

RTF:SC:MER
F.#2005R01856

109-0029

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TO BE FILED UNDER SEAL

UNITED STATES OF AMERICA

AFFIDAVIT IN SUPPORT OF
ARREST WARRANT

-against-

(18 U.S.C. § 666(a)(1)(B))

ROCCO FASSACESIA and
ABRAHAM PANAGI,

Defendants.

-----X

EASTERN DISTRICT OF NEW YORK, SS:

EVAN CAMPANELLA, being duly sworn, deposes and says that he is a Special Agent with the United States Immigration and Customs Enforcement ("ICE"), duly appointed according to law and acting as such.

Upon information and belief, there is probable cause to believe that from in or about and between 2007 and January 2009, within the Eastern District of New York and elsewhere, the defendants ROCCO FASSACESIA and ABRAHAM PANAGI, being agents of an organization that received in excess of \$10,000 in any one year period under a Federal program involving a grant, subsidy or other form of Federal assistance, did knowingly, intentionally and corruptly solicit, demand, accept and agree to accept something of value, to wit, United States currency, with the intent to be influenced and rewarded in connection with business and a series of transactions of such organization involving

\$5,000 or more.

(Title 18, United States Code, Section 666(a)(1)(B))

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I have been a Special Agent with ICE since May 2007. I am currently assigned to ICE's El Dorado Task Force, which investigates money laundering.

2. The facts set forth in this affidavit are based upon my own investigation of the facts, a review of documents, witness interviews, and upon what I have learned from other agencies, including the Internal Revenue Service ("IRS") and the Office of the Inspector General of The Port Authority of New York and New Jersey.

I. The Defendants, Con Ed and the Contractor

3. Consolidated Edison ("Con Ed") is a New York-based corporation that provides electrical, gas and steam utility services in New York City and Westchester County. As a provider of such utility services, Con Ed is responsible for the maintenance and repair of its electrical, gas and steam lines, as well as the installation of new lines as needed. Con Ed is

¹ Because the purpose of this affidavit is only to state the probable cause to arrest, I have not described all the relevant facts, circumstances and conversations that I am aware of related to this investigation. All conversations and statements reported in this affidavit, unless directly quoted, are described in substance and in part.

further responsible for rebuilding and rerouting existing utility lines as part of construction projects that interfere with existing lines. Con Ed received federal funding in excess of \$10,000 for each year from 2007 through 2009.

4. The defendant ROCCO FASSACESIA is employed as a Construction Manager for Con Ed, and his duties include overseeing all construction projects for Con Ed in Manhattan. FASSACESIA also supervises all of the other Con Ed construction supervisors in Manhattan, including the Senior Specialists and those subordinate to the Senior Specialists. FASSACESIA is the last Con Ed manager to scrutinize an invoice submitted by a contractor and, thus, gives final approval on all contract payments.

5. The defendant ABRAHAM PANAGI is employed as a Senior Specialist for Con Ed, and his duties include overseeing construction projects in Manhattan and supervising other Con Ed construction supervisors, including Chief Construction Inspectors ("CCI") and those subordinate to CCIs. PANAGI is also responsible for reviewing invoices from various Con Ed contractors for construction work performed by those contractors, approving those invoices and passing the invoices up Con Ed's chain of command for payment. PANAGI reports directly to defendant FASSACESIA.

6. Until July 1, 2008, Cooperating Witness #1 ("CW-1") was employed as a Senior Specialist for Con Ed.² CW-1's duties included reviewing the invoices collected by Con Ed's Construction Representatives, approving those invoices and passing them up Con Ed's chain of command for payment.

7. Cooperating Witness #2 ("CW-2") is the president and co-owner of a construction company that performs gas line and electrical work on construction projects.³ Since 2004, CW-2 has been awarded numerous construction contracts by Con Ed, and has paid cash bribes to CW-1, defendants FASSACESIA and PANAGI, and other Con Ed employees.

II. The Manhattan Con Ed Projects

8. In March 2005, CW-2 was awarded a two-year "area contract" with Con Ed to install and maintain various gas facilities throughout the Borough of Manhattan. In March 2007, and again in March 2008, CW-2's area contract was extended through December 2008 without Con Ed soliciting other contractors to bid on a new contract. During the summer of 2008, Con Ed did solicit new bids on the area contract, but CW-2 was again awarded the contract, which will begin in January 2009.

² On March 19, 2007, CW-1 was arrested and has since signed a cooperation agreement with the government and is expected to plead guilty in the near future.

³ On September 17, 2008, CW-2 was arrested and has since signed a cooperation agreement with the government and is expected to plead guilty in the near future.

