

RULE CR-5B. INITIAL APPEARANCE OF UNDOCUMENTED ALIEN DETAINED AS MATERIAL WITNESS

(a) **Appearance.** Upon the filing of an affidavit under 18 U.S.C. § 3144 alleging that an undocumented alien is a material witness, the witness must be brought before the court without unnecessary delay.

(b) **Procedure.** Upon presentation of an undocumented alien witness, the court must:

(1) consider, with the assistance of pretrial services, whether the witness may be released under 18 U.S.C. § 3142, including release under an available community release program; and

(2) appoint counsel to represent the witness under the Criminal Justice Act, 18 U.S.C. § 3006A, if the court determines that:

(A) the witness is financially unable to retain counsel, and

(B) the witness does not waive counsel.

(c) **Detention.** If the witness is ordered detained, the detention must accord with the provisions of Rule CR-15B.

Committee Note

Rule CR-5B is a new rule that prescribes procedures for initial appearances of undocumented aliens detained as material witnesses. Because undocumented alien material witnesses are illegally in the United States, the feasibility of their conditional release under 18 U.S.C. § 3142 depends on the continued cooperation of U.S. Pretrial Services Office, the U.S. Attorney, and the Department of Homeland Security.