

Hon. Zachary Bolitho (23-CR-H)

November 27, 2023

A defendant from outside my district was arrested here on a warrant for violating her pre-sentencing release. I conducted her initial appearance under Fed. R. Crim. P. 40. At the initial appearance, the government moved for detention pending the defendant's release revocation hearing in the charging district under 18 U.S.C. 3148. The defendant requested a detention hearing in front of me. The government argued that I lacked the authority to conduct a detention hearing. The AUSA argued that Rule 40 says nothing about a detention hearing in the district of arrest and that 18 U.S.C. 3148 speaks only of a revocation hearing before a judge in the charging district. I rejected the AUSA's argument and found that the right to a detention hearing in the district of arrest was implicit in Rule 40(c), which permits a judge in the district of arrest to "modify any previous release or detention order issued in another district." I determined that it would be inconsistent with the Bail Reform Act for me to modify a release order and require detention without providing the defendant with a hearing on the issue. There are a few decisions from other magistrate judges that have reached the same conclusion. That led to the next issue, which was what standard to apply at the detention hearing. Neither the Bail Reform Act nor the Federal Rules provide a standard. My research revealed that magistrate judges have applied various standards. Because the defendant was awaiting sentencing, I determined the appropriate standard was that set forth in Rule 46(c) and 18 U.S.C. 3143(a). I felt that made the most sense under the circumstances, but I can't point to anything in the Federal Rules or the Bail Reform Act to confirm that I made the right call.

It would be very helpful to magistrate judges if Rule 40 could be amended to address the two questions I faced—(1) Does a defendant who has been arrested on a petition to revoke pre-trial or pre-sentencing release from another district have the right to a detention hearing in the district of arrest?; and (2) If so, what is the standard that applies in the detention hearing?