

IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>EVAN WAYNE GARDNER, Petitioner,</p> <p>V.</p> <p>HON. DAN WILSON, 11TH JUDICIAL DISTRICT COURT,</p> <p>BRIAN HEINO, FLATHEAD COUNTY SHERIFF, Respondents.</p>	<p>Cause No. _____</p>
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PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

Petitioner (“Gardner”) is a pretrial detainee in the Flathead County Detention Center, which is controlled by Flathead County Sheriff Brian Heino. Gardner is charged with felony criminal endangerment and misdemeanor driving under the influence of alcohol. On April 22, 2021, Gardner was released after posting a \$15,000 bond subject to a number of conditions. (Order Setting Bail and Conditions of Release, dated April 21, 2021, *attached as* Appx. 1) Gardner is currently subject to a \$250,000 bond following a September 5, 2024, hearing where the District Judge issued a \$250,000 bench warrant for alleged violations of certain conditions of his pretrial release. (Bench Warrant, dated September 5, 2024, *attached as* Appx. 2) The District Court then denied Gardner’s request for a hearing on this issue. (Order Denying Defendant’s Motion to Quash Warrant, dated September 17, 2024, *attached as* Appx. 3) Gardner was arrested in Florida on March 3, 2025, but the warrant was not returned as served until March 18, 2025, when Gardner was extradited back to Montana. (Sheriff’s Warrant Return, dated March 18, 2025, *attached as* Appx. 4) Gardner cannot afford bail in the amount currently set and therefore remains incarcerated.

Gardner argues that his current incarceration is illegal because he did not violate any of the conditions of his release and that \$250,000 bail constates excessive bail under the Eighth Amendment of the United States Constitution and Article II,

§22, of the Montana Constitution. Gardner further argues such bail constitutes pretrial punishment in violation of the Montana and United States constitutions.

II. FACTUAL BACKGROUND

Gardner was originally taken into custody on April 20, 2021, and charged with felony criminal endangerment and misdemeanor driving under the influence of alcohol. On April 21, 2021, a \$15,000 bond with the following conditions were placed upon Gardner:

- Defendant shall reside at 152 ½ Caroline Rd., Kalispell, MT. Defendant shall not change residence without first notifying the court and his/her attorney. The defendant shall not change the mailing address or telephone number without first notifying the District Court and his/her attorney.
- Defendant shall authorize his/her attorney to inform the court if defendant can no longer be reached by phone or mail.
- Defendant shall obey all laws and shall attend any and all hearings and trial.
- Defendant shall not consume alcoholic beverages or enter bars, taverns, or casinos.
- Defendant shall not have contact, direct or indirect, with any alleged victim or witness.
- Attend your next court hearing on: 4-29-21 9am.

Gardner posted the \$15,000 bond the same day. Gardner was initially represented by private counsel, but on July 27, 2022, his counsel withdrew. Gardner,

appearing *pro se*, filed a motion requesting a continuance due to hardship which was dated December 21, 2022, but filed on January 3, 2023. (See Motion for Continuance Due to Hardship and Extreme Circumstances, dated December 23, 2022, *attached as* Appx. 5) Gardner explained that he was unable to find work locally sufficient to pay housing costs, so he moved to Florida to avoid being homeless. He provided his Pensacola, Florida address to the court. The District Court did not rule on this motion.

The next day, on January 4, 2023, Gardner failed to personally attend his Pretrial Conference and the Court issued a \$50,000 bench warrant for his failure to attend on January 9, 2023. (Bench Warrant, dated January 9, 2023, *attached as* Appx. 6) The County Attorney's Office also filed a new case, DC-23-012, alleging felony bail jumping. Defendant then attempted to file various *pro se* motions to continue and quash the \$50,000 warrant.

On May 8, 2023, the District Court issued an order setting a status hearing for May 25, 2023. Gardner filed a motion to attend by zoom since he was living in Florida. The Court denied this request based upon lack of good cause. Gardner was able to borrow funds from his mother to fly back to Montana, and he was personally present for the May 25, 2023, status hearing.

At the status hearing, the Court appointed the Public Defender's Office to represent Gardner. (Minute Entry, dated May 25, 2023, *attached as* Appx. 7) The

Court then quashed the warrant and released Gardner on the \$15,000 bond previously posted with the following conditions:

- Defendant shall reside at 7591 W Hwy 98, #703, Pensacola, FL 32506. Defendant shall not change his/her residence without permission of the court.
- Defendant shall authorize his/her attorney to inform the court if defendant can no longer be reached by phone or mail.
- Defendant shall obey all laws and shall attend any and all hearings and trial.
- Defendant shall not consume alcoholic beverages or enter bars, taverns, or casinos.
- Defendant shall attend his/her next court hearing on: 10/17/2023 at 9 A.M.

During the May 25, 2023, status hearing, the Court also conducted an Arraignment for DC-23-012 and released Gardner on his own recognizes with the same conditions.

On June 4, 2024, Gardner attended his Pretrial Conferences, and both cases were set for jury trials.

On July 11, 2024, Gardner filed an unopposed motion to vacate the trial and set the matter for a change of plea. The District Court granted the motion and set the matter for a change of plea hearing on August 8, 2024. Gardner also filed a motion to appear by video on July 16, 2023, which was granted on August 6, 2024. (Order

Granting Motion to Appear by Video, dated August 6, 2024, *attached as Appx. 8*) However, the change of plea hearing was continued to September 5, 2024. The District Court ordered Gardner to appear by video at the September 5, 2024, hearing and reimposed the previous conditions of release. (Minute Entry, dated August 8, 2024, *attached as Appx. 9*).

At the September 5, 2024, hearing, Gardner moved for a mistrial and requested the District Court discharge his public defender. (Minute Entry, dated September 5, 2024, *attached as Appx. 10*) In response, the District Court found Gardner to be in contempt and issued a \$250,000.00 bench warrant. However, the bench warrant did not cite contempt of court as the reason for its issuance. Instead, it stated “It now appears that the Defendant has violated certain conditions set forth in the terms of his release.” (Appx. 2)

On September 16, 2024, Gardner filed a motion to quash the bench warrant and requesting a hearing. In his motion, Gardner argued the only missed court date had already been addressed by the District Court at the May 25, 2023, hearing and that he had not missed any other court dates or violated any other conditions of his release. (Motion to Quash Warrant and Request for Hearing, dated September 16, 2024, *attached as Appx. 11*) In its order denying Gardner’s motion, the District Court stated the following:

The Defendant violated his Conditions of Release in this matter by failing to appear voluntarily and submit to the authority of the Court for

the September 5, 2024 hearing. The hearing was set for the purpose of considering the Defendant's request to change his plea. Instead, the Defendant appeared from Florida by video and informed this Court that he, as a sovereign citizen, has no obligation to comply with any laws. (Appx. 3)

The \$250,000.00 warrant was served on Gardner in Florida on March 3, 2025, and Gardner was extradited back to Montana. He has remained in custody since that time.

III. ARGUMENT

A. Gardner did not violate the conditions of his pre-trial release as stated by the District Court.

As set forth above, the District Courts reasons for issuing the \$250,000.00 bond are somewhat unclear. Initially, the District Court stated the reason was that Gardner was in contempt of court. Later, upon issuing the warrant, the District Court stated the reason was that "Defendant has violated certain conditions set forth in the terms of his release." (Appx. 2). In its Order denying Gardner's motion to quash and request for a hearing, the District Court explained that Gardner violated his conditions of release by "failing to appear voluntarily and submit to the authority of the Court for the September 05, 2024 hearing." (Appx. 3) However, Gardner did appear voluntarily, as reflected by the minute entry of that hearing and the District Court's order denying his motion to quash. His voluntary appearance shows he submitted to the authority of the District Court. No condition of release required Gardner to forego any jurisdictional or other arguments. Thus,

his arguments in this regard do not constitute a violation of his conditions of pretrial release.

B. Gardner’s bail is excessive.

It is a fundamental constitutional principle that bail may not be excessive. *Billings v. Layzell*, 242 Mont. 145, 149, 789 P.2d 221, 223 (Mont. 1990) (citing U.S. Const. Amend. VIII; Art. II, Sec. 22, Mont. Const.). “To insure that bail is not excessive, the Montana courts are constrained in setting bail by the [twelve] factors listed in § 46-9-301, MCA.” *Id.* “For example, when setting bail a court may consider the defendant’s prior criminal record, the nature of the offense, and the defendant’s financial ability.” *State v. Spady*, 2015 MT 218, ¶ 33, 380 Mont. 179, 354 P.3d 590 (citing Mont. Code Ann. § 46-9-301(5)-(7) and *State v. Couture*, 2010 MT 201, ¶ 62, 357 Mont. 398, 240 P.3d 987). Under these parameters, Gardner’s bond is clearly excessive.

As set forth below, the original \$15,000.00 bond was sufficient to address the factors contained in Mont. Code Ann. § 46-9-301. Specifically, that statute states, “In all cases in which bail is determined to be necessary, bail must be reasonable in amount and the amount must be:

- (1) *Sufficient to ensure the presence of the defendant in a pending criminal proceeding[.]*

Gardner attended all court appearances except the January 4, 2023, pretrial conference (which he attempted to attend but had insufficient funds). At the next

hearing, on May 25, 2023, Gardner appeared in person, and the District Court quashed the \$50,000.00 warrant. Thus, the \$15,000.00 bond was sufficient to ensure his appearance, and a \$250,000.00 warrant was unnecessary.