9. In April 2007, CW-2 was awarded a one-year "ladder contract" with Con Ed to install electric distribution facilities at various locations throughout Manhattan. A "ladder contract" operates as follows: numerous contractors submit bids outlining their rates for a particular type of work. Con Ed then ranks the contractors from lowest to highest in order of their bids. As the work arises, Con Ed contacts the lowest bidder and offers that bidder the project, which the contractor is free to refuse. If the lowest bidder refuses the project, Con Ed approaches the next bidder "up the ladder" until someone accepts the project. Ladder contracts continue without extension or rebid for as long as the contractor wishes to remain on the ladder. In the summer of 2008, CW-2 was awarded a project via the ladder contract to replace several manhole vaults near 45th Street in Manhattan (the "Vault Project"). Defendant PANAGI was the supervisor on the Vault Project on behalf of Con Ed.

10. In July 2007, CW-2 was awarded a contract for emergency repair work at the intersection of 41st Street and Lexington Avenue in Manhattan, where a steam pipe had exploded.

11. In August 2007, CW-2 was awarded a "spot buy" contract to install a gas regulator station in Manhattan. A "spot buy" contract is one that has defined start and end dates, and for which payment is made, for the most part, in a lump sum based upon an invoice submitted by the contractor. If the spot

buy contract is particularly expensive or will last for an extended period of time, invoices can be submitted, and payments made, on a periodic basis.

12. Defendant FASSACESIA acted as Con Ed's Construction Manager on all of the Manhattan construction projects discussed in this section.

III. The Kickback Scheme Related to the Manhattan Projects

13. In the spring of 2007, CW-2 met with defendant FASSACESIA in an effort to ensure that CW-2 received favorable treatment with respect to CW-2's area contract with Con Ed to install and maintain various gas facilities throughout Manhattan. After discussing the matter, they agreed that CW-2 would make cash payments to FASSACESIA, and in exchange CW-2 would receive favorable treatment from FASSACESIA.

14. On two to three occasions between the spring of 2007 and September 2008, CW-2 met defendant FASSACESIA at either a gas station or a deli near the Hutchinson Parkway in New York, and paid him \$10,000, an amount that represented \$500 to \$1,000 per week of work on the Manhattan Con Ed projects. On one additional occasion, CW-2 paid FASSACESIA \$20,000 after CW-2 was awarded a contract for emergency repair work at the intersection of 41st Street and Lexington Avenue in Manhattan, where a steam pipe had exploded.

IV. Recorded Conversations⁴

A. Conversations with CW-1

15. On May 14, 2008, CW-1 met with defendant FASSACESIA at the Odessa Restaurant in Manhattan. At the time, CW-2 had fallen behind in making his cash payments to a group of Con Ed employees, including CW-1, and CW-1 was about to retire from Con Ed. CW-1 believed that defendant FASSACESIA was also taking payments from CW-2, and believed that FASSACESIA was taking payments from other contractors as well. CW-1 brought his concern about CW-2's delinquent payments to FASSACESIA's attention during their conversation:

CW-1: Listen, part of the reason why I wanted to get together, this is between you and I, I don't want it to go any further, alright? I'm thinking about retiring. I got a problem. [CW-2] owes me a lot of money. A lot of money.

FASSACESIA: Oh.

CW-1: Okay? And I, just get your feelings on it. I don't. I don't even need you to intercede, okay? I had a good deal with him downtown. The work is finished. Now, [another Con Ed employee]'s got that end of the business downtown.

FASSACESIA: Right.

CW-1: So what happens? We finished in December. So he's cut slowly but surely. He's blaming it on cash flow. He can't get cash, alright? But I'm talking about one percent deal on all

⁴ CW-1 and CW-2 wore electronic devices to record the conversations that are quoted in this section of the affidavit.

the extras. I'm talking about a couple of hundred thousand dollars. I mean, Roc, I don't want to leave it on the table.

FASSACESIA: I know.

CW-1: I mean, you know.

FASSACESIA: Especially now that you're planning on leaving.

CW-1: Exactly. That's why I just want to get some feelings on your end 'cause I don't know if he's behind with you or, or, or - Did you ever get yourself in a situation like that?

FASSACESIA: Well, I'll say this, you know how some, you know how mostly we did, we did weekly shit, you know?

CW-1: Yeah.

FASSACESIA: Some guys are very regular with it.

CW-1: Right.

FASSACESIA: Some guys you got to chase or -

CW-1: Yeah.

FASSACESIA: - or, or they usually don't chase them; they tend to let it balloon maybe to a month or two before you -

CW-1: Right.

FASSACESIA: - gotta talk to them. So, you, you know, you end up, you know, doing that.

CW-1: You may.

FASSACESIA: Yeah. You know, he's, he's, he is, you know. I mean, I don't, he, I never got into him for that kind of a, a number but he, he is one of the slower guys.

