

RTF:SC:MER
F.#2005R01856

MO9-0027

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))

PAUL SANABRIA and
ANTHONY VILLANO,

Defendants.

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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 2006 and January 2009, within the Eastern District of New York and elsewhere, the defendants PAUL SANABRIA and ANTHONY VILLANO, 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 throughout New York City. 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 further responsible for

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.

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 2006 through 2009.

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

5. The defendant ANTHONY VILLANO is employed as a Senior Specialist for Con Ed, and his duties include overseeing construction projects in the Bronx and supervising other Con Ed construction supervisors, including Chief Construction Inspectors ("CCI") and those subordinate to CCIs. VILLANO 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. VILLANO reports directly to defendant SANABRIA.

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

II. The Bronx Holland Avenue Con Ed Project

7. In June 2006, CW-1 was awarded a "spot buy" contract to install a gas main at Holland Avenue in the Bronx (the "Holland Avenue Project"). 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. Defendant VILLANO was the supervisor on the Holland Avenue Project on behalf of Con Ed.

III. The Kickback Scheme Related to the Holland Avenue Project

8. During the course of the Holland Avenue Project, CW-1 felt that his company was being treated unfairly by Con Ed with respect to certain payments being withheld. Specifically, CW-1's company had submitted change orders (requests for payment

² On September 17, 2008, CW-1 was arrested and has since signed a cooperation agreement with the government and is expected to plead guilty in the near future.

of unforeseen costs that arose during the project) for time and material costs that were incurred when construction was delayed for various reasons. Con Ed initially claimed that CW-1 should bear the cost of the delays, as per the contract; CW-1 disagreed. When CW-1 complained about this to defendant VILLANO, he stated that CW-1 should speak with defendant SANABRIA who was responsible for authorizing all contract payments. CW-1 met with SANABRIA to discuss the situation and told him that the job had been "rough" for the company and CW-1 would like to "square things away." They agreed that CW-1 would pay SANABRIA \$10,000 in exchange for which SANABRIA would ensure that CW-1's invoices would be reviewed favorably and that the payments to CW-1 would not be cut. SANABRIA told CW-1 that, the next time they have a job together, they should "get together earlier" to resolve things. Sometime during the summer of 2006, CW-1 paid SANABRIA \$10,000 in cash when they met in CW-1's car near 138th Street and Willow Avenue in the Bronx. After the payoff was made, the payment for the aforementioned costs were approved by Con Ed, as well as various other payments that had been withheld, resulting in a total additional payment to CW-1's company of approximately \$250,000.

9. One or two months after CW-1 paid SANABRIA \$10,000, defendant VILLANO demanded a payment of \$25,000, the equivalent of ten percent of the "extras," as VILLANO characterized it,

referring to the \$250,000 additional payment CW-1 had received. CW-1 advised VILLANO that CW-1 had already "taken care of" SANABRIA. VILLANO informed CW-1 that SANABRIA "does his own thing" and that VILLANO required a payment for himself. CW-1 convinced VILLANO to accept a lesser amount, and ultimately paid VILLANO \$20,000 in cash, in three or four installments, toward the end of the project in the fall of 2006. The payments took place in CW-1's car in the parking lot of The Shops at Bruckner, a shopping center off of Bruckner Boulevard in the Bronx.

IV. Recorded Conversations³

10. On December 29, 2008, CW-1 met with defendant VILLANO in his car in a Burger King parking lot in the Bronx. CW-1 explained to VILLANO that he was interested in pursuing more work in the Bronx, and wanted to see if he could count on VILLANO's assistance in so doing. VILLANO told CW-1 that CW-1 would have to speak to defendant SANABRIA about having any work directed towards CW-1. CW-1 explained to VILLANO that he was meeting with VILLANO in advance of having obtained any particular contract in the Bronx, because CW-1 felt it was to his detriment that he did not pay off VILLANO sooner on the Holland Avenue Project:

CW-1: I guess the other reason why I want to talk to you is, if we're able to do something,

³ CW-1 wore an electronic device to record the conversations that are quoted in this section of the affidavit.

'cause what I didn't want to happen is what happened the last time on that other job, Holland, because we talked too late -

VILLANO: Umhmm.

CW-1: - and uh, it wasn't set up and, you know, I kinda, you know, everything was rough. I ended up walking out of there in rough shape. Probably at the end of the day, and I think if you and I would've met before the job -

VILLANO: Yeah, well, we could've put a different inspector on, number one.

CW-1: - well, it would've been a better job for me, I think.

VILLANO: And it would've started out the job differently, but, um, you know, we'll just keep that in mind if things work out and we get another job together, then we'll talk in advance, we'll work things out, we'll put the right guy on it and uh, plant the seeds properly.

CW-1 explained to me that the Con Ed inspector on the Holland Avenue Project made things very difficult for CW-1's company in terms of denying payments for change orders and generally causing delays. CW-1 advised me that a more favorable inspector would ensure that change orders were paid and the job went more quickly, which ultimately would save CW-1's company money.

