

**From:** "████████ (USANYS)" <████████>  
**To:** "████████)" <████████>; "████████)" <████████>  
**Subject:** FW: Second Circuit Bail Decision  
**Date:** Thu, 01 Aug 2019 15:05:58 +0000  
**Attachments:** boustani.pdf; ATT00001.htm

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**From:** █████ (USANYS) <████████>  
**Sent:** Thursday, August 1, 2019 11:05 AM  
**To:** █████ (USANYS) <████████>; █████ (USANYS) <████████>  
**Cc:** █████ (USANYS) <████████>; █████ (USANYS) <████████>  
**Subject:** Fwd: Second Circuit Bail Decision

████████

Begin forwarded message:

**From:** "████████ (USANYE) 12" <████████>  
**Date:** August 1, 2019 at 11:01:20 AM EDT  
**To:** "████████ (USANYS)" <████████>  
**Subject:** Fwd: Second Circuit Bail Decision

FYI

Begin forwarded message:

**From:** "████████ (USANYE)" <████████>  
**Date:** August 1, 2019 at 10:56:49 AM EDT  
**To:** USANYE-Brooklyn\_Criminal\_Attorneys <████████>  
**Cc:** "████████ (USANYE)" <████████>  
**Subject:** Second Circuit Bail Decision

The Second Circuit today issued an opinion today that will affect bail motions in white collar cases and other cases where wealthy defendants seek to be released to home confinement and monitored by private security companies. Specifically, in United States v. Boustani (copy attached), the court held that the Bail Reform Act does not permit wealthy defendants to be released to "self-funded private jails" in circumstances where poorer defendants would be detained:

"We now expressly hold that the Bail Reform Act does not permit a two-tiered bail system in which defendants of lesser means are detained pending trial while wealthy defendants are released to self-funded private jails. It is a fundamental principle of fairness that the law protects 'the interests of rich and poor criminals in equal scale, and its hand extends as far to each.' To interpret the Bail Reform Act as requiring district courts to permit

wealthy defendants to employ privately funded armed guards where an otherwise similarly situated defendant without means would be detained would violate this core principle. Such a two-tiered system would ‘foster inequity and unequal treatment in favor of a very small cohort of criminal defendants who are extremely wealthy.’”

Slip op. at 7

The court recognized one potential exception to this principle, i.e., “where the defendant is deemed to be a flight risk primarily because of his wealth. In other words, a defendant may be released on such a condition only where, but for his wealth, he would not have been detained.” Id. But it appears that this exception is a narrow one, since the district court in Boustani cited the defendant’s wealth as “one of many factors” but “did not rely primarily on Boustani’s personal wealth in finding that he posed a flight risk.” Slip op. at 9. Thus, because “[a] similarly situated defendant of lesser means surely would be detained pending trial, ... Boustani is not permitted to avoid such a result by relying on his own financial resources to pay for a private jail.”

I do not expect that this opinion will be the last word on this issue, but it is now the governing law in the Second Circuit.