16. CW-1 proceeded to ask defendant FASSACESIA for advice regarding how CW-1 could get the money CW-2 owed CW-1. CW-1 mentioned that, "for a period of time when [CW-2] was falling behind, he said he was thinking about coming up with a business and, and would be able to write by checks. He was gonna write us checks, you know, because he's way behind on money." FASSACESIA agreed that, "cash is gonna be tough[.]" When CW-1 asked if CW-2 had ever discussed writing checks through a business with FASSACESIA, he replied, "No, I never talked to him about that." The conversation continued:

CW-1: So I just didn't know how he was doing everything with you and, and, and I, and I said, "geez -

FASSACESIA: No.

CW-1: - I gotta run this by somebody." Because I - You know what? You know what's gonna happen? He's gonna want to cut me out. And that's the other thing -

FASSACESIA: Sure they are.

CW-1: Of course. Come on, Roc, they all do it.

FASSACESIA: Sure.

CW-1: Every one of them do it, Roc, alright?

FASSACESIA: Especially them guys.

CW-1: But I'm saying I'm talking about a couple of hundred thousand dollars, Roc. It's a lot of money. It, it would be perfect for, for my retirement. Just think about it. I could do what I want to, alright? On top of a decent retirement anyway, you know?

FASSACESIA: Uh, unless you could talk to him about him giving you five grand a week. You know, at least.

Later in the conversation, the following exchange ensued:

FASSACESIA: I, you know, like I said, I, I, I can honestly, I never was owed nowhere near that. They usually all work, ain't that big. You know what I mean?

CW-1: Yeah. And, and -

FASSACESIA: Maybe they fall behind a couple of weeks, couple of months even and you just have to break their balls a little bit and, and, and you come to an uh, you know -

CW-1: - an understanding.

FASSACESIA: An understanding.

CW-1: Yeah, yeah. Uh-huh.

FASSACESIA: But to be owed that kind - Especially, towards, uh - [CW-2] is a nice guy, we get along, I like him, I got nothing, nothing against the guy. He does good work for us but I wouldn't trust him because, shit -

CW-1: [Chuckles]

FASSACESIA: - once you retire, man, what the fuck? What are you going to do? Send him a nasty fucking note. You can't do nothing. You can't call the cops. You can't, you can't sue him. What are you going to do? [Laughs]

FASSACESIA then told CW-1 that CW-2 was not behind in making payments to FASSACESIA the way CW-2 was with CW-1. FASSACESIA added, "[not] like that. A couple grand the most may, maybe ten grand [U/I]."

17. CW-1 and defendant FASSACESIA also discussed how FASSACESIA had never wanted to transfer to a different borough that Con Ed services, in light of the payments he was receiving from various contractors doing work for Con Ed in Manhattan.

FASSACESIA said:

In fact, there's very few people left in the shop I could even talk about this to. . . . Abe is one of them I have said to Abe many times, listen, many times they offered me one of the other boroughs. Okay? You know. Uh, and, and, and I had to come up with a bullshit story as to why I wouldn't want to do that, right? And what I said was this, you know? I mean, I got a lot of contracts. I got seven or eight contractors working. You, you know, in the other boroughs, you don't have that. You know what I mean?

FASSACESIA also explained to CW-1 that he does not involve anyone in his arrangements to accept payments from contractors, other than PANAGI, whom he refers to by PANAGI's first name, "Abe":

FASSACESIA: The only one who knows anything about anything like that is Abe.

CW-1: Re-Really?

FASSACESIA: That's it. The rest of them -

CW-1: Wow.

FASSACESIA: - I, I cut them all loose.

CW-1: Really? Wow.

FASSACESIA: Yeah. I had to. I had to.

CW-1: 'Cause it gets crazy.

FASSACESIA: It gets too dangerous.

18. Defendant FASSACESIA discussed with CW-1 how careful he is when spending the cash he has generated from the illegal kickbacks so as not to attract attention:

FASSACESIA: So [my daughter] is looking to buy a condo near me.

CW-1: Right.

FASSACESIA: So I, I can only help her minimally. I can't even help her the way I would like to help her because I can't come out with -

CW-1: Yeah. Yeah.

FASSACESIA: - cash. I mean, you can't do it anymore.

CW-1: I know.

FASSACESIA: You know?

CW-1: That's the issue.

FASSACESIA explained that, unlike others who accept payments from contractors and have side businesses to "move [the cash] all around" and, thus, explain the income, he does not have that option. He explained, "I mean, [my wife] doesn't even work. The only, the only, the only income that I have that I can show is on the W-2 Form I get from Manhattan." The conversation continued as follows:

FASSACESIA: It's not easy any more.

CW-1: Very hard, very hard.

FASSACESIA: I used to, off to where my daughters were in college. One was in URI and one was in Oneonta. I used to go up to the Bursar's office at, at the campus and come out with their fucking tuition for the semester in

fucking 100's. The whole fucking place was looking at me. Everybody else is writing a check and here's this fucking douche bag. I mean, who's doing that? Who's, who's doing that? Right?

CW-1: Uh-huh. I know. I, I know.

FASSACESIA: Well, what am I going to do? I can't put it in the bank so I can write a check against it. You put more than 10,000 dollars you'd be fucked.

CW-1: Of course, of course, of course.

FASSACESIA: I don't run it through anything.

CW-1: Yeah. No, uh, uh, believe me, like you said, it's, it's not that much at one time that you have to worry about.

FASSACESIA: Right.

CW-1: But you still gotta worry about it. You gotta worry about it. You can't be burying money every -- on a routine basis.

FASSACESIA: You can't all of sudden show up with a bunch of savings, in your saving accounts or, you know.

FASSACESIA later added, "What, you know, what, whether you have 10 grand at home or a million at home in a fucking shoe box? What are you gonna do with it?"

B. Conversations with CW-2

19. On September 18, 2008, CW-2 met with defendant FASSACESIA at CW-2's office in the Bronx, New York so that FASSACESIA could lecture CW-2's workers on construction site safety. Just before the safety lecture, CW-2 gave FASSACESIA an

envelope containing \$5,000 in cash. CW-2 had intended to pay FASSACESIA \$10,000. The following exchange ensued.

CW-2: I only did five because I'm fucked up with cash. I know it's been a while, I apologize. I tried to do ten. I was going to. So if you have any other - see for me now cash is real fucking problem and I got, I think I got, an audit coming and I got to be careful that, you know, cause I don't want to do something that's gonna come and create a problem -

FASSACESIA: Um hum.

CW-2: - you know if you have an idea or like, or if you have something I can write a check to, something -

FASSACESIA: Yeah, you know it's becoming a problem more and more with other people. It really has, you know, the whole, the whole, economy so to speak, you know.

CW-2: It's hard no matter what, you know, but if you have an idea.

FASSACESIA: Yeah.

CW-2: Like we'll talk, we don't have to -

FASSACESIA: All right.

CW-2: - think about it.

FASSACESIA: That's why I try to do it on a weekly basis because you figure a smaller number is easier to sneak out, then you have to go to get a bigger number that makes it more difficult.

CW-2: I know, but it's been a while since we met.

FASSACESIA: Right.

CW-2: And you know what -

FASSACESIA: Right.

CW-2: - out of sight out of mind.

FASSACESIA: Yeah it has to, yeah, you know I'm not breaking you guys' chops either. I just let it go. I figure you know you're there, so what am I going to do call you up every week and say, "hey [CW-2] what are you doing?"
[Laughs]

CW-2: [Laughs] You know, I'll try like, two weeks.

FASSACESIA: Yeah.

CW-2: I'll give you a call, like I should have something -

FASSACESIA: Okay.

CW-2: I apologize.

FASSACESIA: No problem, don't worry about it.

CW-2: I looked at it, then I fucking scrambled -

FASSACESIA: It's not.

CW-2: - and then -

FASSACESIA: I mean, I know you and I trust you. You know what are we doing, you know.

20. On October 28, 2008, CW-2 was advised by one of his site supervisors (the "Supervisor") that defendant FASSACESIA had requested that CW-2 provide him with four tickets to the New York Giants/Dallas Cowboys game on November 2, 2008. On October 29, 2008, CW-2 spoke to FASSACESIA and said, "hey I was talking to [the Supervisor]. He said you was looking for tickets for Sunday for the Giants?" FASSACESIA answered, "Yeah." They made arrangements to meet the next day. On October 30, 2008, CW-2 met FASSACESIA in Queens, New York and gave him four tickets to the

Giants game that CW-2 had purchased for approximately \$2,000 from an online ticket purchasing website. Photographs of the meeting show FASSACESIA carrying the tickets in his left hand after he leaves CW-2's car. On November 2, 2008, I observed FASSACESIA at Giants Stadium in New Jersey sitting in one of the four seats CW-2 had purchased a ticket for, and had given to FASSACESIA.

