ATTACHMENT B

The Government has moved for pretrial detention here on the basis of both risk of flight and danger to the community. With respect to the first ground, the Second Circuit has established a two-tier test:

> First, the court must make a finding as to whether the defendant presents a risk of flight if not detained . . . .
>
> Second, if the court finds that a defendant is likely to flee, then the court must proceed to the second step of the inquiry, namely, whether there are conditions or a combination of conditions which reasonably will assure the presence of the defendant at trial if he is released. The burden of proof is on the government to prove the absence of such conditions by a preponderance of the evidence.

United States v. Shakur, 817 F.2d 189, 194-95 (2d Cir.)(citations omitted), cert. denied, 484 U.S. 840 (1987).

As stated in open court, the Government has sustained both its burdens here. Unlike defendant's multiple encounters in state court, where he has served remarkably little time in prison, here, if convicted on both counts, he faces a mandatory minimum term of imprisonment of fifteen years. Defendant has a horrifying criminal record, starting with an arrest for possession of narcotics in October 2000 at age sixteen, which was reduced to possession of marijuana, for which he received a $100 fine. Thereafter, he was arrested ten more times, with nine convictions (one charge is still pending), for a variety of offenses, including five FTA's, five for possession of narcotics or marijuana, two for probation violations, kidnaping and burglary, and assault. Starting with his arrest in September 2002, at age seventeen, every subsequent arrest occurred while he was on probation or parole from a previous conviction. The only gaps in his criminal record occurred between 2003 and 2005, when he was serving a two-year term of imprisonment for possession of narcotics and FTA, and between 2006 and 2009, when he was serving a one-year term of imprisonment for assault. He also had two charges for absconding from parole, as well as seven

disciplinary actions while in DOC custody for fighting, insulting, threatening, and contraband, all of which resulted in five to eight days of punitive segregation. Contrary to defense counsel's arguments, it is difficult to discount this extensive criminal history to youthful indiscretion. Especially telling are defendant's two arrests just a few months ago – within days of his release from his one month in jail for possession of marijuana and probation violation, for which he was placed on two years' probation, he was arrested again for possession of narcotics. In the words of defense counsel, he is "hopelessly irresponsible," and not a suitable candidate for supervision by USPO.

With respect to dangerousness, the Second Circuit has summarized the government's burden as follows:

> A district court may order pretrial detention where it finds that "no condition or combination of conditions will reasonably assure . . . the safety . . . of the community. . . ." To order detention, the district court must find, after a hearing, that the government has established the defendant's dangerousness by clear and convincing evidence.

United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995)(multiple citations omitted). In that case, the Second Circuit upheld the Magistrate Judge's conclusion to detain a defendant based upon dangerousness, where defendant allegedly had committed an arson at an apartment building at 11:00 p.m. (when most of the tenants were at home), which fire resulted in the death of a firefighter; directed his brother to illegally evict tenants at other buildings he owned by intimidating them with a violent dog; arranged for a mortgagee to be shot in the neck when defendant fell behind on mortgage payments (promptly causing the mortgagee to sell the mortgages back to defendant Ferranti at a loss); and ordering a tenants' rights activist to be murdered and mutilated. See also United States v. Ciccone, 312 F.3d 535 (2d Cir. 2002)(affirming Magistrate Judge's and District Judge's decision to detain defendant Peter Gotti, who was "Acting Boss" of the Gambino crime family after his brother was incarcerated, and thus directed the crime family's activities, including extortion, despite

defendant's offer of $4,000,000 bond, home confinement, and electronic monitoring); United States v. Mercedes, 254 F.3d 433 (2d Cir. 2001)(reversing District Judge releasing defendants on strict bond, and instead holding that defendants posed a danger to the community, where the defendants were arrested as they were about to hijack a van with drugs; several loaded guns, two law enforcement badges, and a pair of handcuffs were found in their vehicles); United States v. LaFontaine, 210 F.3d 125 (2d Cir. 2000)(after defendant in health care fraud case had been released on significant bond, District Judge correctly revoked defendant's bond as being a danger to the community, where defendant had attempted to tamper with a witness and had committed perjury under oath while on bond); United States v. Rodriguez, 950 F.2d 85 (2d Cir. 1991)(Magistrate Judge correctly found defendant posed a danger to the community, where he was the alleged "hitman" for a cocaine distribution network, in the past had shot an individual in the kneecap over a $60 debt, and in a monitored conversation, agreed to commit a murder in exchange for one kilogram of cocaine and made reference to a prior murder); United States v. Streater, No. 3:97 CR 232 (EBB), 1999 WL 1067837 (D. Conn. Nov. 5, 1999)(upholding Magistrate Judge's conclusion that defendant posed a danger to the community, where defendant had a long history of violence, including having beaten a codefendant with a baseball bat, accosted another affiliate with a pistol, ordered the shooting of a rival drug dealer, and attempted to run drug operation while in detention).

The Government's proffer against defendant is equally as strong as that in Ferranti, Ciccone, Rodriguez, and Streater, and is significantly stronger than that presented in Mercedes and in LaFontaine. Even if the Court were to disregard defendant's strong response to the alleged sexual assault of the six-year-old daughter of his friend, the Court cannot ignore his alleged actions following the attempted robbery of defendant Smith, in which he and defendant Smith took steps to assemble weapons and ammunition. While

defense counsel may attempt to characterize their conversations as "two men spouting off" who were trying to "appear more menacing," the Hartford Police Department and the FBI certainly took their conversations seriously, by "flood[ing]" the neighborhood in order to prevent further violence. The seizure of a forty caliber weapon and a "Dirty Harry" on September 18, 2010 was consistent with defendant's previous conversations about these weapons.