

INITIAL APPEARANCE ON A PETITION ALLEGING A VIOLATION OF TSR -- THE TERMS OF THE DEFENDANT'S SUPERVISED RELEASE

[Use this form if a petition has been filed alleging that the defendant has violated the terms of his/her supervised release]

[Note: *If you have any doubts about the defendant's ability to speak and understand English, then consider using a certified interpreter in accordance with 18 U.S.C. § 1827. If a certified interpreter is used, then no record needs to be made about the interpreter's qualifications. Be sure to swear the interpreter.]*

1. "This is the case of the United States of America versus (*name of defendant*). Are you (*defendant's name*)? I am (*state your name*)."
2. *[Tell the defendant]* "A petition has been filed alleging that you have violated the terms of your supervised release by *[summarize the allegations in the petition]*."

[Ask the defendant] "Within the past 24 hours, have you used or taken any **alcohol, drugs, or medication?**" *[If "yes," then say]* "Do you think this might affect your ability to understand the legal matters we'll be talking about at this hearing today?"

[Tell the defendant] "I now will tell you about certain of your constitutional rights."

[ADVICE OF RIGHTS]

4. "You have the right to remain silent. This means you don't have to say anything to anyone. If you give up that right and make a statement, the prosecutor can, and probably will, use everything you say against you. Therefore, I strongly suggest that you not say anything to anyone unless you and your lawyer decide it's in your best interests to do so. If you've already given a statement, you don't have to say anything else. If you

decide to go ahead and make a statement, you have the right to stop at any time.”

5. “Do you understand your right to remain silent?”
6. “You also have the right to be represented by a lawyer at every stage of this case. If you need some time to find a lawyer, I’ll give you that time. If you want a lawyer but can’t hire one, I’ll appoint one to represent you. If I appoint a lawyer to represent you, the lawyer would represent only you in this case, but the court would pay the lawyer’s fees and expenses.”
7. “Do you understand?”

[REPRESENTATION]

8. “Are you able to hire your own lawyer?” [*If “yes,” then go to paragraph 8(c). If “no,” then say*] “Would you like me to appoint one to represent you?” [*If “yes,” then say*] [*(Name of defendant’s lawyer) has represented you in this case. Do you want (name of attorney) to represent you in connection with this matter?*”] “Has the defendant completed a financial affidavit?” [*and go to paragraph 8(a) or 8(b), as appropriate. If “no,” then go to paragraph 8(d).*]
 - (a) [*If a completed financial affidavit IS available, then review the financial affidavit and say one of the following things.*]
 - (1) [*If a panel lawyer or federal defender is present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed your financial affidavit, and find that you’re entitled to court-appointed counsel. I hereby appoint (name of lawyer) to represent you. Is defense counsel prepared to proceed with the arraignment?” [*If “yes,” then go to paragraph 9 on page 5. If no, go to paragraph 14 on page 6.*]

(2) [*If a lawyer is not present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed your financial affidavit, and find that you’re entitled to court-appointed counsel. I direct the Clerk of Court to appoint a lawyer to represent the defendant either from the federal defender’s office or from the panel of lawyers qualified to handled this type of case.” [Go to *paragraph 14 on page 6.*]

(3) [*If the defendant does not qualify for court-appointed counsel, then say*] “I find the defendant is not entitled to court-appointed counsel based on (*state reason, such as level of income or available assets*).” [Ask the defendant about his/her plans for retaining a lawyer, then, go to *paragraph 14 on page 6.*]

(b) [*If a completed financial affidavit IS NOT available, then say one of the following things.*]

(1) [*If a panel lawyer or federal defender is present, then say*] “I hereby appoint (*name of lawyer*) to represent you.” [Then say] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [Tell the defendant] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [Then ask lawyer] “Are you prepared to proceed with the arraignment?” [If “yes,” then go to *paragraph 9 on page 5.* If “no,” then say] “The arraignment in this case is scheduled for (*schedule arraignment*).” [Go to *paragraph 14 on page 6.*]

(2) [*If a lawyer is not present, then say*] “I order that a lawyer be appointed to represent the defendant from the list of lawyers qualified to handled this type of case.” [Then say] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.”

[*Tell the defendant*] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [Go to *paragraph 14 on page 6.*]

(c) [*If the defendant does not want the court to appoint a lawyer for her/him because (s)he has hired or intends to hire a lawyer*]

(1) [*If the lawyer is present, then say*] “Is defense counsel prepared to proceed with the arraignment?” [*If “yes,” then go to paragraph 9 on page 5. If “no,” then say*] “The arraignment in this case is scheduled for (*schedule arraignment*)” and go to *paragraph 14 on page 6.*]

(2) [*If the lawyer is not present or has not yet been retained, make a record on the subject, and then say*] “The arraignment in this case is scheduled for (*schedule arraignment*)” and go to *paragraph 14 on page 6.*]

(d) [*If the defendant does not want the court to appoint a lawyer for her/him because (s)he wants to represent him/herself, then say*] “Although you may have a constitutional right to represent yourself in this case, you will have to convince me that you are competent to do so before I will allow you to proceed without a lawyer. I strongly suggest that you have a lawyer represent you in this case.” [*Make a record on the defendant’s competence to represent him/herself, and then, as appropriate, either proceed with the arraignment (by going to paragraph 9), or say*] “The arraignment in this case is scheduled for (*schedule arraignment*)” and go to *paragraph 14 on page 6.*]

[DETENTION]

9. “What’s the government’s position on detention?” [*If the government does not ask for detention, then sign the bond and advise the defendant to go*

over the terms of the bond carefully with his/her lawyer, and this would conclude the hearing. If the government asks for detention, then go to paragraph 10.]

10. *[If the hearing has been set on the petition, then use your judgment on whether to release the defendant on bond or detain him/her until the hearing. If no hearing has been set, or if the hearing is not scheduled to occur within a short period of time, then schedule a detention hearing. This would conclude the initial appearance.]*
11. *[If you release the defendant, say] “If you violate your bond, I could issue in a warrant for your arrest, revoke your pretrial release, and have you prosecuted for contempt. If you commit a crime while on release, you could be given an additional sentence of up to 10 years in prison. Tampering with, threatening, or attempting to intimidate an informant, witness, juror, or officer of the court is punishable by up to 10 years in prison. Failure to appear is punishable by up to 15 years in prison.”*

[ADJOURNMENT]