(2) *Sufficient to ensure compliance with the conditions set forth in the bail[.]*

With the exception of the missed January 4, 2023, hearing, there is no evidence in the record of this case that Gardner violated any conditions of release. As set forth above, Gardner did not violate any conditions of his release at the September 5, 2024, hearing.

(3) *Sufficient to protect any person from bodily injury[.]*

Gardner was charged with only non-violent crimes. There is no allegation in his DUI or Criminal Endangerment cases that he inflicted bodily injury (nor is there any such allegation regarding the bail jumping charge). Gardner has not been charged with or accused of any offense including allegations of inflicting bodily injury and does not have any prior criminal history.

(4) *Not oppressive[.]*

Gardner's \$250,000.00 bond is clearly oppressive. He is not able to afford such a bond. At the time the bond was imposed, Gardner was working as many as three part-time jobs as a laborer. He moved to Florida because he could no longer

afford to live in Montana,¹ as set forth in his motion to continue the January 4, 2023 hearing. (See Appx. 5; *see also* Affidavit of Karman Townsend, dated May 5, 2025, *attached as* Appx. 12) Thus, a bond in any amount above the \$15,000.00 he already posted would be oppressive.

(5) *Commensurate with the nature of the offense charged[.]*

A review of the current Flathead County Detention Center roster shows Gardner's \$250,000.00 bond is not commensurate with the nature of the offenses for which he is charged (i.e., DUI, Criminal Endangerment, and Bail Jumping). (Flathead County Detention Center Jail Roster, downloaded May 1, 2025, *attached as* Appx. 13) For example, no defendants charged with DUI (except Gardner) have a bond above \$100,000.00. That defendant is charged with a 4th or subsequent DUI, while Gardner is charged with a first offense. The most comparable defendant to Gardner is charged with an aggravated DUI, and her bond is set at \$10,000.00.

Similarly, the highest bond for criminal endangerment (other than Gardner) is \$200,000.00, but that defendant is also charged with deliberate homicide. Other defendants charged with criminal endangerment face between \$30,000.00 and \$50,000.00 bonds.

¹ On July 2, 2022, Governor Gianforte addressed Montana's housing crisis in Executive Order No. 5-2022, which created the Housing Advisory Council. *See* https://gov.mt.gov/Documents/GovernorsOffice/executiveorders/View?doc=EO_05-2022_Creating_the_Housing_Advisory_Council.pdf. *See also* Appx. 12.

Likewise, for bail jumping, the highest bond set (other than Gardner's) is \$200,000.00, but in that case the defendant is also charged with sexual intercourse without consent and being a fugitive from justice. The only other defendant charged with bail jumping faces a \$40,000.00 bond. Thus, Gardner faces a bond far higher than those charged with similar or more serious offenses.

(6) Considerate of the financial ability of the accused[.]

As set forth above, Gardner does not have the ability to post a \$250,000.00 bond. At the time of his arrest, Gardner was working three jobs and living in Florida because he could no longer afford to live in Montana.

(7) Considerate of the defendant's prior record[.]

Gardner has no prior criminal record.

(8) Considerate of the length of time the defendant has resided in the community and of the defendant's ties to the community[.]

Gardner is a 40-year-old who was born and raised in Montana. Other than his three years of military service, four years in Nevada, and the past approximately two years in Florida, Gardner has resided in Montana for his entire life. Gardner has worked in the Flathead Valley for approximately 12 years and has significant ties to the community. Indeed, in 2017, Gardner ran for the United States Congress as the libertarian candidate during the special election.² Thus, he is

² https://ballotpedia.org/Evan_Gardner

not a flight risk and, as the history of this case indicates, a \$250,000.00 bond is not necessary to prevent him from fleeing or to insure his appearance in court.

(9) Considerate of the defendant's family relationships and ties[.]

Gardner's mother and her husband have also resided in the Flathead Valley for his entire life. Additionally, Gardner has extended family in the Flathead Valley, including his sister, brother-in-law, an aunt, two uncles, and three cousins.

(10) Considerate of the defendant's mental health status and of the defendant's participation in a mental health treatment program[.]

Gardner has no current mental health diagnoses. However, prolonged incarceration has been shown to have significant impacts on mental health. Thus, it is possible Gardner's mental health has or could decline with prolonged pre-trial incarceration.

(11) Considerate of the defendant's employment status[.]

At the time of his arrest, Gardner was working three jobs. Those employers are currently holding those jobs for Gardner, due to his excellent work ethic and skills in the trades. However, it is unknown how long those employers will hold those jobs.

(12) Sufficient to include the charge imposed in [Mont Code Ann. §] 46-18-236.

No fine has been imposed on Gardner, and there is no forfeiture allegation in his case. However, even Gardner was convicted of all counts and the maximum

fine on each count was imposed, the total fine would equal \$51,500.00 (\$50,000.00 (criminal endangerment), \$1,000.00 (DUI), \$500.00 (bail jumping)). Thus, Gardner's current bond is nearly five times the amount of the maximum fines that could be imposed

Because Gardner's originally posted \$15,000.00 bond satisfied all factors under Mont. Code Ann. § 46-9-301, there was no need to increase his bond. Further, it appears the District Court did not increase Gardner's bond as a result of violating the conditions of release but, instead, because the District Court was offended by Gardner's argument regarding jurisdiction. However, this is not a factor the Montana Legislature determined relevant to a bond consideration. As a matter of statutory construction, the District Court was not permitted to add that as a factor when considering an appropriate bond. *See* Mont. Code Ann. § 1-2-11 ("In construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.").

C. The District Court is punishing Gardner with pre-trial detention in violation of the United States and Montana constitutions.

"The Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law. The Due Process

clause prohibits the state from subjecting an individual to punishment prior to an adjudication of guilt.” *Spady* at ¶ 33 (internal citations omitted).

Decades ago, the United States Supreme Court stated that when “evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). “For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Id.* (internal citations omitted).

As set forth above, Gardner has not been convicted of anything. Further, the single violation of his conditions of release wherein he missed his January 4, 2023, pretrial conference is readily explainable. He filed a motion to continue that hearing based on hardship. (Appx. 5) Specifically, Gardner requested the District Court continue the hearing because he was living in Florida, his significant other was undergoing surgery, and he lacked funds sufficient to come back to Montana for his hearing. *Id.* Thus, while this was not the basis for Gardner’s current bond amount, it still would not warrant a \$250,000.00 bond. This is evidenced by the fact that the District Court determined a \$50,000.00 bond was sufficient to address the missed hearing, and that warrant was later quashed when Gardner cured the violation by appearing at his next scheduled hearing. Thus, the only explanation for

the District Court's issuance of a \$250,000.00 bond is punishment for Gardner's arguments at the September 5, 2024 hearing.

“While the district court has broad discretion in fashioning the conditions, they must be the least restrictive conditions necessary to meet the goals of public safety and the appearance of the defendant.” *Spady* at ¶36 (internal citations omitted). Because he did not commit the violation of his conditions of release cited by the District Court as the basis for his current bond, it was unnecessary to raise Gardner's bond. Further, because he had demonstrated a significant track record of appearing at his hearings and had not violated any other conditions of his pretrial release, the current bond is not the least restrictive condition necessary to ensure Gardner's appearance; nor is there any evidence Gardner presents a danger to the community. Thus, his current bond and pretrial detention are both excessive and constitute pretrial punishment in violation of the Montana and United States constitutions. Thus, this Court should quash the warrant issued by the District Court on September 5, 2024.

IV. CONCLUSION

Gardner did not commit the violation of his release conditions cited by the District Court as the basis for issuing the \$250,000.00 bond. Even if Gardner had committed that violation, such a bond would be excessive. Further, the District Court is punishing Gardner, not for any violation of a release condition, but for

making a jurisdictional argument that offended the District Judge. Such punishment violates the Montana and United States constitutions.

Accordingly, Petitioner respectfully requests the following relief:

1. That the Court accept original jurisdiction over this matter;
2. That the Court strike the condition that Petitioner post bail in the amount of \$250,000 and quash the warrant issued on September 5, 2024.

Respectfully submitted on this 5th day of May 2025.

\S\ *Toby Cook*
Toby Cook
Attorney for Petitioner

PETITION VERIFICATION

State of Montana)

:SS

County of Flathead)

Pursuant to § 46-22-201(3), MCA, the undersigned, being first duly sworn, declare that all the facts and matters set out herein are true and accurate to the best of my knowledge and belief.

DATED this 5th day of May 2025.

/s/Toby Cook

Toby Cook

Attorney for Petitioner

SUBSTRIBED AND SWORN to before me this 5th day of May 2025.


Signature


Printed Name

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14 of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a Times New Roman, proportionately spaced typeface of 14 points, is double spaced except for footnotes and quoted and indented materials, has less than 4,000 words (3,293 words) as counted by the attorney's word processing software, excluding table of contents, table of citations, verification, certificate of service, exhibits, certificate of compliance and addendum, if any.

DATED this 5th day of May, 2025.

/s/Toby Cook
Toby Cook
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Tobias Joel Cook, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 05-05-2025:

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Electronically Signed By: Tobias Joel Cook
Dated: 05-05-2025