11. CW-1 told defendant VILLANO that CW-1's obtaining work in the Bronx could be beneficial to both of them and, in the following conversation, referred to having paid \$20,000 in connection with the Holland Avenue Project:

CW-1: You know, like I said, I'm looking at it that, you know, hopefully, like I said, if

you see an opportunity, it's something, like I said, it'd be good for the both of us.

VILLANO: Mmhmm.

CW-1: You know what I mean? I definitely would wanna take care of you and make sure we did that right thing.

VILLANO: Mmhmm.

CW-1: In the same token, you can't say anything to anybody cause -

VILLANO: Right.

CW-1: - if this gets out -

VILLANO: Nah, this conversation ends right here.

CW-1: Right, because well, like I said, I learned my lesson on the last job. I think I lost 20,000 on that last job. (Laughs) You made 20,000 and I lost 20,000, how does that work? That job killed me but whatever I - I - I don't wanna, whatever, see what you could do -

VILLANO: Okay.

12. On December 30, 2008, CW-1 met with defendant SANABRIA in CW-1's car at 141st Street and Locust Avenue in the Bronx. CW-1 advised SANABRIA that CW-1 was interested in doing more work in the Bronx. CW-1 told SANABRIA that he wanted to meet in advance of being awarded any particular contract because, "I learned from the first time the job I did on Holland I came to you way after the fact and it was too late and we said let's talk ahead of time." The following conversation ensued, during which SANABRIA identified defendant VILLANO by his first name, "Tony,":

SANABRIA: Yeah, you know, and Tony and I are pretty close, although we don't divulge the business we do -

CW-1: Umhmm.

SANABRIA: - but I give him full ability to do whatever has to do to make the job work, and one policy we have is "don't screw the contractors."

CW-1: Okay, good.

SANABRIA: "Don't let them get hurt" because, you know, what if we start screwing you guys then you start getting hurt, then where do we stand? So, you know we always look out for you guys.

CW-1: I know an - and believe me, I appreciate it but I never, I like to be ahead of the curve -

SANABRIA: Right.

CW-1: - I wanna get you way early because I wanna kinda lay things out a little better, because last time, I'll be honest with you, I gave you 10,000 for Holland and I don't know if I insulted you, but, I don't know.

SANABRIA: [Laughing]

CW-1: I don't know but, what if I did and you put me on the "don't pay me no mind" list, you know, I mean.

SANABRIA: No, no, no, no.

CW-1: But you know what I'm saying.

SANABRIA: Yeah, I hear you. No but, I appreciated it. I really did.

13. CW-1 and defendant SANABRIA discussed how CW-1 should pursue certain spot buy contracts that would be coming up for bid in the future. SANABRIA said, "I can give you the

information up front so you can start looking at it -- you know, get ahead of everybody else" with respect to forming a bid. With respect to a kickback, SANABRIA said that CW-1 could decide the amount based on "what I was able to do for you guys." CW-1 confirmed with SANABRIA that, with respect to paying off VILLANO, "I deal with Tony separately?" SANABRIA agreed, "yeah, that's it" and noted that he and VILLANO, "understand each other[.]"

14. On January 7, 2009, CW-1 met with defendant SANABRIA in CW-1's car at 141st Street and Locust Avenue in the Bronx. During the meeting, SANABRIA disclosed to CW-1 information relating to a project in the Bronx that SANABRIA wanted to direct to CW-1. The project involved moving a water main that was too close to a newly-installed transmission high pressure gas main that runs along 138th Street in the Bronx (the "138th Street Project"). SANABRIA told CW-1, referring to defendant VILLANO by his first name, "Tony," that, "I'm gonna have Tony send you a sketch, it's a water main that has to be replaced here." SANABRIA explained to CW-1, that, with respect to coming up with a bid price, "give [VILLANO] a number. You might not want to include the excavation, 'cause the excavation is contaminated soil." CW-1 explained to me that the excavation of contaminated soil costs more than the excavation of non-contaminated soil. According to CW-1, if the increased cost was contained in the initial bid, the contractor would be less

competitive and might lose the project. However, if the increased cost can be submitted as a change order, or "extra," the contractor can keep the bid low and ultimately earn more money on the project. SANABRIA, thus, was helping CW-1 tailor the bid in a way most favorable to CW-1's company.

15. During the meeting, CW-1 gave defendant SANABRIA \$5,000. This transfer of cash was videotaped. The following conversation ensued during the transfer of cash:

CW-1: Okay, like I said, I kinda wanted to sit with you. I kinda want to seal the deal. I got a little something for you -

[CW-1 hands SANABRIA an envelope]

SANABRIA: Ah, oh.

CW-1: - nah, no problem it's only 5,000 -

SANABRIA: Ah, man. That's -

CW-1: - but I want you to think of me 'cause I'm not gonna be around.

SANABRIA: Always will, and you know, the way I do it is, I'll throw as much as I can your way.

CW-1: Okay.

SANABRIA: You know, I make sure that you don't get hurt on the jobs and, you know, once a month you give me a buzz, I don't put numbers to it -

CW-1: Right.

SANABRIA: - as long as you do okay.

CW-1: As long as I get an inspector that's fair, not a guy that, you know, is gonna -

SANABRIA: That you'll always get and I have given Tony

the power to override them if he has to.

CW-1: Perfect, so all I gotta do is -

SANABRIA: Yeah.

CW-1: - catch up with Tony, let him know. I'll reach out for him -

SANABRIA: Yeah, I'll let him know that you're gonna reach out for him -

CW-1: Okay.

SANABRIA: - even he and I don't talk about certain issues, just for our own protection -

CW-1: That's why I wanna, that's why I wanna get with him.

SANABRIA: So we all know what's going on, so alright, that's fine.

16. On January 8, 2009, CW-1 met with defendant VILLANO in CW-1's car at 138th Street and Walnut Avenue in the Bronx. VILLANO pulled out the Con Ed drawings for the 138th Street Project that he had sent to CW-1 via e-mail earlier that day. CW-1 asked VILLANO, "how do you want me to price this?" VILLANO proceeded to give CW-1 detailed instructions regarding what costs to include, and not to include, in his proposed bid. CW-1 said, referring to defendant SANABRIA by his first name, "Paul,":

Paul mentioned about maybe not including the excavation because it's all going to be contaminated, or exclude like 40. How do you wanna do that, because I think that's where we're gonna get all the extra's.

VILLANO advised CW-1 to, "price it normal, okay? 'Cause now

what's gonna happen is you will a, you have to price out the excavation," thus ensuring that CW-1 could later recoup the "extra" cost of the excavation through a change order. When CW-1 asked VILLANO, with respect to a kickback payment, "how you wanna work our end? What do you wanna do?" VILLANO said, "we usually try and work it like, twenty percent of the extras. You put your bid in, you get the job. Anything over that." The conversation regarding the kickback amount continued:

VILLANO: Okay, so we get the job and what do you mean, what do you wanna do with this? We get the job and there's gonna be I don't know fifty percent extras, one hundred percent extras.

CW-1: Well that's the thing, I don't -

VILLANO: Talk to me. So far we've been honest with each other so let's keep it that way.

CW-1: - the way I'm looking at it is, I don't have a problem with twenty percent of the extras, I'm just nervous that that number get's way too big, you know what I mean?

VILLANO: Well, it's a percentage, so if my number gets big, so does yours.

CW-1: Okay.

VILLANO: You know what I mean?

CW-1: Then it will just take more time for me to pay that's - that's, you know, what I mean 'cause I gotta - gotta -

VILLANO: I know.

CW-1: - it flows a certain way cash just doesn't, which is fine, I don't have a problem if you're patient with me -

VILLANO: Right.

In terms of defendant SANABRIA's involvement, VILLANO stated:

The way Paul and I are is that, I'm sure he knows what I'm doing and I know what he's doing, but we can't ever put our heads together and discuss it. There will never be a threesome between him, you and me.

17. VILLANO later responded to CW-1's concern about how long it would take to get the cash together to pay off

VILLANO:

VILLANO: I don't have a problem waiting so long as we're all on the level and we make a schedule and you say -

CW-1: Yeah.

VILLANO: - it'll be this amount a week, a month, a, you know, we'll work to it.

CW-1: Nah, I'm fine with that, it's just -

VILLANO: 'Cause you know this job starts out at \$300,000 and it could be \$700,000 when your done, I mean -

CW-1: Right, well, I know, I hear what you're saying.

VILLANO: - you know?

CW-1: No problem.

VILLANO: I just don't wanna -

CW-1: Nah, listen I'm not gonna leave you hanging out to dry.

VILLANO: Yeah.

CW-1: I need, you're gonna give me a good inspector to start, please.

VILLANO: Yes.

CW-1: Don't give me the guy (laughs) -

Villano: No, I'm gonna, no I'm probably gonna give you, I'm gonna try and give you this guy [name of Con Ed inspector] who's a complete fucking, he's a real schmuck, he really is -

CW-1: Okay.

18. Toward the end of the meeting, CW-1 gave defendant SANABRIA \$5,000. This transfer of cash was videotaped. The following conversation ensued during the transfer of cash:

CW-1: [CW-1 hands VILLANO an envelope]. I got, I just want to give you something just kinda seal the deal a little bit.

VILLANO: Okay. Okay, I appreciate it.

CW-1: 5,000 to get us started, alright.

VILLANO: Okay.

CW-1: And then as we go on that way I'm a little bit ahead you know. That way you trust me.

VILLANO: I like it, I like that, (laughing) that makes good business.

WHEREFORE, your deponent respectfully requests that arrest warrants be issued for the defendants PAUL SANABRIA and ANTHONY VILLANO 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
12 day of January 2009



UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK