

RTF:SC:MER
F.#2005R01856

NO9-0023

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))

RICHARD GIANNETTO,

Defendant.

- - - - -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 December 2008 and January 2009, within the Eastern District of New York and elsewhere, the defendant RICHARD GIANNETTO, being an agent 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 Defendant, 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

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.

well as the installation of new lines as needed. Con Ed is 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 2008 through 2009.

4. The defendant RICHARD GIANNETTO is employed as a Senior Specialist for Con Ed, and his duties include overseeing construction projects in the Bronx, New York, and supervising Chief Construction Inspectors ("CCIs") and those subordinate to CCIs. GIANNETTO 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.

5. 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.

II. The EDC Project

6. The New York City Economic Development Corporation ("EDC") is an agency of the City of New York. The EDC is the City's primary vehicle for promoting economic growth in each of the City's five boroughs.

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.

7. In or about February 2008, CW-1's company was awarded a contract to perform work installing water mains in a park near Yankee Stadium in the Bronx (the "EDC Project").

8. After CW-1's company won the contract, it negotiated with Con Ed the rates of reimbursement it would receive for moving any Con Ed utility lines as it performed the contracted work. Work on the EDC Project was completed in approximately August 2008, but the billing was not completed until the end of December 2008.

III. The Kickback Scheme

9. In approximately December 2008, GIANNETTO reached out to CW-1 through one of CW-1's job site supervisors, indicating that he increased payments on a bill that the job site supervisor had previously thought was too low. During the two meetings described below, GIANNETTO and CW-1 reached an agreement whereby CW-1 would pay GIANNETTO for the increases that GIANNETTO made to CW-1's bills, including "extras," or payments for work that was not done.

IV. Recorded Conversations³

10. On December 19, 2008, CW-1 met with defendant GIANNETTO in CW-1's car in a parking lot of a Dunkin' Donuts in the Bronx, New York. GIANNETTO told CW-1 that CW-1's job site

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

supervisor told GIANNETTO to meet with CW-1. GIANNETTO told CW-1 that GIANNETTO's Con Ed inspector "doesn't know what he's doing." GIANNETTO explained that when the inspector told GIANNETTO that CW-1's job came to \$82,000, GIANNETTO knew that was "wrong." GIANNETTO stated that he added a "phantom" water main to the bill to increase the bill by \$15,000, as well as "a couple of other things," which resulted in a total payment of "140-something, I forget, 141, 143, something." After informing CW-1 about the extras added to CW-1's bill, GIANNETTO reported that he had told the job site supervisor "I usually get ten," and that the job site supervisor told GIANNETTO that he should talk to CW-1, which is why he contacted CW-1.

11. When CW-1 asked GIANNETTO whether there was anyone else that CW-1 should plan to pay, GIANNETTO said no, that GIANNETTO would handle that, and he assured CW-1 that this arrangement was a "win-win" situation. GIANNETTO and CW-1 also discussed other work that GIANNETTO might have available for CW-1 in the future. GIANNETTO said, "really I have a lot of work[.]" At the end of the conversation, CW-1 and GIANNETTO agreed that they would meet the following week.

12. On December 22, 2008, CW-1 and defendant GIANNETTO met in CW-1's car in the parking lot of a Staples in Astoria, New York. At the beginning of the conversation, CW-1 showed GIANNETTO a list of payments CW-1 had received from Con Ed so

that GIANNETTO could identify the payment he talked about during their previous meeting. GIANNETTO confirmed that a payment of \$146,494 was the payment he was responsible for inflating:

CW-1: That's the payment. Okay.

GIANNETTO: That is it.

CW-1: Alright.

GIANNETTO: Because it was 131 and then I added the 15 on for that -

CW-1: Water.

GIANNETTO: Manhole.

CW-1: Manhole?

GIANNETTO: I mean for the offset. I'm sorry.

CW-1: Yeah, okay.

GIANNETTO: Did [CW-1's job site supervisor] tell you I told him, "Just take another fucking invoice and fucking change it and send it to me for that,"

CW-1: Okay, for this amount?

GIANNETTO: No, no for that fucking [pause] offset.

CW-1: Okay, just to add it on.

GIANNETTO: Yeah, 'cause it was bullshit. [Laughs]

GIANNETTO and CW-1 then again discussed the possibility of doing more work together in the future. GIANNETTO told CW-1 that he had already spoken to his manager about it, and GIANNETTO and CW-1 agreed that it was likely that the contract CW-1 had with Con Ed in Manhattan could "translate over" to future work in the

Bronx. GIANNETTO told CW-1 that there is a job coming up, but that it will not start until the second quarter of the year. CW-1 and GIANNETTO then discussed the arrangement GIANNETTO would like to establish for kickback payments going forward. In particular, they discussed whether GIANNETTO wanted to be paid a percentage of the total bill, or of the inflated costs only. GIANNETTO explained his thinking with respect to the inflated bill he created, concluding that he wanted to be paid \$10,000:

GIANNETTO: What I did was I put in there the 15 for the water main. Let's say I put in another item what they call a 1012 which was seven grand and then I put, so there I'm probably gonna say around, I don't even know, uh, 30 grand?

CW-1: Okay.

GIANNETTO: Extra, so I had just said to him, "Listen, instead of doing the one, the top, instead of doing this, instead of doing that, I said there's 30-plus," I got away with, I don't wanna get into it, but a whole bunch of other shit, I said it's about, it ended up being about 50, total.

CW-1: Right.

GIANNETTO: So I said, so either let's just do it on that,

CW-1: Okay.

GIANNETTO: People do 20 percent of that, they do ten percent [U/I]

CW-1: I get it now, okay.

GIANNETTO: And I, and I said to him I don't wanna, you know, just meeting you,

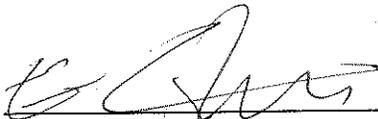
CW-1: Yeah, right.

GIANNETTO: And I said, "I could turn around and say 14 and this is how we do it off the," I said, "I don't want to do that, just make it an even ten. And I'll make sure."

At the end of the conversation, GIANNETTO told CW-1, "So I always try and make sure I go above and beyond, you know." During that part of the conversation, CW-1 handed GIANNETTO an envelope containing \$5,000 cash, stating, "I got half." This transfer of cash was videotaped. CW-1 and GIANNETTO agreed that they would meet up again after the holidays.

WHEREFORE, your deponent respectfully requests that an arrest warrant be issued for the defendant RICHARD GIANNETTO so that he 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 warrant 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