught up to Nichols, pushed him to the ground, and assaulted him with punches, kicks, and a baton. (Trial Tr., R. 677, PageID# 12572-12574; Trial Tr., R. 603, PageID# 8482-8501 (Ex. 6), PageID# 8490-8502 (Ex. 12)).

When Haley arrived at the scene, he hollered for his fellow officers to “[b]eat that man.” (Trial Tr., R. 603, PageID# 8501). Then Haley ran

up to Nichols—who was restrained on the ground—and delivered a “vicious” kick to his head. (Trial Tr., R. 603, PageID# 8501-8502).

After Haley and the other officers finished imposing their “street tax,” they removed their body-worn cameras and bragged about how many times and how hard they hit Nichols. (Trial Tr., R. 603, PageID# 8411-8517 (Exs. 6, 7, 9)). Haley even took photos of a bloody and battered Nichols slumped on the ground, texting them to friends and fellow officers. (Trial Tr., R. 644, PageID# 9841-9843 (Ex. 54); Trial Tr., R. 645, PageID# 9909-9910; Trial Tr., R. 675, PageID# 12098).

When paramedics arrived to take Nichols to the hospital, neither Haley nor the other officers told them about their assault on Nichols or that Nichols had been beaten in the head. (Trial Tr., R. 645, PageID# 10087-10088; Trial Tr., R. 665, PageID# 10853). Nichols later died from blunt-force injuries to his head. (Trial Tr., R. 665, PageID# 10810).

When other police officers investigated what happened to Nichols, Haley and his fellow officers repeatedly lied about and obscured what happened. They falsely claimed, for example, that Nichols was actively resisting arrest. (Trial Tr., R. 644, PageID# 9765-9782 (Ex. 42)). Haley also submitted a report falsely implying that he was not present for any

use of force. (Trial Tr., R. 603, PageID# 8538-8540 (Ex. 18)). And Haley never reported the assault by his fellow officers, as he needed to do. (Trial Tr., R. 644, PageID# 9866-9868 (Ex. 74)).

Further investigation also revealed that Haley's assault of Nichols was not an isolated incident. Just the night before, Haley kicked a handcuffed person in the face. (Trial Tr., R. 677, PageID# 12564). Before that, Haley threw a handcuffed suspect into a sliding door and then punched him in the face. (Trial Tr., R. 676, PageID# 12822-12827). And there was another time when Haley used his closed fist to punch a handcuffed man in the eye. (*Id.* at PageID# 12849). These were all other instances when Haley violently punished handcuffed arrestees who posed no threat.

B. Haley is indicted, tried, and convicted.

A federal grand jury returned a four-count indictment against Haley and other officers for their alleged roles in the assault and the subsequent coverup:

Count 1, *Deprivation of Rights Under Color of Law: Excessive Force and Failure to Intervene*, 18 U.S.C. 242 and 2, for unlawfully assaulting Nichols and willfully failing to intervene in the unlawful assault (including aiding and abetting one another while doing so), resulting in bodily injury and death to Nichols;

Count 2, *Deprivation of Rights Under Color of Law: Deliberate Indifference*, 18 U.S.C. 242 and 2, for willfully disregarding the serious medical needs of Nichols (including aiding and abetting one another while doing so), resulting in bodily injury and death;

Count 3, *Conspiracy to Witness-Tamper*, 18 U.S.C. 1512(k), for conspiring to intentionally withhold material information and knowingly make false and misleading statements to cover up the use of unreasonable force on Nichols; and

Count 4, *Obstruction of Justice: Witness Tampering*, 18 U.S.C. 1512(b)(3), for providing false and misleading information and intentionally omitting material information about Nichols's actions.

(Indictment, R. 2, PageID# 9-14). Before trial, Haley was released on an unsecured bond at the recommendation of the United States.

(Minute Order, R. 14).

After a 19-day trial, a jury convicted Haley on all counts. (Order, R. 629, PageID# 9525-9526). As to Counts 1 and 2, the jury found that the offenses resulted only in bodily injury, not death. (*Ibid.*).

Immediately after the jury convicted Haley, the district court revoked his bond. (Order, R. 633, PageID# 9605). Sentencing is scheduled for January 23, 2025, and Haley faces a recommended sentence of at least ten years in prison under the Sentencing Guidelines.

C. Both the magistrate judge and district court reject Haley's requests for release pending sentencing.

Haley moved for release pending sentencing, arguing that the Bail Reform Act did not require his detention. (Motion for Release Pending Sentencing, R. 639, PageID# 9611-9613). The proceedings below focused on (1) whether detention was mandatory under Section 3143(a)(2) because Haley was convicted of a crime of violence; and (2) whether, regardless of whether Haley was convicted of a crime of violence, Section 3143(a)(1) still required his detention because he did not present clear and convincing evidence that he is not a flight risk or danger to the community.

The Bail Reform Act defines “crime of violence” to include:

(A) “an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another” (the elements clause); or

(B) “any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense” (the residual clause).

18 U.S.C. 3156(a)(4)(A) and (B).

A defendant convicted of a crime of violence must be detained unless certain exceptions apply. *See* 18 U.S.C. 3143(a)(2)(A) and (B)

and 3145(c). The only exception that Haley raises in this appeal is under Section 3145(c), which allows a defendant convicted of a crime of violence to be released if he can show by clear and convincing evidence that (1) he is not a danger to the community, (2) he is not a flight risk, and (3) “that there are exceptional reasons why [his] detention would not be appropriate.” 18 U.S.C. 3145(c) (incorporating the standards for release at 18 U.S.C. 3143(a)(1)).

Haley did not raise this “exceptional reasons” argument below. Instead, Haley’s motion for release argued that (1) none of his convictions qualified as a crime of violence and (2) he was not a flight risk or danger to the community. (Motion for Release, R. 639, PageID# 9611-9613). On the second point, Haley included only one sentence supporting his argument, citing—without elaboration—his “compliance with the release conditions set for him in this case,” his “ties to the community,” his “family support,” and his posting a “substantial bond” in his state prosecution regarding the attack. (*Id.* at PageID# 9612-9613).

The magistrate judge held a bond hearing, but Haley did not call any witnesses, as one of his codefendants did. (Detention Hearing Tr.,

R. 659, PageID# 16050-16051, 10661). At the end of the hearing, the magistrate judge denied Haley's motion for release, concluding that detention was mandatory because Haley's conviction under Count 1 for violating 18 U.S.C. 242 qualified as a crime of violence under the Bail Reform Act's residual clause. (*Id.* at PageID# 10649-10650). Haley then filed a motion with the district court to overturn the detention order. (Motion for Review, R. 658, PageID# 10635-10639).

The district court denied Haley's motion for release, providing three reasons why he should be detained. (Order Denying Release, R. 704, PageID# 14289-14303). First, the district court agreed that Haley's conviction for violating 18 U.S.C. 242 qualified as a crime of violence under the residual clause, rejecting Haley's vagueness challenge to that provision. (*Id.* at PageID# 14296-14300). Second, the court held that the elements clause also would mandate detention because Haley's conviction under Count 1—for violating an individual's right to be free from excessive force—categorically requires the use of physical force against another person. (*Id.* at PageID# 14300-14301 n.2). Finally, the Court determined that regardless of whether Haley's conviction qualified as a crime of violence, the Bail Reform Act

mandates his detention because “Haley has still not satisfied his burden to show by clear and convincing evidence that he is unlikely to flee and poses no danger to the community.” (*Id.* at PageID# 14301).

SUMMARY OF THE ARGUMENT

Haley’s convictions for brutally assaulting Tyre Nichols and then covering up his involvement mandates his detention under the Bail Reform Act for two independent reasons.

First, Section 3143(a)(2) governs Haley’s detention because Haley was convicted of a crime of violence under the Bail Reform Act’s elements clause. Willfully depriving someone of their right to be free from unreasonable police force necessarily requires using physical force, and that conclusion is reinforced by the additional element that bodily injury resulted. Haley does not appear to dispute this, focusing instead on the possibility that he was convicted solely for aiding and abetting the other officers who assaulted Nichols. Putting aside that Haley was captured on video kicking Nichols, this Court has long held that an aider and abettor faces the same criminal liability as the person they aided and abetted. Thus, because Haley’s conviction under Count 1 qualifies as a crime of violence under the elements clause, this Court

should affirm the detention order without reaching Haley's constitutional challenge to the Act's residual clause.

Second, and separate from whether Haley committed a crime of violence, the Bail Reform Act mandates Haley's detention under Section 3143(a)(1) because Haley has not met his burden to show by clear and convincing evidence that he is not a danger to the community or a flight risk. The district court did not abuse its discretion when reaching this conclusion, especially considering the compelling evidence at trial regarding Haley's role in the assault, his deception after the assault, and his history of violence.

Finally, because Haley failed to meet his burden to show that he is not a danger to society or a flight risk, he cannot be granted release for "exceptional reasons" under Section 3145(c) of the Bail Reform Act. 18 U.S.C. 3145(c). Thus, because detention is mandatory, and because there is no reason for the district court to reconsider its ruling, this Court should affirm the district court's order and deny Haley's request for a remand.

ARGUMENT

The district court correctly held that the Bail Reform Act mandates Haley's detention pending sentencing. This Court reviews a district court's denial of bail under an abuse-of-discretion standard, and this standard of review applies to all issues below. *See United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002). "Absent a showing that the court's factual findings were clearly erroneous or that the district court committed an error of law, the district court's detention order should be affirmed." *United States v. Bowman*, 98 F.3d 1343 (6th Cir. 1996) (Tbl.) (affirming order revoking bond and requiring detention pending sentencing).

I. The Bail Reform Act mandates detention because Haley was convicted of a crime of violence under the elements clause.

The Bail Reform Act requires detention pending sentencing where a defendant is found guilty of a crime of violence. *See* 18 U.S.C. 3142(f)(1)(A), 3143(a)(2). The law defines "crime of violence" in several ways, but this Court need only look at the first definition, known as the elements clause. *See* 18 U.S.C. 3156(a)(4)(A)-(C). Under that clause, a "crime of violence" is "an offense that has as an element of the offense

the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. 3156(a)(4)(A).

To determine whether an offense constitutes a crime of violence under the elements clause, courts apply the categorical approach. *See Nicholson v. United States*, 78 F.4th 870, 877 (6th Cir. 2023) (applying the categorical approach to 18 U.S.C. 924(c)(3)(A), which contains the same elements clause as the Bail Reform Act); *United States v. Watkins*, 940 F.3d 152, 163 (2d Cir. 2019) (applying the categorical approach to determine whether an offense is a crime of violence under the Bail Reform Act). Under the categorical approach, an offense is a crime of violence only if that offense *always* requires proof of the use, attempted use, or threatened use of physical force against the person or property of another. *Nicholson*, 78 F.4th at 877.

When a statute sets out multiple crimes with different elements, the statute is divisible, and courts apply a modified categorical approach. *See United States v. Johnson*, 933 F.3d 540, 543 (6th Cir. 2019), *abrogated on other grounds by Borden v. United States*, 593 U.S. 420 (2021). Under the modified categorical approach, the Court may examine certain documents, such as the indictment and jury

instructions, to determine the crime of conviction and its required elements. *See Mathis v. United States*, 579 U.S. 500, 505 (2016). From there, courts apply the usual categorical approach to determine whether that particular offense qualifies as a crime of violence.

A. The district court properly applied the modified categorical approach.

As Haley agrees (Br. 18), the modified categorical approach applies here because 18 U.S.C. 242 is divisible. Section 242 criminalizes the willful “deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” 18 U.S.C. 242. Because this sweeping law spans the entire United States Constitution and United States Code, a prosecutor charging a Section 242 violation must specify which right the defendant is alleged to have violated and prove that specific violation beyond a reasonable doubt. *See United States v. Cruikshank*, 92 U.S. 542, 558 (1875) (interpreting an analogous statute and noting that an indictment is constitutionally insufficient if it alleges only this broad deprivation-of-a-right language, without specifying the right that was allegedly violated). In other words, each constitutional or statutory right that

underpins a Section 242 prosecution gives rise to its own Section 242 offense.

To determine which Section 242 offense applies here, the district court examined Count 1 of the indictment, which charges Haley with violating Section 242 by depriving Tyre Nichols of his constitutional right to be free from unreasonable force by a police officer, with bodily injury resulting. (Order Denying Release, R. 704, PageID# 14300 n.2). As the jury instructions and verdict illustrate, this offense has four elements:

- 1) “That the defendant acted under color of law”;
- 2) “That the defendant deprived Tyre Nichols of . . . the right to be free from the unreasonable use of force by a police officer”;
- 3) “That the defendant acted willfully”; and
- 4) “That bodily injury resulted from the offense.”

(Jury Instruction No. 18, R. 630, PageID# 9549; Order, R. 629, PageID# 9525-9526).

The jury instructions also explained that a defendant can deprive someone of their constitutional right to be free from excessive force in one of two ways: when “a defendant personally used unreasonable force,” or when “a defendant knowingly failed to prevent another officer

from using unreasonable force.” (Jury Instruction No. 18, R. 630, PageID# 9552-9553). Either way, as the district court correctly ruled, this crime satisfies the elements clause because “force must be used, and that force must be unreasonable.” (Order Denying Release, R. 704, PageID# 14300 n.2).

B. Willfully depriving someone of their right to be free from unreasonable police force necessarily involves the use of physical force.

Because the Section 242 violation charged here always requires the government to prove that someone endured unreasonable police force and that the offense resulted in bodily injury, Haley’s conviction easily satisfies the element clause’s requirement that “physical force” be attempted, threatened, or used. 18 U.S.C. 3156(a)(4)(A). The Supreme Court defines “physical force” to mean “force capable of causing physical pain or injury.” *Johnson v. United States*, 559 U.S. 133, 140 (2010).

This includes “force as small as hitting, slapping, shoving, grabbing, pinching, biting, and hair pulling.” *Stokeling v. United States*, 586 U.S. 73, 85 (2019) (quoting *United States v. Castleman*, 572 U.S. 157, 165 (2014)). Interpreting this precedent, this Court—as well as every other circuit—has held that the physical force requirement is satisfied any

time a defendant causes physical harm. *See Banks v. United States*, 773 F. App'x 814, 822 (6th Cir. 2019) (citing cases).

Haley appears to suggest that some Section 242 violations for excessive force may not require a sufficient level of force to qualify as a crime of violence. Br. 20 (arguing that “the bodily injury element itself doesn’t involve the requisite substantial risk that physical force may be used”). But Haley makes this argument when discussing the residual clause, and his brief does not explain whether this one-sentence statement reflects any error by the district court’s ruling on the elements clause, so this Court need not reach the issue. *See McPherson v. Kelsey*, 125 F.3d 989, 995-996 (6th Cir. 1997) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.” (alteration in original; citation omitted)).

In any event, a Section 242 violation for depriving someone of their right to be free from excessive force necessarily satisfies this element, especially here when the violation results in bodily injury. To begin, excessive police force is *capable* of causing physical pain or injury. And bodily injury, as the jury was instructed, includes “any

injury to the body, no matter how minor or temporary, and it includes any cut, abrasion, bruise, burn, disfigurement, illness, physical pain, or impairment of a bodily member, organ, or mental faculty.” (Jury Instruction No. 22, R. 630, PageID# 9560). As the above caselaw confirms, this definition more than satisfies the physical-force requirement because each example is *capable* of causing physical pain or injury. Therefore, Haley’s conviction under Count 1 qualifies as a crime of violence under the Bail Reform Act’s elements clause.

C. Aiding and abetting a crime of violence is a crime of violence.

Haley does not allege any error in how the district court applied the modified categorical approach to determine that the Section 242 violation charged in Count 1 is a crime of violence under the elements clause. Instead, Haley contends that *his* conviction does not qualify as a crime of violence because he also was charged with aiding and abetting the offense, and a conviction on that basis would not qualify as a crime of violence. Br. 18. Not so. “One who aids and abets a crime of violence necessarily commits a crime that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” *Nicholson*, 78 F.4th at 880 (internal quotation

marks omitted) (quoting *Alvarado-Linares v. United States*, 44 F.4th 1334, 1348 (11th Cir. 2022)).

As this Court has explained, “principals and those who aid and abet them are held to have committed the same crime, and are punished in kind.” *United States v. Buie*, 960 F.3d 767, 772 (6th Cir. 2020) (noting that this rule is applied in every American jurisdiction). So it makes no difference whether Haley or only one of his codefendants violated Tyre Nichols’s right to be free from excessive police force (though, to be clear, Haley actively participated in the attack, as the trial evidence confirms (Trial Tr., R. 603, PageID# 8501-8502)).

In sum, every conviction for aiding and abetting a crime requires the jury to find that all essential elements of the underlying crime were committed by someone. *See Nicholson*, 78 F.4th at 879. Thus, Haley was convicted of “*an offense* that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. 3156(a)(4)(A) (emphasis added). That alone is sufficient to affirm the district court’s order.

D. This Court should not reach Haley’s constitutional challenge to the residual clause.

Because Haley’s Section 242 conviction in Count 1 qualifies as a crime of violence under the Bail Reform Act’s elements clause, this Court need not and should not address Haley’s constitutional challenge to the residual clause. “The power to hold laws unconstitutional is one of ‘great gravity and delicacy,’” and federal courts thus should not decide constitutional questions “unless absolutely necessary.” *Torres v. Precision Indus., Inc.*, 938 F.3d 752, 754-755 (6th Cir. 2019) (quoting *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 345 and 347 (1936) (Brandeis, J., concurring)).

As the district court observed, “[t]here is precious little guidance from higher courts regarding the continuing validity of the residual clause of the Bail Reform Act following *Johnson*, *Dimaya*, and *Davis*,” which are Supreme Court cases invalidating residual clauses in other statutes. (Order Denying Release, R. 704, PageID# 14298). This expedited appeal provides a poor vehicle to address this unsettled and uncommon legal issue. Indeed, as detailed in the next section, Haley must be detained under Section 3143(a)(1) regardless of whether he was convicted of a crime of violence for purposes of Section 3143(a)(2). So

the Court need not reach Haley's constitutional challenge. When two grounds to affirm already exist, this Court should not reach this third issue.

II. The Bail Reform Act separately mandates detention because Haley failed to prove that he is not a danger to the community or a flight risk.

Although this Court could affirm based solely on the district court's correct determination that Haley's conviction under Count 1 qualifies as a crime of violence and that Section 3143(a)(2) thus governs his detention, this Court could bypass that issue and affirm based solely on the district court's other holding that Haley must be detained under Section 3143(a)(1) because he failed to overcome the presumption that he is a danger to others and a flight risk.

Under Section 3143(a)(1), a defendant found guilty but not yet sentenced must be detained "unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released." 18 U.S.C. 3143(a)(1). As this Court has instructed, this provision does not require the government to make any showing of dangerousness; rather, the statute "presumes dangerousness and the criminal

defendant must overcome this presumption.” *United States v. Vance*, 851 F.2d 166, 168 (6th Cir. 1988). Put simply, “[r]elease is no longer favored once guilt of a crime has been established.” *United States v. Bowman*, 98 F.3d 1343 (6th Cir. 1996) (Tbl.).

A. The district court did not abuse its discretion or make any errors when rejecting Haley’s request for release.

The district court made no factual or legal errors when it concluded that “Haley has still not satisfied his burden to show by clear and convincing evidence that he is unlikely to flee and poses no danger to the community under § 3143(a)(1).” (Order Denying Release, R. 704, PageID# 14301). In reaching this conclusion, the court rightfully observed that “ cursory statements” cannot overcome the presumption of dangerousness and flight risk. (*Id.* at PageID# 14302) (citing *Vance*, 851 F.2d at 168).

Haley’s initial motion to the magistrate judge and his later motion to the district court included just one sentence on this issue. (Motion for Release, R. 639, PageID# 9612-9613 (¶ 5); Motion for Review, R. 658, PageID# 10635 (¶ 6)). That sentence states that Haley is not a flight risk or danger to the community because of his “compliance with the release conditions set for him in this case,” his “ties to the community,”

his “family support,” and his posting a “substantial bond” in the state prosecution. (*Ibid.*).

These conclusory assertions, the district court found, were outweighed by the “seriousness of the recent convictions” and the “great weight of the evidence against [him] at trial.” (Order Denying Release, R. 704, PageID# 14303). That evidence included testimony that Haley told Nichols, “I’m going to knock you the fuck out” before delivering a “vicious” kick to Nichols’s head. (Trial Tr., R. 603, PageID# 8449-8454 (Ex. 8), PageID# 8501-8502). Plus, Haley assaulted at least three other handcuffed individuals before that night. (Trial Tr., R. 676, PageID# 12822-12827, 12849; Trial Tr., R. 677, PageID# 12564).

If all this were not enough, the district court also cited Haley’s conviction for obstructing justice and conspiring with his fellow officers to obstruct justice. (Order Denying Release, R. 704, PageID# 14303). On this point, evidence at trial showed that Haley not only failed to report his use of force, but also colluded with other officers to deny that he was even at the scene. (Trial Tr., R. 603, Page ID# 8506-8513 (Ex. 6); Page ID# 8411-8512 (Ex. 9); Page ID# 8515-8517 (Ex. 7); Trial Tr., R. 644, PageID# 9765-9782 (Ex. 42)). This documented deception, along

with the lengthy potential prison sentence that Haley faces—a recommended sentence of at least ten years under the Sentencing Guidelines—underscores that Haley “has not met his burden to show that he is unlikely to flee.” (Order Denying Release, R. 704, PageID# 14303).

B. Haley has had ample opportunity to prove that he is not a danger to society or a flight risk.

Haley does not specify in his brief how exactly the district court abused its discretion in denying him release under Section 3143(a)(1), nor does he identify any clearly erroneous finding. Instead, he complains that he was not allowed to present evidence to the court below. Br. 21-23. The record belies this assertion. Again and again, Haley had a chance to show why he should not be deemed a danger to society or a flight risk, and again and again, Haley squandered these opportunities.

First, Haley had the opportunity to present evidence in his written motion seeking release pending sentencing, but he did not do so. Second, Haley had the opportunity to present evidence at the hearing on that motion, but the only evidence he offered was proof that he paid the state bond in his criminal case. To be sure, the magistrate judge

denied Haley's requested one-day continuance *to conduct legal research*, but Haley never conveyed that he needed more time to present evidence or call witnesses (which his codefendant did at the hearing). (Detention Hearing Tr., R. 659, PageID# 10649, 10661). And in any event, if Haley thought the magistrate judge erred by denying him a fair opportunity to present evidence, Haley could have argued that in his motion seeking review of the magistrate judge's decision, but he did not do so. Nor did Haley proffer any new evidence or ask for a hearing in his motion seeking review of the magistrate judge's decision. (Motion for Review, R. 658, PageID# 10635-10638).

In sum, the district court did not abuse its discretion or make any errors when it held that Haley failed to offer clear and convincing evidence that he was not a danger to society or a flight risk. The Bail Reform Act thus mandates his detention under Section 3143(a)(1).

III. Because Haley failed to meet his burden on dangerousness and flight risk, he cannot be released for “exceptional reasons.”

Haley's final argument, that he should be released under the “exceptional reasons” provision of the Bail Reform Act, 18 U.S.C. 3145(c), fails several times over. First, Haley never made this

argument below and thus forfeited it. Second, this provision allows for potential release despite a conviction for a crime of violence only when a person clearly shows that he is not a danger to the community or a flight risk, which Haley has not. Finally, Haley does not offer any “unique combination of circumstances giving rise to situations that are out of the ordinary” that would justify release under this section. *See United States v. Sandles*, 67 F. App’x 353, 354 (6th Cir. 2003) (quoting *United States v. DiSomma*, 951 F.2d 494, 497 (2d Cir. 1991)). Thus, this Court should deny Haley’s request for a remand on this issue.

CONCLUSION

This Court should affirm the district court's order denying release pending sentencing.

Respectfully submitted,

REAGAN FONDREN
Acting United States Attorney
Western District of Tennessee

Mary H. Morris
Assistant United States Attorney
167 North Main Street, Suite 800
Memphis, TN 38103
(901) 544-4231
Mary.Morris@usdoj.gov

KRISTEN CLARKE
Assistant Attorney General

s/ Brant S. Levine
ERIN H. FLYNN
BRANT S. LEVINE
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station, P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-4373
Brant.Levine@usdoj.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of the Court's briefing order because it contains 5064 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Brant S. Levine
BRANT S. LEVINE
Attorney

Date: December 16, 2024

CERTIFICATE OF SERVICE

On December 16, 2024, I filed this brief with the Clerk of the Court by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

s/ Brant S. Levine
BRANT S. LEVINE
Attorney

ADDENDUM

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record Entry Number	Description	PageID# Range
R. 2	Indictment	9-14
R. 629	Order on Jury Verdict	9525-9526
R. 630	Jury Instruction No. 18 and 22	9549-9560
R. 633	Order	9605
R. 639	Motion for Release	9611-9613
R. 658	Motion for Review	10635-10638
R. 659	Detention Hearing Transcript	10649-10651
R. 704	Order Denying Release	14289-14303
R. 705	Notice of Appeal	14304