UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 1050-4
v.	)	
	)	Judge James B. Zagel
FRANK CALABRESE, SR. *et al.*,	)	

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT FRANK CALABRESE, SR.'s MOTION FOR RELEASE ON BOND

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, for the reasons set forth below respectfully requests that this Court deny defendant Frank Calabrese, Sr.'s motion for release on bond.

I. PROCEDURAL BACKGROUND

On April 21, 2005, defendant was charged in the First Superseding Indictment. See R. 1. Defendant at that time did not resist the government's request that he be detained. See R. 10. On June 2, 2005, the Second Superseding Indictment charged defendant with a RICO conspiracy alleging various predicate violations (Count I); interference with commerce by threat or violence (Counts IV); and illegal gambling (Count V). See R. 60. The Second Superseding Indictment also charges that defendant was involved in 10 separate murder incidents involving 13 victims. Id. The defendant's continued detention was ordered that same day. See R. 61.

On April 29, 2005, co-defendants James and Michael Marcello had their detention

hearings, and the Court on May 3, 2005, issued a written Order denying their requests for pretrial release. See R. 33. Relevant to defendant's instant motion, this Court in the May 3 Order found: That defendants proposed stringent conditions of release, id. at 1; that the rebuttable presumption in favor of detention was triggered by the allegations contained in the RICO count (Count I), id.; that, "[w]ithout question, the allegations portray an organization that threatens the safety of individuals; similarly, the crimes alleged are among the most serious crimes to threaten the safety of the community," id. at 3; that the information provided by one of the government's cooperating individuals concerning the operation of the enterprise and the planning and execution of the various charged murders was corroborated by other evidence, id. at 3-4; that the government's evidence "is strong even when weighed against the presumption of innocence," id. at 4; that a conviction in this case would likely result in the defendants spending the rest of their lives in prison, thus increasing the likelihood of flight, id. at 4-5; that "criminal organizations that have existed for decades" pose "unique risks," id. at 6; that the Chicago Outfit is a criminal organization of long duration, id.; and that organizations such as the Chicago Outfit use kidnaping and murder to intimidate and/or silence witnesses, id.

On July 11, 2005, defendant Michael Marcello's appeal of this Court's May 3, 2005 Order was denied by the Seventh Circuit Court of Appeals. See R. 76. On June 1, 2006, defendant filed the instant motion for bond. See R. 170.

II. REBUTTABLE PRESUMPTION IN FAVOR OF DETENTION APPLIES TO DEFENDANT

Defendant is charged with crimes of violence, as defined in 18 U.S.C. §§ 16 and 3156(a)(4)(A), and is facing a potential life sentence, see § 3142(f)(1)(B), thus triggering §3142(f)'s rebuttable presumption in favor of detention. See generally United States v. Patriarca, 948 F.2d 789, 791-92 (1st Cir.1991) (RICO case in which extortion and credit transactions were defined as crimes of violence triggering the rebuttable presumption in favor of detention); see also R. 33 at 1 (Court's ruling that presumption applies to co-defendants James and Michael Marcello because of nature of charges).

III. SUMMARY OF DEFENDANT FRANK CALABRESE, SR's ARGUMENT

Defendant argues that he should be released on bond because he is a 69-year-old convicted felon in ill health who has been an "exemplary" inmate, and who while incarcerated on Outfit-related charges attended some 250 Alcoholics Anonymous meetings as well as parenting classes. See Defendant's Motion at 4. Defendant characterizes the "13 mob hits" he is charged with as merely part of a "historical" case, id. at 2, maintains that the evidence against him is "confusing, stale, and inconsistent," id. at 4, and claims that the dozens of hours of intercepted conversations featuring defendant, among other things, trying to initiate his son into the ways of the Outfit are "taken out of context," id. Defendant's arguments fall short of the mark, and defendant fails to rebut the presumption in favor of detention.

IV. ANALYSIS

Defendant's protestations to the contrary notwithstanding, the evidence against him, including the many hours of damning conversations featuring defendant discussing not only the murders he personally participated in, but also the nature and structure of the Chicago Outfit and defendant's ongoing criminal activities while incarcerated, leave little doubt that defendant is uniquely inappropriate for pretrial release. Defendant was and continues to be a grave danger to the community, as well as a serious risk of flight. It is also the government's position that the defendant, if released, would pose a serious risk that he will attempt to obstruct justice and attempt to threaten, intimidate, or injure prospective witnesses.