21. On November 11, 2008, CW-2 learned that there were portions of the invoice CW-2's company had submitted to Con Ed on the Vault Project that had not yet been paid. CW-2 called the Supervisor, who was responsible for overseeing the project on-site, to ask about the unpaid portion of the invoice. The Supervisor advised CW-2 that \$400,000 of the submitted invoice, which reflected legitimate costs, had already been paid by Con Ed. According to the Supervisor, however, PANAGI was withholding payment on an additional \$300,000 worth of "extras," which did not reflect legitimate costs, that the Supervisor added to the invoice with PANAGI's knowledge and approval. The "extras" included payment for the removal of rock from the construction area that had never been removed, but that PANAGI approved for

payment nonetheless.⁵ The Supervisor told CW-2 that he had paid PANAGI approximately \$8,000 to date for his assistance on the Vault Project, but that PANAGI now wished to meet with CW-2.⁶

22. On November 14, 2008, CW-2 telephoned defendant PANAGI and arranged a meeting. On November 19, 2008, CW-2 and PANAGI met at a restaurant in Manhattan. PANAGI told CW-2 that the Supervisor, "gave me some money. He's giving me some money. He, he gave me about 8,000 dollars" on the Vault Project. PANAGI also said that the Supervisor and he had added another \$350,000 to the original \$500,000 invoice, and that he was trying to inflate the project to approximately \$900,000. PANAGI claimed that there were at least \$500,000 worth of "extras" included in the Vault Project invoice:

PANAGI: We paid a half million dollars already into it. I got another 350. I'm gonna try to get it about 900,000 dollars.

CW-2: Okay.

⁵ CW-2 explained to me that because it costs more for a contractor to remove rock from an excavation site -- as opposed to dirt -- an invoice that reflects the removal of rock that was, in fact, not there, results in a windfall to the contractor.

⁶ CW-2 has advised me that in late 2001 or early 2002, when CW-2 was an employee of the construction company he presently co-owns and operates, CW-2 and PANAGI met for lunch in Manhattan to discuss the difficulty the construction company was having with Con Ed regarding a project in lower Manhattan. CW-2 and PANAGI reached an agreement whereby CW-2 would make cash payments to PANAGI in exchange for which PANAGI would ensure that CW-2's invoices would be reviewed favorably and that the payments would not be cut. During the time period from late 2001 until 2003, CW-2 paid defendant PANAGI \$500 on approximately eight occasions.

PANAGI: There's at least 500,000 dollars in extras, but I'm not here to nickel-and-dime you or whatever.

PANAGI also said that the Supervisor had advised him that CW-2 was going to give PANAGI an additional \$12,000, for a total payment of \$20,000:

PANAGI: Okay. So, you know, you tell me. What did [the Supervisor] tell you? [The Supervisor] said that you were going to give me 12, uh -

CW-2: Okay. So, it comes out to about 20?

PANAGI: Yeah. Okay? And then -

CW-2: You think -

PANAGI: Rocky you, you -

CW-2: Yeah, I'll deal with that.

PANAGI: I'm gonna get, I'm gonna get you between 850 and nine, okay?

CW-2: You think there's that much in extras? I thought it was like around three.

PANAGI: No, there's more than that. There's more.

CW-2: So, it's about 500,000?

PANAGI: About.

CW-2: Okay.

PANAGI: Yeah, give and take.

CW-2: I, I believe you.

PANAGI: Because there was no, there was some piers there. There was, I mean, we're paying rock to the top. I'm, I'm cover - We didn't work days over there. We only worked days on the ball.

CW-2 advised me that PANAGI was referring to defendant FASSACESIA when Panagi mentioned "Rocky." CW-2 advised me that paying "rock to the top" meant adding the cost of removing rock that was not in fact removed in order to inflate the bill. Similarly, with respect to the "piers," CW-2 advised me that billing for the removal of concrete piers that had not in fact been removed was added to the invoice in order to inflate the costs. With respect to working "days," CW-2 advised me that Con Ed allowed CW-2's employees to work at night, which permitted CW-2 to bill Con Ed for hourly labor costs at an increased rate.

23. PANAGI described how the deal had arisen between him and the Supervisor:

[The Supervisor] said, he goes, "All right, can you get me up to a half, half, 550 or anything?" And he goes, "I'll give you about eight, 10,000 and maybe another 15,000."

PANAGI said that he told the Supervisor, "All right, we'll play with your numbers." PANAGI described his conversation with the Supervisor as follows:

"So, if I give you 850, I figure it's a half a million dollars extra . . . I am not looking for 20 percent or anything like that." I go, "You talk to [CW-2] and what." I go, "We're, we're men about this."

PANAGI stated that the Supervisor told him that "'Rocky is being covered.' And I don't think Rocky wants me to know what he's doing and that's okay. I do a lot of business with Rocky, but if he's doing different, you know, it's, it's his thing, you know?"

CW-2 assured PANAGI that the payoffs CW-2 was making to FASSACESIA were completely separate from the payments being made to PANAGI.

