

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

11 Cr. 12 (RMB)

- against -

ANTHONY MOSCATIELLO *et al.*,
Defendants.

-----X

**ANTHONY MOSCATIELLO'S MOTION AND SUPPORTING
MEMORANDUM FOR RELEASE ON BAIL PENDING TRIAL**

JOSEPH DIBENEDETTO
The Law Office of
Joseph DiBenedetto, P.C.
The Woolworth Building
233 Broadway, Suite 2707
New York, NY 10279
212-608-5858
jdibenedetto@dibenedettolaw.com

Attorney for Anthony Moscatiello

TABLE OF CONTENTS

POINT I

INTRODUCTION1

A. Statement Of Facts And Procedural History.1

B. The Applicable Law.....4

C. Anthony Moscatiello’s Alleged Membership In An Organized Family Does Not Require *Per Se* Detention.6

POINT II

ANTHONY MOSCATIELLO IS A PROPER CANDIDATE FOR BAIL8

A. History And Characteristics Of Anthony Moscatiello.....9

B. Anthony Moscatiello Has Significant Roots Within New York.....11

C. Pretrial Services Recommended That Anthony Moscatiello Be Released On Bond.....12

D. The Facts Proffered By The Government Do Not Support Mr. Moscatiello’s Continued Detention13

1. The charged marijuana conspiracy is weak and there is no direct evidence linking Anthony Moscatiello to the charged offense other than information provided by an informant who lacks credibility.....13

2. The charged arson conspiracy is also weak and based solely on unreliable informant testimony.....18

3. The recordings provided by the government support a finding that Anthony Moscatiello does not have a propensity for violence.....20

E. The Informant, Howard Santos, Is A Career Criminal Facing Life Imprisonment And Lacks Credibility.....	22
1. Howard Santos committed numerous violent offenses.....	23
2. The informant is a pervert and absentee parent	26
F. Anthony Moscatiello Is Not A Flight Risk.....	28

POINT III

THE PROPOSED BAIL PACKAGE IS SUFFICIENT TO ENSURE THE SAFETY OF THE CITIZENRY AND MR. MOSCATIELLO’S CONTINUED PRESENCE FOR ALL COURT PROCEEDINGS.....	29
---	----

A. Property.....	29
B. Financially Responsible Persons.....	30

POINT IV

CONCLUSION.....	31
-----------------	----

ARGUMENT

I. INTRODUCTION

Please accept this memorandum submitted on behalf of my client, Anthony Moscatiello, in support of his release pending trial.¹ For the reasons more specifically addressed herein, it is respectfully requested that this Court find that Mr. Moscatiello is not a danger to the community or a risk of flight and release him on the proposed bond in accordance with the recommendation of Pretrial Services, based on: (1) his lifelong community ties; (2) the weakness of the government's proffer regarding Mr. Moscatiello's involvement in marijuana and arson; (3) the absence of any actual or implied threat of harm made by Mr. Moscatiello; (4) the cooperating witnesses lack of credibility and status as a career criminal facing life imprisonment; and (5) the considerable moral suasion present in the proposed bail package.

A. Statement Of Facts And Procedural History.

On February 17, 2009, Howard Santos (Santos) was indicted in the Southern District of New York and charged with the sale or receipt of stolen goods stemming from a commercial burglary of an electronics store in New Jersey. The products stolen exceeded \$120,000.00. In or about June 2009, Santos was

¹ Defense counsel is respectfully requesting that this Court schedule oral argument prior to deciding the instant bail application.

approached by federal agents and informed that they had information about his participation in murder and drugs and was offered the opportunity to cooperate. Santos quickly agreed in an attempt to escape a life sentence.

Shortly thereafter, the government allowed Santos, a serial home invader and career criminal, to roam the streets with a recording device. Santos had the ability to operate the recording device without supervision. Stated differently, he had the ability to activate and deactivate the device at will. Santos obtained recordings up until January 2010, when his cooperation attempts were prematurely cut short.

During this six month period Santos met and spoke with anybody and everybody in an attempt to work off his potential life sentence. After Santos disappeared in January 2010, it became common knowledge that he was an informant for the government.

On January 20, 2011, approximately one year after it became known that Santos was a government informant, Anthony Moscatiello was arrested at his residence, without incident, along with numerous other individuals, as part of the Department of Justice's well-orchestrated media ploy to secure additional funding for the Federal Bureau of Investigation.

On January 25, 2011, Anthony Moscatiello was arraigned on an indictment before this Court. The indictment contains

numerous exaggerated counts. More specifically, Mr. Moscatiello is charged with Racketeering and Racketeering Conspiracy with predicate acts of marijuana trafficking, illegal gambling (sports betting), illegal gambling (baccarat), illegal gambling (poker games), making and collecting extortionate loans, and arson. Mr. Moscatiello is also charged with substantive counts of conspiracy to transport marijuana, illegal gambling (sports betting), illegal gambling (baccarat), illegal gambling (poker games) and making and collecting extortionate extensions of credit.

Soon after Mr. Moscatiello's arraignment, the government made available approximately 700 hours of recordings made by Santos. Most importantly, not a single conversation exists regarding Mr. Moscatiello's alleged involvement in arson or marijuana trafficking. Stated differently, in spite of 700 hours of recordings, neither Mr. Moscatiello, nor any of his codefendants discuss his involvement in either act. Finally, not a single conversation exists regarding Mr. Moscatiello threatening a single person with physical harm. In fact, the recordings support the exact opposite finding - that Mr. Moscatiello is not violent.

B. The Applicable Law.

Pursuant to the Bail Reform Act, a defendant may be released prior to trial unless there are no conditions or combination of conditions which would reasonably assure the appearance of the defendant as required and the safety of any other person and the community. See 18 U.S.C. §3142. A finding of dangerousness must be supported by clear and convincing evidence, while a finding of risk of flight must be supported by a preponderance of the evidence. See United States v. Chimurenga, 760 F.2d 400, 405 (2d. Cir. 1985). The burden of proof always remains with the government.

The Bail Reform Act lists four factors to be considered when determining if a defendant is a proper candidate for bail. They include: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. §3142(g).

Moreover, because the Bail Reform Act favors pretrial release, "it is only a limited group of offenders who should be denied bail pending trial." *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007) (citing *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987)).

While a presumption in favor of detention arises in some instances, *a defendant must introduce only some evidence contrary to the presumed fact in order to rebut the presumption.* See United States v. Rodriguez, 950 F.2d 85, 88 (2d Cir 1991). However, the government retains the burden of persuasion. Id. Stated differently, a defendant bears a limited burden of production – not a burden of persuasion – to rebut that presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight. United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001). Once a defendant has met his burden of production relating to these two factors, the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court. Id. Similarly, the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community. The government also retains the ultimate burden of persuasion by a preponderance of the evidence that the defendant presents a risk of flight.

Although the charged offense of marijuana trafficking triggers a presumption in favor of detention, the information provided herein not only overwhelmingly exceeds Mr. Moscatiello's burden of production, but also defeats the government's attempts to satisfy their ultimate burden of

persuasion. Accordingly, Mr. Moscatiello should be released on bond.

C. Anthony Moscatiello's Alleged Membership In An Organized Crime Family Does Not Require Per Se Detention.

The crux of the government's argument in favor of detention consists of Mr. Moscatiello's alleged affiliation with organized crime. It is respectfully asserted that an allegation by the government that a defendant is a member of organized crime is not the sole consideration for bail. See United States v. Ciccone, 312 F.3d 535, 543 (2d Cir. 2002) (*holding that there is no per se rule in favor of detention*).

In fact, in United States v. Gotti, 358 F.Supp.2d 280, 284 (S.D.N.Y. 2005), the court held that there *cannot be a per se rule that requires detention whenever a defendant is accused of being a member of, or even a leader in, an organized crime family (emphasis added)*. Rather, the true question is whether the government has shown by clear and convincing evidence that a defendant is a danger to the community, such that there is no condition or combination of conditions that will reasonably assure the safety of any other person and the community if he is released on bail. See id.

Moreover, numerous other alleged members of organized crime who were charged with similar or more egregious crimes and alleged to have held higher-ranking positions than Mr.

Moscatiello have either been released on consent by the government or granted bail by the court in the past. For example, a non-exhaustive list includes: (1) United States v. John A. Gotti; 04 CR 690 (SAS) (S.D.N.Y.), alleged boss of the Gambino family released on bond; (2) United States v. Ernest Muscarella, 02 CR 140 (ILG) (E.D.N.Y.), alleged acting boss of the Genovese family released on bond; (3) United States v. Salvatore Vitale, 01 CR 382 (ADS) (E.D.N.Y.), alleged underboss of the Bonanno family released on a *Five Hundred Thousand Dollar* (\$500,000.00) bond; (4) United States v. Richard V. Gotti, 02 CR 606 (FB) (E.D.N.Y.), alleged *captain* in the Gambino family released on a *Three Hundred Thousand Dollar* (\$300,000.00) bond; (5) United States v. Richard G. Gotti, 02 CR 606 (FB) (E.D.N.Y.), alleged *soldier* in the Gambino family released on a *Three Hundred Thousand Dollar* (\$300,000.00) bond; (6) United States v. Robert Lino, 00 CR 632 (WHP), alleged *soldier* in the Bonanno family released on a *Two Million Dollar* (\$2,000,000.00) bond; (7) United States v. Pasquale Falcetti, 02 CR 140 (ILG), alleged *soldier* in the Genovese family released on bond; (8) United States v. Thomas Cafaro, 02 CR 140 (ILG), alleged *soldier* in the Genovese family released on a *Two Hundred Fifty Thousand Dollar* (\$250,000.00) bond; (9) United States v. Ronald Giallanzo, 06 CR 181 (RJD), alleged *soldier* in the Bonanno family who was released on a *Five Hundred Thousand Dollar*

(\$500,000.00) bond; (10) United States v. Paul Geraci, 01 CR 416 (ILG), alleged *soldier* in the Genovese crime family released on a One Million Dollar (\$1,000,000.00) bond; (11) United States v. Scott Gervasi, 00 CR 1167 (JG), alleged *soldier* in the Lucchese family released on a Two Million Dollar (\$2,000,000.00) bond; (12) United States v. George DeCicco, 07 Cr. 56 (RJD), alleged *captain* in the Gambino crime family released on bond; (13) United States v. William Scotto, 08 CR 76 (JBW), alleged *soldier* in the Gambino crime family released on bond; (14) United States v. Anthony Licata, 08 CR 76 (JBW), alleged *soldier* in the Gambino crime family released on bond; and (15) United States v. Vincent Dragonetti, 08 CR 76 (JBW), alleged *soldier* in the Gambino family released on bond.

Therefore, the government's unsupported and conclusory statements regarding Mr. Moscatiello's involvement in the charged offenses, coupled with their allegation of organized crime affiliation, are weak and fall egregiously short of the standard required for detention. Consequently, Mr. Moscatiello's release is proper.

II. ANTHONY MOSCATIELLO IS A PROPER CANDIDATE FOR BAIL.

Anthony Moscatiello does not pose a danger to the community. Additionally, he is clearly not a risk of flight. Rather, Anthony Moscatiello has strong family roots and significant community ties. More importantly, the government's

evidence against Mr. Moscatiello is weak and is based almost exclusively on informant testimony. Therefore, for the reasons more specifically addressed herein, and in accordance with the recommendation of Pretrial Services, it is respectfully asserted that Anthony Moscatiello is a proper candidate for bail.

A. History And Characteristics Of Anthony Moscatiello.

Anthony Moscatiello is Forty (40) years old born to Rosa Finelli (68) and Geatano Moscatiello (68), on August 27, 1970, in Queens, New York.² Rosa and Geatano reside in Ozone Park, New

² Anthony Moscatiello has one criminal conviction. On April 23, 2003, he entered a plea of guilty to Enterprise Corruption. The underlying conduct consisted of gambling, a non-violent offense. Mr. Moscatiello was sentenced to 1-3 years in prison. Mr. Moscatiello was released early for good behavior on July 14, 2004, after serving approximately one year and subsequently placed on parole.

It is aptly noted that Mr. Moscatiello was granted bail pending trial. Additionally, he has no warrant history, as he followed the court's directive and returned to court for each appearance. It is respectfully asserted that Mr. Moscatiello's ability to comply with the court's directive, combined with his model behavior while incarcerated, which earned him a shorter term of imprisonment, weigh heavily in favor of rebutting the government's current contention that no combination of conditions can ensure Mr. Moscatiello's appearance in court.

Mr. Moscatiello also has a non-criminal conviction. On February 13, 2005, Mr. Moscatiello was arrested and charged with driving while intoxicated. On that date, Mr. Moscatiello went to dinner with a friend. While at dinner, Mr. Moscatiello consumed two glasses of wine with his meal. His friend consumed much more alcohol and was noticeably intoxicated upon completion of the meal. In no way, shape or form, did Mr. Moscatiello feel impaired. As a result, Mr. Moscatiello opted to take his friend home using his friend's automobile. Mr. Moscatiello was immediately pulled over less than one block away because he allegedly did not signal while pulling out of a parking spot. As a result of the low breath test reading and Mr. Moscatiello's satisfactory completion of the field sobriety test, the charges were reduced to driving while ability impaired by alcohol, the equivalent of a traffic infraction.

Mr. Moscatiello's plea of guilty to the traffic infraction resulted in a violation of his parole. Resultantly, Mr. Moscatiello was sentenced to four months imprisonment. However, Mr. Moscatiello was released after 77 days for good behavior. Upon his release, Mr. Moscatiello was reinstated to parole and ultimately discharged on August 8, 2006, based on successful completion.

Mr. Moscatiello fully understands the consequences associated with any infraction if he is released on bail. He would not jeopardize the well-being

York. Geatano and Rosa have lived in Queens, New York for over forty years. Geatano has been employed as a construction worker for fifty-one years and recently retired from T&T Landscaping & Construction. Rosa is also retired. She was employed as a seamstress at various factories throughout Brooklyn and Queens. Earlier this month, Rosa was diagnosed with breast cancer. Rosa is the family's "rock" and her family leans on her heavily for emotional support during times of need. Needless to say, Anthony Moscatiello and his entire family are devastated by the recent diagnosis.

Anthony Moscatiello has two sisters. Angela Brasile (42) is married with two children and resides in Ozone Park, New York. She is currently employed at C-Town in Ozone Park, New York. Her husband, Richard, has been employed with the New York City Department of Sanitation for approximately twenty years. Teresa Johnson (35) is married and resides in Howard Beach, New York. Her husband, John, is employed by Time Warner Cable.

Anthony Moscatiello and April Scaglione were married in 2009. Anthony and April have a one year old son, Santino, who was born on April 16, 2010.

Mr. Moscatiello also has another son from a previous relationship. Anthony Moscatiello is 10 years old. Mr.

of his family and friends. He is fully appreciative of those who would post properties and sign the bond for his release. It is respectfully asserted that Mr. Moscatiello will comply with whatever conditions implemented by this Court, just as he proved he could from 2002 through 2003.

Moscatiello plays an active role in his son Anthony's upbringing and would spend several days a week with him prior to his incarceration.

Prior to his incarceration, Mr. Moscatiello worked for Ben Elias Industries for approximately eleven years.³ During that stretch, Mr. Moscatiello received numerous advancements in position. He began as a freight truck driver and ultimately worked his way to general manager. As general manager, Mr. Moscatiello's job duties included overseeing the day to day activities of the business and supervising over 300 employees. Additionally, Mr. Moscatiello paid taxes each year.

Unfortunately, as a result of his arrest and conviction, Mr. Moscatiello was released from his position at Ben Elias Industries.

Since his release, it has been difficult for Mr. Moscatiello to obtain a full-time position because of his felony conviction. As a result, Mr. Moscatiello has worked part-time with his father. Mr. Moscatiello was mainly responsible for finding new work and overseeing its completion.

B. Anthony Moscatiello Has Significant Roots Within New York.

Anthony Moscatiello has lifelong roots throughout the New York City area, which span over forty years. He has lived in

³ Attached hereto as "Exhibit A" is a copy of Mr. Moscatiello's Personal Fund Balance and Investment Information based on his employment at Ben Elias Industries. Page one clearly states the "date of hire" as 10/10/91.

Queens, New York his entire life. Anthony Moscatiello has been at the same address, 164-48 98th Street, Howard Beach, New York, for over ten years. Also, as previously mentioned, his entire family lives within the borough of New York. His parents have lived in Queens, New York for over forty years.

C. Pretrial Services Recommended That Anthony Moscatiello Be Released On Bond.

It is respectfully noted that Pretrial Services, an advisory arm of the Court, believes that Anthony Moscatiello is not a risk of flight or a danger to the community and recommends bail.

In fact, Officer Rosado of Pretrial Services recommends that Mr. Moscatiello be allowed to work while released on bond. More specifically, Officer Rosado recommends that Mr. Moscatiello be released upon a bond to be secured by cash and/or property, cosigned by three financially responsible persons along with the following conditions: (1) strict pretrial supervision; (2) home detention with electronic monitoring, except for court, attorney's visits, employment, medical services and religious services; (3) no contact with codefendants, witnesses, or victims; (4) travel restricted to E.D.N.Y. and S.D.N.Y.; and (5) surrender passport and do not apply for a new passport.

For all the reasons stated herein, it is respectfully requested that the Court follow the recommendation of Pretrial Services.

D. The Facts Proffered By The Government Do Not Support Mr. Moscatiello's Continued Detention.

The government's detention memorandum contains nothing more than conclusory statements which are unsupported by the discovery provided thus far. The absence of any recordings implicating Mr. Moscatiello in the charged marijuana conspiracy and arson further highlight this point. Additionally, the non-existence of any evidence to support Mr. Moscatiello's propensity for violence refutes any argument advanced by the government in favor of detention.

- 1. The charged marijuana conspiracy is weak and there is no direct evidence linking Anthony Moscatiello to the charged offense other than information provided by an informant who lacks credibility.**

The government's allegation that Anthony Moscatiello is a participant "in a massive marijuana distribution operation" flies in the face of the discovery provided by the government. As stated above, the government allowed Santos the ability to record anybody that Santos believed to be involved in criminal activity. Santos recorded the targets obviously at a time when they did not know they were being recorded, but also in a friendly environment where the targets would feel comfortable

speaking with him. Resultantly, Santos provided the government with approximately 700 hours of recordings within a six month period.

It is aptly noted that not a single recording exists wherein Anthony Moscatiello discusses marijuana or even makes reference to marijuana.

Additionally, not a single recording exists wherein Mr. Moscatiello's codefendants discuss Mr. Moscatiello's involvement in marijuana.⁴

Moreover, it is not by accident that Santos did not attempt to discuss Anthony Moscatiello's involvement with marijuana with Mr. Moscatiello or any of his codefendants. In fact, it was purposeful because Santos was aware that his lies regarding Mr. Moscatiello's involvement in marijuana would be uncovered. Stated differently, Santos did not question or ask Mr. Moscatiello or his codefendants about Mr. Moscatiello's involvement in marijuana because Santos knew the response he would receive - that Mr. Moscatiello has no dealings with marijuana.⁵

⁴ Santos was successful in obtaining admissions from some of Mr. Moscatiello's co-defendants. Therefore, if Mr. Moscatiello's codefendants were comfortable enough to discuss their own criminal conduct with Santos, they would have undoubtedly disclosed Mr. Moscatiello's involvement in marijuana. The fact that none of his codefendants stated that Mr. Moscatiello was involved with marijuana, all the while making admissions, is strong evidence in support of Mr. Moscatiello's non-involvement with marijuana.

⁵ It is aptly noted that Santos, the informant, readily admits that he did not participate in any criminal conduct with Anthony Moscatiello. More

In fact, Santos even admits that no one is selling marijuana "in this era." In other words, the government's own informant, who can say or do no wrong in the government's eyes, clearly rebuts the government's own allegations with regards to Mr. Moscatiello's involvement with marijuana. More specifically, during a recorded conversation on November 12, 2009, Santos informs a co-defendant regarding how his case was transferred from New Jersey to New York, the F.B.I.'s pitch to have him cooperate and that no one in this era sells marijuana or commits murders. They state:

Santos: That's why I got fucking locked up by the feds.

UM: Yeah?

Santos: They told me straight out. We found out from a confidential informant that you got locked up in New Jersey. So we went over there and pulled it over here.

UM: That's amazing.

Santos: Yeah.

UM: Imagine that.

Santos: Yeah. They said we know who you hang out with in. Who you hung out with in the 90's. We know who you are hanging out with now.

UM: ***Yeah. There's a big difference between that and (laughter) these guys.***

specifically, during a recorded conversation on January 6, 2010, Santos clearly states, "I don't do anything with them (including Moscatiello)."

Santos: *You's, you's are going down. Murders, drug dealing, this, that. I'm saying to myself, what the fuck?*

UM: *There ain't none of that going on.*

Santos: *Yeah.*

UM: Woo hoo!

Santos: *You got the wrong, wrong era.*

UM: *Yeah. That is the truth.*

It is respectfully asserted that this conversation alone rebuts any presumption associated with the count charging a marijuana conspiracy.

Furthermore, while preparing for the instant bail application defense counsel contacted the government to determine whether or not the government was relying on any recorded conversations to support the allegations that Mr. Moscatiello was "participating in a massive marijuana distribution operation." The government's response only further supports the defense's assertion that the charged conspiracy is woefully weak. The government directed defense counsel to a conversation dated July 15, 2009, between Santos and Christopher Reynolds, a co-defendant. At the tail end of the conversation, Christopher Reynolds informs Santos that he was going to have an altercation with another individual. Reynolds then stated that Mr. Moscatiello informed this individual that Mr. Reynolds was

"with me."⁶ The government's implication that this conversation supports Mr. Moscatiello's involvement in marijuana distribution stretches the facts beyond any permissible inference.⁷ The clear and only credible inference that can be drawn from the aforementioned conversation is that Anthony Moscatiello interceded to prevent a fight between Christopher Reynolds and another individual. Moreover, this conversation also disproves any argument that Mr. Moscatiello has violent propensities. His action of interceding in the dispute actually highlights his disposition for peacefulness.

Finally, during a recorded conversation on September 16, 2009, Santos and a co-defendant clearly discuss how Moscatiello does not have a reputation as an "earner." More specifically, the co-defendant states, **"Him, him (Anthony Moscatiello) out of all of them...I mean the guy doesn't have an earn. He doesn't have nothing...he doesn't have an earn."** It is respectfully asserted that the aforementioned statements are incongruous with

⁶ It is aptly noted that this statement does not qualify as a coconspirators statement and likely would not be admissible at trial because Santos' conversation with Reynolds is nothing more than idle gossip and the statements were clearly not being made in furtherance of any conspiracy.

⁷ The conversation between Santos and Christopher Reynolds occurred within approximately the first month of Santos recording others. Since that date, Santos recorded Reynolds at least 23 more times. In fact, some of the recordings include conversations regarding marijuana. Consequently, if Moscatiello's statement that Reynolds was "with me" was meant or interpreted to mean that Moscatiello was involved in a marijuana conspiracy, Santos had plenty of opportunities to follow-up with Reynolds regarding: (1) what was meant by the statement; (2) whether Reynolds had an arrangement with Moscatiello; (3) if yes, what was the arrangement; (4) how long has Reynolds been involved with Moscatiello, etc. However, in the 23 recordings that follow the July 15, 2009 conversation, Mr. Moscatiello's name is never mentioned in connection with marijuana.

that of an alleged drug kingpin involved in a "massive marijuana distribution operation."

Simply stated, Mr. Moscatiello is not a drug dealer or involved with marijuana and the recordings support this statement. The government's proffer rests on the word of cooperating witness who is best described as a degenerate with no redeemable qualities and who has ample motive to fabricate. It is respectfully asserted that the defense has done more than offer "some evidence" to rebut the presumption associated with the marijuana distribution count. In fact, the government has failed miserably in carrying their ultimate burden of persuasion with regard to this count.

2. The charged arson conspiracy is also weak and based solely on unreliable informant testimony.

The government's contention that Mr. Moscatiello participated in numerous arsons is equally as weak. The indictment charges an arson conspiracy which encompasses the late 1980s through the mid 1990s. At a bare minimum, this conduct is alleged to have occurred over fifteen years ago or at a maximum, over 20 years ago.

In spite of 700 hours of recordings, the government concedes that there is not a single recorded conversation

between Santos and Moscatiello in which arson is discussed.⁸ Additionally, not a single conversation exists between Santos and any of Mr. Moscatiello's codefendants wherein Mr. Moscatiello's involvement in arson is discussed.⁹

Once again, the government's sole evidence consists of the word of a career criminal. The government has produced nothing to substantiate this claim. The government has not provided the defense with a single police report, 911 call, sprint printout of a 911 call or an insurance claim for damages to a car or building. Additionally, the government has not even identified an alleged victim. Stated differently, the government included this count in the indictment without performing any independent investigation.

Like the marijuana conspiracy, the government's proffer regarding arson consists of nothing more than unsubstantiated conclusory statements which fall noticeably short of the clear and convincing standard required in order to satisfy their ultimate burden of persuasion. Accordingly, Mr. Moscatiello's

⁸ The government confirmed this fact to defense counsel by email on March 4, 2011.

⁹ As stated above, Santos had every opportunity to discuss Mr. Moscatiello's alleged involvement in arson directly with Mr. Moscatiello or any of his codefendants. Yet Santos purposely chose not to for the same reasons he did not ask about marijuana - he knew the response would be that Mr. Moscatiello never participated in any arsons and he would be exposed as a liar to the government. Similarly, if Mr. Moscatiello's codefendants were comfortable enough to make admissions regarding their own involvement in violent crimes to Santos, they would have surely disclosed Mr. Moscatiello's involvement in arson or any other violent crime. The absence of these conversations supports the defense's assertion that Mr. Moscatiello did not commit arson.

release pending trial pursuant to the proposed bail package is proper.

3. The recordings provided by the government support a finding that Anthony Moscatiello does not have a propensity for violence.

Based on the government's detention memorandum, the government will have you believe that Mr. Moscatiello not only has a reputation for violence, but is in fact a violent person. Such a statement could not be further from the truth. In fact, the discovery clearly refutes the government's contention.

The Santos recordings consistently support a finding that Mr. Moscatiello does not have a propensity for violence. More specifically, *not a single conversation exists wherein Mr. Moscatiello discusses violence with Santos. Additionally, not a single conversation exists wherein Mr. Moscatiello's reputation for violence or actual acts of violence are discussed by his codefendants. Conversely, Santos and Mr. Moscatiello's codefendants state on numerous occasions that Mr. Moscatiello is not violent.*

As noted above, during a recorded conversation on September 16, 2009, Santos and a codefendant discussed how Mr. Moscatiello is not known for violence, how he has never committed a violent act in his lifetime and how he has a reputation for not being an "earner," i.e., a person who generates money from illegal conduct. During their conversation, while discussing Mr.

Moscatiello, the codefendant states, **"Just because you don't have nothing to worry about in life because you never fucking stepped on a grape? You know what I'm saying?"**

Later, during the same conversation, Mr. Moscatiello's codefendant states, **"Him, him (Anthony Moscatiello) out of all of them. I mean he really never did anything! I mean the guy doesn't have an earn. He doesn't have nothing...he doesn't have an earn."**

In fact, the recordings clearly establish that Santos, the informant, is the only one with a reputation for violence. For example, during a recorded conversation on July 5, 2009, Santos and codefendant Salvatore Tortorici clearly state that Santos has more of a reputation as an enforcer and/or propensity for violence than Mr. Moscatiello. They state:

Tortorici: **Howie, between me and you. Listen, between me and you, you've done more fucking things than all three of them put together.¹⁰ Between me and you, alright?**

Santos: **You know. That, that you know. I don't want to put nobody down.**

Tortorici: **No. That is the truth. Listen, the truth is the truth. Spades, cards are cards. Ok.**

In a separate segment of the same conversation with Santos, Salvatore Tortorici reinforces that Santos is violent and has a reputation of violence, not Moscatiello. Tortorici states, **"You**

¹⁰ The reference to "all of three of them" includes Anthony Moscatiello.

did more things than all three of them did in their lifetime.

Think about it, really! In their lifetime!"

Finally, as noted above, the July 15, 2009 conversation between Santos and Christopher Reynolds further supports the assertion that Mr. Moscatiello is not violent. As noted above, during their conversation, Reynolds explained how Moscatiello interceded on his behalf and quelled an argument which was bound to result in a physical altercation.

The Santos recordings provide the Court with insight as to not only how Mr. Moscatiello carries himself, but also how he is viewed by others - both of which are relevant for a determination on whether or not Mr. Moscatiello presents a risk to the citizenry. Therefore, based on the absence of any recordings discussing violence by Mr. Moscatiello and the presence of recordings which establish that he "never stepped on a grape," "never did anything" and "doesn't even have an earn," it is respectfully asserted that bail pending trial is just and proper.

E. The Informant, Howard Santos, Is A Career Criminal Facing Life Imprisonment And Lacks Credibility.

The government's proffer in support of Mr. Moscatiello's continued detention relies heavily on a career criminal that is facing a life sentence and has ample motive to embellish and/or

fabricate in the hopes of receiving a reduced sentence.¹¹ For the reasons more specifically delineated below, the government's proffer and its cooperator should be closely scrutinized and allotted no credence when determining whether Mr. Moscatiello is an appropriate candidate for bail.

1. Howard Santos committed numerous violent offenses.¹²

Howard Santos is a true menace to society and a walking crime wave. From the 1980s through the 2000s, Santos has built up a resume that would make a fellow career criminal proud. Over time he has graduated from assaults, to commercial burglaries, to violent and elaborate home invasions, to bank burglaries, to drug dealing and eventually murder.

More specifically, throughout that time period, Santos participated in numerous violent home invasions wherein he posed as either an NYPD officer, DEA Agent or an FBI agent.

¹¹ Santos was aware that his life of crime would eventually catch up to him. In fact, during a recorded conversation on October 29, 2009, Santos made clear that he would use his "get out of jail free card" when needed. More specifically, while discussing the John Gotti, Jr. trial and a witness's decision to testify for the defense and not the government, Santos states, "**I tell you the truth...it kind of surprised the hell out of me too...he got a fucking get out of jail free card...and fucking he's testifying (for the defense).**" During the same conversation Santos discussed his arrest and stated, "**I don't feel bad for myself at all. You know what I do when I'm down and out? I sit down and try to figure out how I'm going to get out of it. That's what I do.**" This Freudian slip further confirms Santos' manipulative, sadistic and calculating nature. Santos made clear that he would scheme and fabricate to obtain a "get out of jail free card" rather than be held accountable for his actions. This premeditated plan strongly supports the notion that he lacks credibility and has ample motive to embellish and fabricate for the purpose of receiving a reduced sentence.

¹² Unless stated otherwise, the instant factual presentation is based on information and belief.

Incredibly, Santos would type up his own search warrants and show them to the victims as a ruse to gain entrance into their home. Once he and his cohorts entered the home, it was not uncommon for Santos to tie up, cuff, duct tape their mouths and pistol whip the victims. On one occasion, Santos pistol whipped an old man and tied up his entire family. On a separate home invasion, Santos struck the victim with a shot gun. On yet a separate home invasion, the victim, an 84 year old man, ultimately died from the injuries he sustained during the home invasion. He was found dead with his mouth duct taped, hands bound and injuries consistent with being assaulted.

Santos lacks shame. He once assaulted and cursed an individual in front of the victim's children, while the victim's children cried and screamed for Santos to stop. Santos even attempted to rob his ex-girlfriend's mother. Our investigation also uncovered that Santos may have been involved in at least one rape and that he would regularly beat his then-wife.

Moreover, Santos kidnapped someone he believed to be a bookmaker. After he was denied entrance into the victim's building by the landlord, Santos forced the individual into his car at gunpoint, slapped the victim repeatedly and violently threw him out of his automobile after taking two thousand dollars.

Santos was known to carry a firearm with him at all times. In fact, Santos had his automobile modified so that he could stash a firearm in the dashboard of his car. Santos created a removable vent on his dashboard so that the firearm would always be within reach.

Santos also shot numerous individuals. For example, one night, while out drinking, Santos was involved in a physical altercation, wherein he was assaulted. Santos left and returned shortly thereafter with a pistol. In a cowardly fashion, Santos shot an individual he believed to be involved in the altercation in the chest. Amazingly, the victim survived because the bullet fragmented after striking a pendent hanging from the victim's chain.

In fact, Santos admitted to regularly carrying a pistol and referred to himself as a psychotic individual who needs medication, or else he would kill everyone in sight. In particular, during a recorded conversation with codefendant Salvatore Tortorici on July 5, 2009, Santos clearly states that he always carried a pistol. He later states, **"I take xanax. Yeah. It keeps me calm because I'm high strung. Otherwise I would be looking to kill everybody."**

Santos was also involved in at least one bank burglary as well as numerous commercial burglaries in New York, New Jersey, Pennsylvania and Connecticut.

Santos also regularly sold and abused marijuana, cocaine and pills. Additionally, Santos would regularly slur his speech and fall asleep from a drug induced stupor. In fact, Santos' change in speech pattern on the recordings is clearly noticeable.

Santos is a degenerate in every sense of the word. As a result of his heinous acts, Santos is facing many lifetimes in jail and totally lacks credibility.

2. The informant is a pervert and absentee parent.

Santos is a pervert who has no regard for either his child or the mother of his child. Santos was not shy in revealing to Mr. Moscatiello that his daughter refuses to acknowledge him. Even more revolting, Santos was not shy in informing another co-defendant that he set up a hidden video camera and recorded himself having sex with the mother of his child.

During a conversation with Mr. Moscatiello and others on October 20, 2009, Santos revealed that his teenage child informed him on numerous occasions that she does not consider him a father and does not want to be bothered with him because he is never around. More specifically, during various segments of the conversation he states: ***"She don't want to be bothered with me," "She makes up this bullshit thing like she barely knows me because I was in jail a lot," "She is throwing up bullshit things to justify," "She got to understand that I have***

to live a life too" and "I text her and she doesn't even text message me back." Any normal person would be horribly upset and guilt ridden if his child made that known. However, in true selfish fashion, Santos is unfazed and even laughs when he informed Mr. Moscatiello and others that his daughter does not respond to his text messages.

During another conversation on January 13, 2010, Santos, in true degenerate fashion, informed a co-defendant about recording sex with his ex-wife, waiving at the camera during the act and inviting friends over to watch the recording while enjoying White Castle, as though it were a night out at the movies. More specifically, Santos states:

...he gets a camcorder, he has an apartment in old Howard Beach. So like I'm inviting her over for one of my booty calls, whatever. And we set up the camera and I'm going to record it...So I turn it on like 15 minutes, ya know, 20 minutes before she got there. And I'm fucking around and I'm waiving at the camcorder and ya know I'm making a joke out of it, right. So she leaves, they come back with fucking uh White Castle. We fucking sit down eating White Castle, throw the tape in on the T.V. getting ready to watch you know me the big shot. Uh, we're watching me pacing back and forth, you fucking see the tape cut off.

Howard Santos does not possess a single redeemable quality. Any person who would purposely exploit the mother of his child and laugh while telling others that his daughter ignores him, is

a true sociopath who lacks credibility and deserves a lengthy prison sentence, not a cooperation agreement.

F. Anthony Moscatiello Is Not A Flight Risk.

The government's allegation that Mr. Moscatiello is a flight risk borders on the frivolous. Anthony Moscatiello has never demonstrated that he is a flight risk. Mr. Moscatiello has strong community ties as his entire family resides within Queens, New York. Moreover, Mr. Moscatiello has resided in Queens for over forty years and at his current address for approximately ten years.

Additionally, it became common knowledge that Santos was a cooperating witness as early as January 2010. Since that date, Mr. Moscatiello had ample opportunity to flee and/or relocate. But he did not. Rather, he continued to live at the same address wherein he was arrested.

Most importantly, Anthony Moscatiello has two young children and he plays an active role in their upbringing. Mr. Moscatiello would never abandon them and jeopardize the well-being of his family and friends who are willing to post their homes and signatures in favor of his release.

Mr. Moscatiello did not flee in 2003 when faced with similar charges. Instead, he returned routinely for each scheduled court appearance. Likewise, if released by this Court,

Mr. Moscatiello would be fully compliant with the Court's directives and appear at each and every scheduled appearance.

III. THE PROPOSED BAIL PACKAGE IS SUFFICIENT TO ENSURE THE SAFETY OF THE CITIZENRY AND MR. MOSCATIELLO'S CONTINUED PRESENCE FOR ALL COURT PROCEEDINGS.

Listed below are five (5) properties belonging to Anthony Moscatiello's family and friends, all of which are willing to be posted as part of a bail package. It is defense counsel's humble opinion that a bail package of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) secured by both the properties and signatures of the financially responsible persons listed below would be sufficient to secure Anthony Moscatiello's appearance and the safety of the citizenry.

A. Property.

1. Anthony Scaglione (Brother-in-law)
Maria Scaglione (Sister-in-law)
385 O'Connor Road
North Babylon, New York 11703
Approximate Value: \$450,000.00
Mortgage: \$ 80,000.00
Equity: \$370,000.00

2. Lucia Taddeo (Family Friend)
162-11 86th Street
Howard Beach, New York 11414
Approximate Value: \$850,000.00
Mortgage: \$350,000.00
Equity: \$500,000.00

3. Pasquale Gugliemo (Friend)
Patricia Ratz
159-48 80th Street
Howard Beach, New York 11414
Approximate Value: \$700,000.00
Mortgage: \$500,000.00

Equity: **\$200,000.00**

4. Enza Iervolino (Family Friend)
592 Keith Lane
West Islip, New York 11795
Approximate Value: \$500,000.00
Mortgage: \$.00
Equity: **\$500,000.00**

5. Joseph Iervolino (Family Friend)
129 Prince Street
Patchogue, New York 11772

Approximate Value: \$350,000.00
Mortgage: \$ 80,000.00
Equity: **\$270,000.00**

TOTAL APPROXIMATE EQUITY: **\$1,840,000.00**

B. Financially Responsible Persons.

1. Anthony Scaglione (Brother-in-Law)
Freight Truck Driver at New Penn
Earns \$90,000.00 per year
2. Joseph Iervolino
Self-Employed Mechanic
Earns \$30,000.00 per year
3. Phil Lobell
Chelsea Financial
Earns \$100,000.00 per year
4. Kristen Lobell
Enterprise Process Service, Inc.
Earns \$40,500.00
5. Richard Brasile
New York City Department of Sanitation
Earns \$90,000.00
6. Angela Brasile
C-Town
Earns \$20,000.00 per year

IV. CONCLUSION.

For the aforementioned reasons, it is respectfully requested that This Court release Mr. Moscatiello pending trial pursuant to a Two Million Five Hundred Thousand Dollar Bond secured by the aforementioned properties and financially responsible persons, along with any other conditions or combination of conditions that the Court deems necessary and appropriate.

Respectfully submitted,

_____/S/_____

JOSEPH DIBENEDETTO
The Woolworth Building
233 Broadway, Suite 2707
New York, NY 10279
212-608-5858
jdibenedetto@dibenedettolaw.com

Attorney for Anthony Moscatiello