In sum, defendant has been a serial-murderer for the Chicago Outfit. Moreover, defendant has extensive experience evading justice and manipulating the legal process by, among other things, killing real and potential witnesses against him. As discussed in more detail below, defendant while incarcerated has also continued his criminal activities on behalf of the Chicago Outfit, and has maintained covert locations containing substantial funds, stockpiles of medicines, guns, and false identification documents to facilitate his flight from law enforcement. This serious criminal background and disposition, combined with defendant's well-founded fear of spending the rest of his life in prison should he be convicted in this case, establish beyond question that there are no conditions or combinations of conditions that can assure defendant's appearance in Court

or the safety of the community. See 18 U.S.C. § 3142(g).

A. The Nature and Circumstances of the Offenses Charged.

The Second Superseding Indictment charges that defendant for almost four decades was an active and integral member of the Chicago Outfit who personally was involved in the killing of those who stood in his way, including individuals who he believed to be law enforcement cooperators and innocent bystanders. See R. 60, para. 24. More specifically, the indictment charges, inter alia, that defendant personally participated in thirteen Outfit-related homicides. See id. at 9-10. These murders include the 1970 murder of Michael Albergo; the 1976 murder of Paul Haggerty; the 1977 murder of Henry Cosentino; the 1978 murder of John Mendell; the 1978 murders of Vincent Moretti and Donald Renno; the 1980 murders of William and Charlotte Dauber; the 1980 murder of William "Butch" Petrocelli; the 1981 bombing murder of Michael Cagnoni; the 1983 murders of Richard Ortiz and Arthur Morawski; and the 1986 murder of John Fecarrota. Moreover, defendant is charged with conspiracy to use violence and other means to extort money ("street tax") from businesses and individuals, with providing "juice loans," as well as with various gambling activities. The charged conduct is, as this Court has previously noted, see R. 33 at 3, extremely serious, and poses a significant threat to the community.

B. The Weight of the Evidence Against Defendant.[1]

The weight of the evidence presented against defendant is substantial, and, the government submits, will likely result in his conviction if he opts to go to trial. Not only does the government have the extensive testimony of corroborated cooperators with first-hand knowledge of defendant's criminal activities, but the government also has many

---

[1]According to defendant, the ruling in United States v. Dominguez, 783 F.2d 702 (1986), stands for the proposition that "[t]he weight of the evidence [against a defendant] is the least important factor [when considering the release of a defendant pursuant to 3142(g)]." Defendant's Motion at 4. To the contrary, the Dominguez court simply found that, "[w]hile it is not intended that [the detention hearing] become a full-blown trial on the charges at issue, the nature of the charged offenses and the weight of the evidence against the defendant are among the factors to be explored." Id. at 705 (emphasis added). Dominguez does not stand for the proposition asserted by defendant.

Indeed, the government could not locate any binding authority in this Circuit supporting the oft-repeated claim that the weight of the evidence is "the least important factor" to be considered; the weight of the evidence, after all, is listed in 3142(g) as one of four co-equal factors (along with nature and circumstances of the offense(s) charged; history and characteristics of person; and dangerousness to community) to be weighed by the court. The government was able to trace the notion that the weight of the evidence is somehow a disfavored factor to the Ninth Circuit's mid-1980's rulings in cases such as United States v. Motamedi, 767 F.2d 1403, 1408 (9th Cir. 1985) (cited in Compare United States v. Radick, 2006 WL 436116, *3 (N.D. Ill. Feb 17, 2006) (Valdez, Magistrate)) (contending that the weight of the evidence is purportedly least important factor). Motamedi, however, simply held that, "[a]lthough the statute permits the court to consider the nature of the offense and the evidence of guilt, the statute neither requires nor permits a pretrial determination that the person is guilty." A short time after the issuance of this rather non-controversial holding, other courts in the Ninth Circuit began citing Motamedi and its progeny for the questionable proposition that, "[o]f these factors, the weight of the evidence is the least important . . . ." United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991) (emphasis added). While the government of course agrees that the weight of the evidence at the detention phase should not serve as a proxy to determine defendant's guilt of the charged crime, the mis-reading of both the statute and the Ninth Circuit caselaw referencing the statute sheds serious doubt upon defendant's claim that the weight of the evidence is, contrary to the plain language of the statute, to be accorded less importance than the other factors. In any event, the government has established that all of the other factors favor detention, and the resolution of this legal issue is thus not outcome-determinative.

hours of taped conversations in which defendant himself describes his extensive criminal involvement (including his own participation in a number of the above-described murders). The likelihood of a conviction and of the subsequent imposition of an extremely serious penalty clearly provides defendant Calabrese with every incentive to flee the jurisdiction. See generally United States v. Jackson, 845 F.2d 1262, 1274 (5th Cir. 1988) ("The defendant's membership in a nationwide organization capable of hiding fugitives from justice, coupled with his substantial penal exposure in this case, could easily motivate him to flee."). In the interest of brevity, the government for the purposes of the instant motion will limit itself to outlining just some of those discussions:

1. Defendant Taped Discussing Ceremony During Which He Became a "Made" Member of the Chicago Outfit.

As the government showed during the April 29, 2005, Marcello detention hearing, the Chicago Outfit is a hierarchical organization in which "made" members enjoy higher status, and are considered members of the Outfit for life. Moreover, in order to become a "made" member, the individual must complete at least one murder for the Outfit. As indicated at the Marcello hearing, Nicholas Calabrese, defendant's brother, advised the FBI that he was "made" with his brother, James Marcello, and others in 1983.

During a February 14, 1999, consensually-monitored conversation between defendant and CW#1, defendant discusses the ceremony during which he was "made," and thus confirms his membership in the Outfit:

DEFENDANT:	Their fingers get cut and everybody puts the fingers together and all the blood running down, then they take pictures. Put them in your hand. Burn them.
CW#1:	Pictures, of.
DEFENDANT:	Holy pictures.
CW#1:	Oh.
DEFENDANT:	Understand, they're like this. They're the holy pictures. And they [senior ranking members of the Outfit who participate in the making ceremony][2] look at you to see if you'd budge and while the pictures are burning. And they, and they wait till they're getting down to the skin. Then they take them out of there.
CW#1:	What happens if you budge. No, but...
DEFENDANT:	Then it shows your fear. You have fear. Stand there like that with your hand cupped like that. Then they say okay. Then you take them and go like this.
CW#1:	Uhm hmm.
DEFENDANT:	One guy at a time. You don't see two up there. One guy, when one guy's on it the other guy's sittin' somewhere else. In the same place but in a different room. There's a panel like that about 9 guys.
CW#1:	Nah, I thou..., I thought, I always thought it was in the movies.
DEFENDANT:	Very, very close, very close, very close. And, ah, the guy that's the second guy in charge is the guy that talks to you, everybody else are all the Capos [Outfit bosses].
CW#1:	They just sit there.
DEFENDANT:	They're watching you.
CW#1:	And what do you got like, ah, ah, ah, the guy that br, brought you in, he's there with you, too.
DEFENDANT:	The guy that brought you in there is a Capo. He is sitting at the table, too.

[2]As appropriate, and for ease of reference, the government will provide its interpretation of the conversation in brackets.

During an April 10, 1999, recorded conversation with CW#1, defendant touches on the etiquette involved when dealing with a made member of the Outfit. Defendant complains to CW#1 that a fellow mobster once introduced defendant to someone as a "made man." Defendant is on tape complaining that the mobster had no right to do this because he (the mobster) was not himself made, and the introduction should not have been done in that manner.

2. Defendant Discusses Why He Did Not Become A Boss of The Chicago Outfit.

During a June 1, 1999, conversation between the defendant and CW#1, defendant tells CW#1 that he (defendant) was slated to become one of the Capos of the Chicago Outfit, but was passed over because he had a medical operation performed on him at the time. Instead, John "Apes" Monteleone[3] got the position, along with the position of "Underboss," when Outfit boss Jimmy LaPietra died:

DEFENDANT:	Yeah. They wanna be. And you wanna know something? It's coming more and more and more to me. Ya know, I got news for you. If, ah, if, ah, brother, Jimmy [LaPietra] wasn't there, I woulda been running the show.
CW#1:	Yeah?
DEFENDANT:	Yeah. I was next in line. Alright? And I'm so fucking happy that I had gotten that operation and everything, (UI).

---

[3]Monteleone was convicted of contempt for his failure to answer grand jury questions concerning a bombing after being granted immunity. United States v. Moneteone, 804 F.2d 1004 (7th Cir. 1986) Monteleone also received protection money from illegal gambling businesses. See United States v. Marino, 835 F. Supp. 1501, 1516 (N. D. Ill. 1993).

CW#1:	Well, what about when he [LaPietra] died? What, what'd they just by-pass you or...
DEFENDANT:	Because I was away from it.
CW#1:	So, then they gave it to, uhm...
DEFENDANT:	Johnny [Monteleone] got it.
CW#1:	...Oh, Johnny got it, okay, Apes. You're happy about that, though.
DEFENDANT:	Huh?
CW#1:	I says, you were happy about that.
DEFENDANT:	Are you kidding? Not only did Johnny get that spot, Johnny got two spots. He became Number Two [the Underboss of the Chicago Outfit] and, and a Capo.
CW#1:	Oh, really?

3. <u>Defendant Discusses The Chicago Mob's Alternative Dispute Mechanism – the "Sit-Down".</u>

Defendant is also on tape discussing the use of "sit-downs" as a mechanism to resolve disputes between different Outfit crews. For example, during a March 27, 1999 conversation, defendant tells CW#1 that a Chicago Outfit street crew called the "Wild Bunch" frequently asked for sit-downs with the Boss/"Number One" of the Outfit:

DEFENDANT:	I never went to anybody to ask for a sitdown. They did because they couldn't beat us any other way. They knew that, don't fuck with us. Leave us alone. And, uh, so they would try to come around and, and, and try to win somethin' by goin' to the table with it. And the old man [Boss of the Outfit] got disgusted with it. That last time he told 'em, he said, if you guys can't work it out, he says, I want no more of these sitdowns. I'm tired of meetin' with you guys. He said, I think this is a waste of time. That most of these things could be straightened out among yourselves.

During the same conversation defendant details how the Wild Bunch would try to steal bookmakers from other crews by offering to pay the bookmakers' street tax to other crews:

DEFENDANT: Try to arm guys off of guys. You know, that are already hooked. You know what they were doin'. I'll show you what they were doin'. They would get bookmakers. They were paying taxes [payments to the Outfit], right? They would go to the bookmaker and that bookmaker would say, I'm payin' taxes. They'd say, okay, here's what you do. We'll pay the taxes for you. You hook up with us. We'll char--we'll go fifty/fifty. We'll pay the taxes for you.

During a February 21, 1999, conversation with CW#1, defendant confirms that the crew structure still exists in the Chicago Outfit, and discusses the current state of the various crews:

DEFENDANT: The best crew you got down there is still Chinatown. The best crew, I'm talkin' about men....The uh, the uh, the moneymakers are Elmwood Park [another crew].

4. <u>Defendant Discusses his Criminal Post-Incarceration Plans with CW#1, As Well As His Fear that His Brother Is Cooperating With Law Enforcement.</u>

Though incarcerated, the defendant continually expresses his allegiance to the criminal organization of which he is a member, and his interest in continuing in its criminal activities when released. On June 1, 1999, for example, the defendant indicates his interest in supporting CW#1's illegal activities when he (defendant) is released,

offering to help CW#1 set up a sports gambling operation once he is released. According to defendant, however, CW#1 must first "earn" the right to get involved in this operation.

Defendant is also on tape repeatedly indicating his concern with warning fellow Outfit members that his brother might be cooperating with law enforcement. In these conversations, the defendant sought to communicate these concerns to co-defendant James Marcello, then incarcerated at FCI Pekin. In fact, it was defendant's intent to have co-defendant Marcello watch the defendant's brother (who was also incarcerated with Marcello at FCI Pekin) for signs that he was cooperating.

The defendant's concerns in this regard became so acute that he told CW#1 on March 13, 1999, that if something were to happen to the defendant's brother, the defendant "would send my blessing," so that Outfit members would know there would be no retaliation for any harm visited on the cooperating brother. In this way, the defendant clearly indicated his allegiance to protecting a violent criminal organization, such allegiance taking precedence over any loyalty to his brother.

5. Defendant's Involvement in the Murder of Michael Albergo Because of Defendant's Fear that Albergo Might Be Cooperating With Law Enforcement.

Michael Albergo was murdered in 1970 because he was suspected of being a witness against defendant and other members of the Mob. In 1969 and 1970, the Illinois

Crime Investigation Commission was involved in an investigation concerning organized crime's loansharking business in the Chicago area. Michael Albergo was subpoenaed by this Commission to provide testimony. A subpoena was also issued by the Commission for the defendant, and the defendant left the Chicago area to go to Arizona to avoid process by the Commission. The government will prove at trial that defendant feared Albergo could incriminate him and other Outfit members in loansharking activities. The government will show that Albergo was lured to the murder location by another male and defendant, and then strangled by defendant, and two others. The body was then stripped and buried in a Chinatown construction site (the building was later razed, re-graded, and then became a White Sox parking lot). At the time of the burial, lime was placed on the victim's body so that it would disintegrate.

During a March 13, 1999, recorded conversation, defendant in fact discusses with CW#1 the Albergo murder: "[W]here we put that person [the victim], [whispering] in Chinatown, it's no longer there. They dug it up and made a parking lot." Defendant further states that "we put lime that eats," that "there was no clothes on the person," that "he [Nicholas Calabrese] did one of those [murders] with me"; and that the murder "was an okay'd [authorized] one."

6. Defendant's Involvement in Murder of William Dauber and His Wife Charlotte Because of Fear that William Dauber Was Cooperating With Law Enforcement.

The Daubers were murdered in 1980 on their way to their residence from a state

court criminal hearing involving William Dauber in the Will County Courthouse. The government will prove that defendant participated in these murders by serving as a "look-out," and that William Dauber was killed because members of the Outfit believed he was cooperating with law enforcement; according to defendant, Charlotte Dauber was simply at the "wrong place at the wrong time."

On March 13, 1999, the defendant confirmed in a recorded conversation that he participated in the Daubers' homicides as a lookout:

CW#1:	I mean, he claimed he knew about, the Dauber one.
DEFENDANT:	Don't even mention that name.
CW#1:	Dauber?
DEFENDANT:	Yeah.
CW#1:	I don't, the wife one?
DEFENDANT:	How could he not? It was in the...
CW#1:	I know, [], but he made it sound like you told him
DEFENDANT:	**Yeah, well, he made it sound like I purposely went after his wife.** (Emphasis added.)
CW#1:	Yeah, I know.
DEFENDANT:	I mean, [], I wasn't even in that vehicle. **I was in the look-out vehicle.** (Emphasis added.)
CW#1:	I know, you told me.

7. Defendant's Involvement in Murder of Richard Ortiz and Arthur Morawski.

On July 23, 1983, Richard Ortiz and Arthur Morawski were murdered in Cicero

by gunmen firing shotguns into the vehicle in which they sat. The victim's' car was parked in front of the "His 'N Mine Lounge" on 22nd Street in Cicero, located between Laramie and 51st Avenue. The government's proof at trial will be that the defendant, Nicholas Calabrese, and other Outfit members were responsible for the homicides. The government will prove that Richard Ortiz was murdered by the defendant and others, amongst other reasons, because Ortiz had committed a murder not authorized by the Outfit. Morawski, like Charlotte Dauber, apparently was just in the wrong place at the wrong time.

The government will prove that in order to carry out the murder of Ortiz, Outfit members conducted surveillance of him for several months. On one occasion the murder did not go as planned because one of the shooters became nervous and called the hit off. The government will prove at trial that the defendant expressed an interest in killing the nervous accomplice, along with Ortiz, for failing to accomplish the murder on this occasion.

On the day of the murders Ortiz and Morawski arrived at the His 'N Mine Lounge in Cicero, and the defendant pulled his car behind Ortiz. There were two other shooters, including Nicholas Calabrese, in the defendant's vehicle; these two were wearing ski masks. The two shooters exited the defendant's vehicle, armed with shotguns, and started shooting the occupants of Ortiz's car from the driver's side of the vehicle. During the shooting, both shotguns were emptied into the victims' car, killing them both.

On April 10, 1999, the defendant confirmed his role in the killing of Ortiz and Morawski in a recorded conversation:

CW#1:	Oh, okay. So the one in Cicero then, he [the third accomplice], he actually did with Uncle Nick. So you were driving, so he can't say nothin' there because he'd get in more trouble than you.
DEFENDANT:	Right, because they, he was the one and Uncle Nicky were the ones that got outta the car...**I was the one talkin to them**...Alright guys, here's what you gotta do here. Okay now, out. Out. Out. Get out. [Laughs]. (Emphasis added.)
CW#1:	And they wouldn't get out?
DEFENDANT:	Yeah, they were like hesitant for a minute, you know. Out. Now, now, now, now. That's the one in Cicero where...
CW#1:	You said where the innocent...Polish guy or something?
DEFENDANT:	**Yeah. And I said, take your time now. Don't rush. Walk up to that car.** (Emphasis added.)
CW#1:	Did they know that the guy in the passenger side– or the other guy was innocent or no?
DEFENDANT:	They knew...he was innocent, [] **he happened to be at the wrong place at the**, we worked on that guy for nine months. (Emphasis added.)
CW#1:	Really?
DEFENDANT:	We had the guy one time by his house. Poker [nickname for third accomplice] chickened out...That's when I told Nicky, I said, why the fuck didn't you leave him there after – **get the other guy first then leave him too** [i.e., kill him]. (Emphasis added.)
CW#1:	That's not the dope dealer guy was it?
DEFENDANT:	He [Ortiz] was a dope dealer and he was, he was lending money out on his own. He, he belonged to Johnny [Monteleone] at one time. He was...Mexican...We used to call him Half 'n Half because he was half Mexican and half something else...And where he got it, his friends were sittin' right across the street...They couldn't even describe the car.

Because you see how confusing things are when people...get scared.

Defendant then describes how, as the driver, he blocked Ortiz' car while co-defendant Nicholas Calabrese and the third accomplice fired their shotguns at Ortiz and Morawski:

DEFENDANT:	As they [Ortiz and Morawski] pulled, **I pulled with 'em**. (Emphasis added.)
CW#1:	Diagonal?
DEFENDANT:	Yeah. Diagonal, like this. But I left room...right off of Laramie there you could park like this on, on 22nd [Cermak]...So when I let – when I got out. I made sure when they got out, I made sure that I didn't have to back up, that you turn right out...There's nobody next to me...This was done in a matter of seconds. **I'm shielding them from the street so nobody could see what they're doing**... (Emphasis added.)

Then defendant then goes on to describe the actual shooting:

DEFENDANT:	**Yeah, they emptied them out. They, I made sure.** (Emphasis added.)
CW#1:	They were...
DEFENDANT:	Empty. No they were automatics.
CW#1:	Oh, they were shotguns?
DEFENDANT:	Yeah, but they were..
` CW#1:	Oh, automatics..
DEFENDANT:	Automatics...'**cause after they eject, we threw 'em away**...[the shotguns] were given to us...so we went over there and we tried the shotguns. They both worked. We did one one night, one another night, in case we had to throw it. We had it, we had gloves and everything on. **They worked**

	perfect. They didn't jam up or anything. So that's what they used. They had, I think, four [rounds] apiece, or five apiece. They had one in there and four in the chamber... And they used them all. And they were double-oughts, []. (Emphasis added.)
CW#1:	That means what? Extra...
DEFENDANT:	**Bigger ones...Big, big bearings. So them, them will fuckin' tear half your body apart.** (Emphasis added.)
CW#1:	So they musta tore them up pretty good.
DEFENDANT:	Oh, yeah. **Tore 'em up bad. Them'll tear your body up. They're called double-oughts.** And you want me to tell you something? **The Polish guy that was with him was a nice guy. Okay? But he happened to be at the wrong place**...It was said, no matter who's with him, want it done. Now if you back away and you have that opportunity and you don't, then you'd look like a fuckin' asshole. (Emphasis added.)
CW#1:	Then they'd put you in that place maybe.
DEFENDANT:.	..they can say, well you don't wanna do it. Then what, are you losing your fuckin' nerve? Okay, you start putting thoughts in people's minds....the poor guy was at the wrong place at the wrong time. We were hoping that he was gonna be alone. But then when we called and told 'em there's another one, go ahead. We said, there's two, uh there's two – how did we put it?
CW#1:	Oh, so you had to get the okay then.
DEFENDANT:	Oh, yeah. We got..it. We said, there's two, it's two security guards in that yard. That's alright. Wait. Oh, it's okay. Go ahead.. Go ahead.. You can enter. **You know who started all that rigga-ma-talk-talk [use of coded language]? I did.** They never talked like that. They didn't know about talkin' like that. Ronny, Joy [code for co-defendant Nicholas Calabrese], all them guys never knew about talkin like that. We used to talk about yards, because there's nothing but a bunch of yards around there.

Although defendant claims that "[t]he intercepted conversations have been taken

out of context," based on the excerpts above it is difficult to determine what lawful context might exist for defendant's explicit and detailed conversations about his personal participation in murders (corroborated by information from cooperating witnesses and physical evidence). Even though the above is but a small sampling of the great body of evidence the government intends to introduce at trial, it is sufficient to demonstrate that there is a high likelihood that defendant will in fact spend the rest of his life in a federal prison. When presented with this almost certain future, and in light of defendant's avocation as a true career criminal, flight is a virtual certainty if defendant is released on bond. Moreover, defendant's casual style of discussing cold-blooded murders of individuals believed to be cooperating with law enforcement, as well his apparent sanctioning of the murder of his own brother should he became a cooperator, convincingly demonstrates that defendant is a serious and ongoing threat to potential witnesses, and that he would not hesitate to use violence to achieve his aims. Indeed, as indicated above, the government will prove that Michael Albergo and William Dauber were murdered by the defendant because they were believed to be in a position to cooperate with law enforcement against the Outfit.

C. Defendant's History and Characteristics.

In 1997, defendant was convicted in this District of racketeering (Count I); mail fraud (Count II); conspiracy to defeat the IRS (Count III); extortion (Count V). Defendant was furthermore convicted of corruptly influencing a witness by encouraging

the witness to lie in the grand jury (Count IX). On October 15, 1997, defendant was sentenced to 118 months incarceration, and was ordered to forfeit in excess of $1,500,000.00. As detailed above, this sentence did not deter defendant from returning to his criminal ways.

Defendant also has no substantive employment history, his highest level of education is grammar school, his wife has had limited employment, and by his own admission he is elderly and in poor health, see Defendant's Motion at 1-2. Nevertheless, defendant most recently lived in a $900,000 residence in Oak Brook, Illinois, and he and his wife continue to maintain summer homes in Port St. Lucie, Florida, and Williams Bay, Wisconsin. The tape recorded conversations, including those in which defendant describes how he himself became a "made" member of the Chicago Outfit, demonstrate that defendant's true "profession" is that of a life-long mobster.

1. Defendant Expert at Assuming False Identities.

Defendant has an extensive history of trying to evade law enforcement, as well as of fleeing the jurisdiction to avoid post-indictment arrest. Defendant is indeed an expert in the acquisition and use of false identities. For example, while incarcerated in FCI Milan, defendant maintained false identity documents in the Chicago area. More specifically, defendant stashed numerous false identity documents (including driver's licenses, birth certificates, voter registration cards, banking information, Illinois and Indiana vehicle registration documents, union memberships cards, social security cards,

credit cards, and security personnel credentials and badges) with his picture and in the names “James Traviso,” “Bruno Adams,” “Tony Cononi,” “Eugene Vincent McLaughlin,” “Shelly Morris,” “James Calabrese, Jr.” (the defendant’s deceased brother’s name), “James Calabrese,” (the defendant’s deceased father’s name), “Joseph Mauro,” and “Primo Massie.” These documents clearly reflect an intent and ability to leave the Northern District of Illinois using false documentation.

2. Defendant Has A History of Concealing Items To Aid Flight at Multiple Locations.

The government will show that the defendant has obtained and maintained various safety deposit boxes within and outside of Chicagoland (one of which contained approximately $400,000; defendant at one point maintained six safety deposit containing a total of approximately $1.5 million, as well as several stash locations and work garages). These locations also contained credit cards and documentation related to bank accounts opened using false identities. During his criminal activities, the defendant and his criminal associates maintained numerous work garages in which defendant hid the tools of his trade, including masks, walkie talkies, guns, ammunition, explosives, blasting caps, false identity documents, and rope. The government, moreover, has evidence that defendant in the 1990's stock-piled various medications for his ongoing health problems; a reasonable explanation for this unusual action is that defendant wants to have sufficient medications so that he can flee the jurisdiction if indicted without

having to take the risk of contacting a physician or pharmacy.

D. Danger to the Community.

That defendant poses a significant risk to the community is established not only by his personal involvement in numerous murders, but also by his continued involvement in the criminal activities of the Chicago Outfit. Defendant asserts that, at 69 years of age and with health problems, he poses no threat of flight or to the community. See Defendant's Motion at 1-2. In so doing, defendant flatly ignores that defendant, then 63 years of age and in similarly bad health, is on tape grooming future mobsters, bragging about past murders, discussing his "mentoring" of young criminals, giving instructions on ongoing Outfit-related criminal activity, planning for CW#1 and defendant to start their own criminal activities upon defendant's release from prison, and sanctioning the potential murder of his own brother. A defendant who is directly involved in the brutal and vicious hands-on murders of at least 13 individuals, including persons who were killed by defendant solely because defendant viewed them as potential law enforcement witnesses/cooperators, and who through his criminal connections and associations can recruit others to intimidate witnesses and plan his own escape if released on bond, poses a real and continuing danger to the community. See United States v. Cirillo, 149 Fed. Appx. 40 at *3 (2nd Cir. Sept. 21, 2005) (Unpublished) (determining that neither defendant's "heart condition nor his dental needs altered the fact that his danger to the community required detention. This court has ruled that even the strictest home

confinement conditions cannot substitute for actual detention to safeguard the public from the danger presented by the leaders of organized crime families routinely involved in violent criminal activities."); United States v. Tortora, 922 F.2d 880, 886-87 (1st Cir.1990) (elaborate conditions dependent upon good faith compliance were insufficient where mob defendant's violent history provided no basis for believing that good faith would be forthcoming); see also United States v. Cervantes, 951 F.2d 859, 861 (7th Cir. 1992); United States v. Ramirez, 843 F.2d 256, 258 (7th Cir. 1988). Indeed, the Court pointed to the danger posed by the Outfit when denying co-defendant James and Michael Marcello's request for bond, see R. 33 at 3, and the evidence of defendant's long-standing criminal activities make defendant at least as dangerous as co-defendants Michael and James Marcello.

E. Cases Cited by Defendant Clearly Distinguishable.

Defendant cites United States v. Traitz, 807 F.2d 322 (3rd Cir. 1986) in support of his motion. In Traitz the government appealed the decision of the District Court releasing defendants who were members of the Roofers Union. Two of the defendants had never been convicted, and one had been convicted of two armed robberies. Id. at 324. None of the defendants were ranking organized crime members. The court found that there was no evidence of any obstruction of justice, and that the presumption of dangerousness did not apply. Id. at 325. In contrast to the instant case, the defendants in Traitz were not charged with being serial murderers for the Mob, were not on tape

planning post-incarceration criminal activity, did not have a history of flight and maintaining secret locations in which they kept items such as multiple false identity documents, firearms, and large amounts of cash, and were not recorded discussing their personal involvement in numerous murders and attempted obstruction of justice. In short, the situation and background of the defendants in Traitz cannot be compared with that of defendant.

Defendant similarly cites to United States v. Gatto, 750 F. Supp 664 (D.N.J. 1990), in which the District Court concluded that, "[a]lthough the government's case concerning the illegal gambling business is strong, its evidence regarding the crimes of violence is much less substantial . . . ." Id. at 624. The Gatto court also noted as "highly relevant" the fact that a similarly-placed co-defendant was released over the government's "vigorous" objections, and that this co-defendant had successfully complied with his release conditions. Id. at 675-76. Suffice it to say that the same cannot be said of co-defendants in the instant case, and that Gatto can be readily distinguished from the instant case.

V. CONCLUSION

The defendant has a lengthy career as a violent criminal, and belongs to a criminal organization that places murderers in its hierarchy. The defendant has been convicted of violent crimes and witness tampering. He has murdered others in the belief that they could provide damaging information against his criminal organization. Based on the

foregoing, the government respectfully requests that this Court deny defendant Frank Calabrese, Sr.'s, motion for release on bond.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

By: /s/ Mitchell A. Mars
MITCHELL A. MARS
Assistant United States Attorney
(312) 353-9353

/s/ John J. Scully
JOHN J. SCULLY
Assistant United States Attorney
(312) 886-7655

/s/ T. Markus Funk
T. MARKUS FUNK
Assistant United States Attorneys
219 South Dearborn Street
Chicago, IL 60604
(312) 886-7635

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that in accordance with FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following documents:

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT FRANK CALABRESE, SR.'s MOTON FOR RELEASE ON BOND

were served pursuant to the district court's ECF system as to ECF filers, if any, and were sent by first-class mail on June 6, 2006, to the following non-ECF filers:

Joseph R. Lopez
Joseph R. Lopez, Ltd
53 West Jackson
Suite 1102
Chicago, IL 60604

/s/ Mitchell A. Mars
MITCHELL A. MARS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-9353