24. On November 21, 2008, CW-2 met with PANAGI in Queens, New York. During their conversation, PANAGI confirmed that the total amount of the invoice submitted for payment on the Vault Project was approximately \$860,000. CW-2 then gave PANAGI \$5,000 in cash for his assistance with inflating the invoice. That transfer of cash was videotaped. Their conversation was as follows:

CW-2: So, how do we look? Uh, the job is gonna go in?

PANAGI: Yeah, no problem.

CW-2: Good.

PANAGI: It's, it's gonna go in today. It's about 860.

CW-2: Eight-sixty?

PANAGI: Maybe, maybe a little, maybe a little more or less. I just gotta go over a couple of, alright? But it's, uh -

CW-2: Nah. Hey, listen, I'm, I'm fucking pleased as shit. I think that's, uh -

PANAGI: No, we got it, uh, we got it up pretty good, you know? I mean, uh, you did a good job. We, uh, I was able to put rock in the fucking thing. I mean, they had some, uh, concrete piers but, uh, you know, he nail it.

CW-2: Okay.

PANAGI: Thirty-six, thirty-seven days of, of work, you know? But, I mean, uh -

CW-2: Ho- honestly, I probably, I probably would have done good at, at 350, 350,000.

PANAGI: Yeah. Yeah.

CW-2: So -

PANAGI: Yeah, yeah, yeah.

CW-2: An extra half a million. Shit!

PANAGI: [Laughs]

CW-2: I'm fucking thrilled! Are you kidding me?

PANAGI: Yeah, that's what I figured so -

CW-2: Yeah. So -

PANAGI: Alright.

CW-2: Li- listen, I, I got five here, okay?

[CW-2 hands PANAGI envelope containing cash]

PANAGI: Alright, good, yeah.

CW-2: That's, um, so, you already got eight -

PANAGI: Yeah.

CW-2: - from [the Supervisor]. So, another seven. Give me next week or probably the week after.

PANAGI: Alright. Okay.

PANAGI and CW-2 then discussed if CW-2 was squared away with

FASSACESIA:

PANAGI: You're okay with Rocky, right? I mean, that's something, you know, you're dealing with him on a, on -

CW-2: Yeah. I mean, you're okay with him?

PANAGI: Yeah. No, no, no. Yeah, no, I'm fine with him -

CW-2: [Laughs]

PANAGI: - believe me. No, sometimes we, you know, we do things together -

CW-2: [Laughs]

PANAGI: - but sometimes we do things on our own. But, but, you know, as long as, uh, everybody understands everything and -

CW-2: I'll be honest with you. I've spoken to him a, a couple of times. He's never mentioned this.

PANAGI: Okay.

At the end of the conversation, PANAGI said, "Give me a call after the holiday. You know, after Thanksgiving and everything, you know" and CW-1 responded, "and then we'll set up the next five."

25. On December 5, 2008, CW-2 and PANAGI met in Manhattan. CW-2 and PANAGI discussed FASSACESIA's knowledge of PANAGI's inflation of the Vault Project invoice, the payoff to PANAGI, and FASSACESIA's knowledge of the scheme:

CW-2: Well, um, I just wanted two minutes because, actually a couple things, um, the payment for the vaults, is that done?

PANAGI: Yeah they're gonna go in today because there was a frozen thing on it. You got a half million and then you're gonna get two payments, one's about 57,000 the other one's about 302. It's about 860 for the total.

CW-2: And that-that-that wraps up -

PANAGI: That wraps up those two, right.

CW-2: Does that - that go through Rocky?

PANAGI: Yeah, well he signs off on it, yeah.

CW-2: Alright, yeah, you see that's why I wanted to talk to you. Did you talk to him about the job at all?

PANAGI: We spoke, we spoke earlier w-with [the Supervisor], right and I told [the Supervisor], uh, I told Rocky today, "it's an expensive job" but I didn't tell Rocky how much it really is -

CW-2: Right, okay.

PANAGI: - you kept a lot on the streets, you know, so Rocky goes "What are you gonna ask [the Supervisor]?" I go, "I don't know, I'll ask him for maybe twenty. You know, I'll see, I'll see, you know, whatever." So, that's the way I left it, you know, at that.

During the following conversation, PANAGI explained to CW-2 that because the agreement had been worked out "on the street" with the Supervisor, and because the Supervisor told PANAGI that CW-2 was paying off FASSACESIA separately, PANAGI did not tell FASSACESIA exactly how much he had inflated the invoice, for fear that FASSACESIA would want a greater kickback from CW-2:

PANAGI: [Y]ou know what happened was [the Supervisor] was giving me money in the street, but he goes, "[CW-2] is taking care of Rocky anyway." So, you know, I didn't get involved with Rocky on that end of it. So afterwards, he goes and I go, "Look, [Supervisor], we've got a lot on here but I don't wanna tell Rocky everything anyway, if they got something else going on."

