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, he faces a mandatory minimum term of imprisonment of ten years, with a maximum of life. Defendant has a horrifying criminal record, starting with an arrest for possession of narcotics in September 2001 at age seventeen, for which he was sentenced to three years' probation; this probation was revoked merely five months later, at which time defendant also was convicted for assault in the third degree, and received a total of fifteen months' imprisonment. Thereafter, he was arrested and convicted three more times, with a probation violation hearing scheduled from the January 2006 conviction on October 21, 2010. The charges for assault in the first degree were nolled on March 22, 2010, when the cooperating witness would not testify against him. Starting with the September 2005 arrest, all his arrests occurred while he was either on probation or bond for prior charges. The most disturbing part of defendant's criminal record occurred during the past three months, when defendant has been arrested on five occasions, two of which involved violence against

former girlfriends, one of whom had obtained a Protective Order against him. This record reflects a person who is seriously spiraling out of control, and to whom court orders mean absolutely nothing. The USPO is correct that his grandparents would not be suitable third party custodians, since all of defendant's criminal activities took place while he was already living with them.[1]

[1] In light of this conclusion, there is no need to address the issue of danger to the community. Given the Government's proffer and defendant's lengthy criminal record, particularly during the last three months, it is quite possible that the Court could find that defendant poses a danger to the community as well. See United States v. Ferranti, 66 F.3d 540 (2d Cir. 1995)(upholding 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); 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).