CW-2: Okay.

PANAGI: So, you know, leave it at that cause don't want Rocky coming over, "oh there's a half million dollars extra, you know, let's get a hundred grand." You know, I didn't wanna, cause it was on the street, you know?

CW-2: Do you, do you think he -

PANAGI: He'll accept ten. Probably.

CW-2: Yeah.

PANAGI: Ye-ye-yeah, no problem, that's what we talked about, you know? So -

CW-2: Okay.

PANAGI: - you know.

CW-2: Like I said -

PANAGI: You know, ask him.

CW-2: - I don't wanna get on the wrong foot with him.

PANAGI: No, no, no I'm telling you exactly what it is. I'm telling you exactly when we sat down, we had lunch with, uh, [the Supervisor] and I told Rocky I said, "Rocky, I'm gonna see if, I'm gonna ask him for about 20." He goes, "alright, you know, whatever you think." And that's it. We left it at that.

26. CW-2 told PANAGI that CW-2 was concerned about angering FASSACESIA by failing to pay him off for his assistance with the inflated invoice. PANAGI understood CW-2's concern and told him that although he and FASSACESIA had agreed to work the Vault Project together, because the Supervisor had advised him that CW-2 was taking care of FASSACESIA separately, he did not think his arrangement with FASSACESIA would be an even split of the payoff:

Plus, I was gonna split everything because usually we do that, but sometimes Rocky goes on his own. I don't wanna get inv- you know . . . you know. And when [the Supervisor] told me, he goes "You know, CW-2's dealing

with [FASSACESIA]," I go "Alright,
[Supervisor]," I go, "I'm not gonna step on
that."

PANAGI stated that FASSACESIA had not been at the office the last couple of weeks but that all of the paper work was on his desk waiting to be approved. CW-2 asked, "So, he - he's gotta sign it and he knows what he's signing?" PANAGI assured CW-2 that "he knows exactly what it is, he knows exactly what it is." At the end of the conversation the following exchange occurred:

PANAGI: But I'm - I'm telling you we talked about the 20 and that's a number that I threw out there and I think he, if you talk, that's where it's gonna be.

CW-2: Alright.

PANAGI: But I told him the number we, you know, we paid the half million already -

CW-2: Right.

PANAGI: - cause he signed off on that, and I told him, I go "it's 57 here so it's about 850 almost 860." Whatever it is.

CW-2: So basically he knows I can talk about it, that's no problem.

PANAGI: Yeah, yeah.

27. On December 3, 2008 defendant FASSACESIA called CW-2 to arrange a meeting. On December 11, 2008, CW-2 met with defendant FASSACESIA in CW-2's car in Manhattan. CW-2 told FASSACESIA that when he received a call from FASSACESIA that CW-2 knew he needed to "catch up" with him. CW-2 then told FASSACESIA that, "I spoke with Abe and I wanted to talk to you about the

vaults, uh, 45th Street?" FASSACESIA confirmed that Con Ed had paid out \$500,000 to CW-2 but still owed CW-2 money on the project. CW-2 explained that he wanted to speak with FASSACESIA about the project in light of his conversation with PANAGI, who is referred to as "Abe" in the conversation:

CW-2: I kinda caught up with Abe about it and uh, I, uh, want, wanted to talk to you 'cause I wasn't sure if - Let me put it to you this way, I wasn't sure if it was something that you and I needed to talk about or you were, you know, I mean - I didn't want to step on your toes.

FASSACESIA: No, or honestly because we had this previous arrangement, I was thinking more along the lines that - Abe doesn't know that because I don't like anybody, you know, nobody doesn't need to know my business or your business, I would never say anything -

CW-2: Well -

FASSACESIA: - about if he approached you about something for the job, is - is that what you're telling me?

CW-2: Well, I kinda, yeah. Well, I mean in the vein, I got that sense that you kinda knew about it and I didn't talk to you about so I was a little concerned that -

FASSACESIA: Right, I did know about it and I did want to talk to you about it also but we just never seemed to be in a spot where we can.

CW-2 explained to FASSACESIA that, "the vault job was a good job for me and - and I know that, um, that Abe was able to pad it almost double." FASSACESIA said that:

I'm glad we were able to do something on top of that because, you know, that's what we like to try

to do to help you and then . . . everybody benefits, right, you know? Shouldn't be a one-way street it should be a two-way street otherwise you have both parties happy with the arrangement. Let's put it that way, alright?

FASSACESIA went on to explain that, "Well we kinda just did it based on the fact that [the Supervisor] was involved and he knows us and we know him for a long period of time." FASSACESIA told CW-2 that:

[A]t the end of the day we'd sit down and work something out . . . okay and that's really where we left it. You know, we'd come up with, uh, you know I - I would say a number based upon the help that we gave you and then take a piece of what the help was . . . you know what I mean? That kinda thing and I don't think we'd have a problem coming to an agreement with that, you know?

28. Defendant FASSACESIA told CW-2 that they would be able to come up with a number in "early January" after they "sit down with [the Supervisor] and go over the nuts and bolts, make sure [we] have the final number. You know, this way it's locked in, pay you the balance, you know and then talk about, you know, whatever help there was." FASSACESIA told CW-2 that he will be looking for "a lump sum based upon whatever help we gave you." The following exchange ensued:

CW-2: Maybe I was just being overly concerned because I thought you kinda up to speed as far as the amounts and - and how much help and like I was behind the curve, I didn't talk to you yet and I didn't

want you to think I was blowing you off -

FASSACESIA: No, I was with [the Supervisor], to be totally honest with you. [The Supervisor], myself and Abe had lunch in Carmine's as a matter of fact. It's gotta be a month, a month and a half ago. Talking about it, talking about the numbers and agreeing that we give the half mil and we were gonna sit down, Abe and I, we're obligated to sit down and crunch it out and see what our number looked like, our final number for the job -

CW-2: Gotcha.

FASSACESIA: - looked like and get back -

CW-2: Okay.

FASSACESIA: - to [the Supervisor] on it and that was our commitment and we haven't done that -

CW-2: Okay.

FASSACESIA: - so you haven't been in arrears or done anything wrong it's really us not getting back to you with it.

29. CW-2 told defendant FASSACESIA that he gets worried because time will pass since the last time CW-2 met with FASSACESIA to make a payment and CW-2 will realize he has not given FASSACESIA a thought. The following exchange ensued:

FASSACESIA: Nah, I'm the same way too. You're out there, you're on my mind, but you're never, like, here and most of the stuff I'd like to talk to you about is not really stuff I'd want to talk to you about over the phone, either -

CW-2: Right, can't be.

FASSACESIA: - so it's like okay I - if I call him do I have time on my schedule, will he have time

on his schedule, where we gonna go, where we gonna meet, but yeah, you know?

CW-2: Not just that but, yeah, once every three months we find five minutes and then, um, the other part is, I don't know if I'm, um, even with, like, the arrangement we have, it's kinda on the fly in my head. Like I lose track, I don't know what the fuck, and that's why -

FASSACESIA: I shouldn't tell you this but I lose track too, I don't like to write things down -

CW-2: Right.

FASSACESIA: - because it's dangerous. I don't ever want to have anything written with, like, a name or a company name or a person's name or anything. I been doing this for a long time and that's the way I grew up in the business, so I try to keep it in my head. The only time I've ever written anything down was when I went to your office for that safety meeting, you know, we had the guys all in there. I don't even remember what date that was. It's up on the calendar that I have hanging in my office. That's the only thing I know.

CW-2: I don't know either. That's why when you made reference in your voicemails, I hope that was like recent (laughs), I was like "fuck me."

FASSACESIA: I don't - You gave me how much last time? What was the date?

CW-2: I don't know.

FASSACESIA: I don't either.

30. CW-2 told FASSACESIA that, by the next time they meet, CW-2 would "square everything away" with respect to any

payments CW-2 owed FASSACESIA. The following conversation ensued:

FASSACESIA: Alright, so you want me to let you know what I think we've gone over so far, in other words, just since the last time we saw each other just you and I, not to do with the vault job -

CW-2: Yeah. Exactly.

FASSACESIA: - and then also with the vault job, two separate issues.

CW-2: Yes, exactly. Okay.

FASSACESIA: Not a problem.

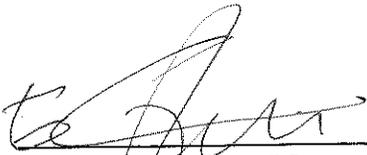
CW-2: Okay.

FASSACESIA: Not a problem at all.

At that point, CW-2 handed FASSACESIA a manila envelope that contained \$4,000. FASSACESIA placed the envelope in his left jacket pocket and got out of CW-2's car. This transfer of cash was videotaped.

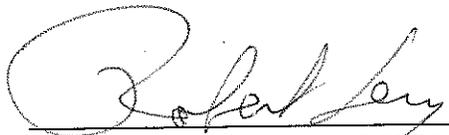
WHEREFORE, your deponent respectfully requests that arrest warrants be issued for the defendants ROCCO FASSACESIA and ABRAHAM PANAGI so that they may be dealt with according to law.

Because of the nature of this application, it is further requested that this application and the related arrest warrants be filed under seal.



EVAN CAMPANELLA
Special Agent, ICE

Sworn to before me on
12th day of January 2009



UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK