

NS:NEM/PAS
F. #2020R00098/OCDETF#NY-NYE-882

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

- against -

RAMIRO GUTIERREZ,
also known as "Cara de Malo"
VICTOR LOPEZ,
also known as "Curioso," and
TITO MARTINEZ-ALVARENGA,
also known as "Imprudente,"

Defendants.

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EASTERN DISTRICT OF NEW YORK, SS:

LUZ MONTANEZ, being duly sworn, deposes and states that she is a Special Agent with the Federal Bureau of Investigation, duly appointed according to law and acting as such.

On or about February 3, 2019, within the Eastern District of New York, the defendants RAMIRO GUTIERREZ, also known as "Cara de Malo," VICTOR LOPEZ, also known as "Curioso," and TITO MARTINEZ-ALVARENGA, also known as "Imprudente," together with others, for the purpose of gaining entrance to and maintaining and increasing position in La Mara Salvatrucha, an enterprise engaged in racketeering activity, did knowingly and intentionally murder Abel Mosso, in violation of New York Penal Law Sections 125.25(1) and 20.00.

(Title 18, United States Code, Section 1959(a)(1) and 2)

TO BE FILED UNDER SEAL

20-MJ-349

COMPLAINT

(18 U.S.C. §§ 1959(a)(1), 924(c)(1)(A)(iii)
and 2)

On or about February 3, 2019, within the Eastern District of New York, the defendants RAMIRO GUTIERREZ, also known as “Cara de Malo,” VICTOR LOPEZ, also known as “Curioso,” and TITO MARTINEZ-ALVARENGA, also known as “Imprudente,” did knowingly and intentionally discharge a firearm during and in relation to a crime of violence, to wit: the murder in-aid-of racketeering of Abel Mosso set forth above.

(Title 18, United States Code, Section 924(c)(1)(A)(iii) and 2)

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

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”), and have been since 2009. I am currently assigned to Squad C-13 in the New York Field Office, Brooklyn/Queens Resident Agency, where I investigate gangs, narcotics trafficking, firearms trafficking, fraud, violent crime and other offenses. I have participated in numerous investigations during the course of which I have (a) conducted physical and wire surveillance; (b) executed search warrants at locations where contraband has been found; (c) reviewed and analyzed numerous taped conversations discussing criminal activity; (d) debriefed cooperating defendants and other witnesses; (e) monitored wiretapped conversations and reviewed line sheets prepared by wiretap monitors; and (f) searched electronic evidence. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file, including the defendants’ criminal history record reports; and from reports of other law enforcement officers involved in the investigation.

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

The Enterprise

2. Based on information provided through the debriefing of cooperating witnesses and confidential informants, as well as speaking with other law enforcement agents, among others, I am aware of the following facts, among others, regarding La Mara Salvatrucha (hereinafter the “MS-13” or the “enterprise”). At all times relevant to this Complaint:

3. La Mara Salvatrucha, also known as the “MS-13,” was a transnational criminal organization comprised primarily of immigrants from Central America, with members located throughout Queens, New York, Long Island, New York, and elsewhere, divided into local chapters, or “cliques.”

4. The MS-13 routinely held meetings to plan criminal activity, and members paid dues into a treasury. The treasury funds were used to purchase firearms, ammunition and other weapons for use in criminal activity. Additionally, treasury funds were sent to MS-13 members in Central America. Members of the MS-13 sometimes signified their membership with the colors of blue and white, and with graffiti and tattoos reading, among other things, “13,” “MS” and “MARA SALVATRUCHA,” frequently written in gothic lettering.

5. Members of the MS-13 engaged in acts of violence, including acts involving murder, assault, witness tampering and witness retaliation, as well as other criminal activity, including narcotics trafficking. Participation in criminal activity by a member, especially violence directed at rival gang members or at MS-13 members or associates believed to have violated the enterprise’s rules, increased the respect accorded to the member and could result in promotion to a leadership position. Members of the MS-13 purchased, maintained and circulated a collection of firearms and other weapons for use in criminal activity.

6. The MS-13, including its leadership, members and associates, constituted an “enterprise” as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact that was engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

Purposes of the Enterprise

7. The purposes of the enterprise included the following:

(a) Promoting and enhancing the prestige, reputation and position of the enterprise with respect to rival criminal organizations.

(b) Preserving and protecting the power, territory and criminal ventures of the enterprise through the use of intimidation, threats of violence and acts of violence, including assault and murder.

(c) Keeping victims and rivals in fear of the enterprise and its members and associates.

(d) Enriching the members and associates of the enterprise through criminal activity, including narcotics trafficking.

(e) Ensuring discipline within the enterprise and compliance with the enterprise’s rules by members and associates through threats of violence and acts of violence.

Means and Methods of the Enterprise

8. Among the means and methods by which members of the MS-13 and their associates conducted and participated in the conduct of the affairs of the enterprise were the following:

(a) Members of the MS-13 and their associates committed, attempted to commit and threatened to commit acts of violence, including acts involving murder and assault, to enhance the enterprise's prestige and protect and expand the enterprise's criminal operations.

(b) Members of the MS-13 and their associates used and threatened to use physical violence against various individuals, including members of rival criminal organizations and against MS-13 members or associates believed to have violated the enterprise's rules.

(c) Members of the MS-13 and their associates used, attempted to use and conspired to use narcotics trafficking as means of obtaining money.

The Defendants

9. The defendant RAMIRO GUTIERREZ, also known as "Cara de Malo," was a member of the MS-13. The defendants VICTOR LOPEZ, also known as "Curioso," and TITO MARTINEZ-ALVARENGA, also known as "Imprudente," were associates of the MS-13.

February 2019 Murder of Abel Mosso

10. Law enforcement agents recovered surveillance video from the Main Street 7-train subway station in Queens, New York (the "Main Street Station") from February 3, 2019 (the "Subway Video"). At approximately 12:28 p.m., the Subway Video shows Abel Mosso swiping a MetroCard to enter the Main Street Station. Mosso is wearing a navy jacket with a horizontal stripe, black pants and a blue knit hat. Shortly thereafter, two men are seen approaching the same subway turnstiles used by Abel Mosso at the Main Street Station. One of the men is wearing a dark vest over a gray hoodie, with the hood up, black pants and dark

shoes. His face is obscured by what appears to be a dark scarf or bandana. The other man is wearing a black shirt over a gray hoodie (covering the majority of the gray hoodie), with the hood up, dark pants and white and red sneakers. His face is obscured by a red scarf. Approximately 23 seconds after Mosso swiped his MetroCard, these two men both jump the turnstile after looking around. Approximately three minutes later, at 12:32 p.m. defendant RAMIRO GUTIERREZ, who is wearing a gray jacket with the hood up, black pants, and a striped scarf, swipes a MetroCard and enters the Main Street Station.

11. The 90th Street subway station in Queens, New York (the “90th Street Station”) is five stops away from the Main Street Station on the Manhattan-bound 7-train line.

12. At approximately 1:20 p.m. on February 3, 2019, after receiving a 911 call regarding a shooting, members of the New York City Police Department (“NYPD”) responded to the Manhattan-bound 7-train platform located at the 90th Street Station and found the body of Abel Mosso. Mosso had sustained multiple gunshot wounds. An autopsy was performed and the autopsy report indicates that Mosso’s cause of death was multiple gunshot wounds to the head, and the manner of death was homicide. According to the autopsy report, Mosso sustained five gunshot wounds to the head.

13. Law enforcement recovered a video posted on Facebook that depicts the murder of Abel Mosso on February 3, 2019 (the “Facebook Video”). Specifically, the Facebook Video shows the defendants RAMIRO GUTIERREZ, also known as “Cara de Malo,” and VICTOR LOPEZ, also known as “Curioso,” attacking Mosso, who is on the ground of the subway platform at the 90th Street Station. The defendant TITO MARTINEZ-ALVARENGA, also known as “Imprudente,” can be seen pulling on Mosso’s arm and attempting to keep subway passengers from intervening in the fight. GUTIERREZ then

stands up and fires approximately six shots at close range, hitting Mosso repeatedly. Mosso is wearing Nike Cortez sneakers, which I know, based on my training, experience and participation in this investigation, are sneakers frequently worn by members of certain gangs, including 18th Street, to signify their gang membership. GUTIERREZ can be seen wearing a gray jacket and black pants. LOPEZ can be seen wearing black camouflage pants, a black shirt over a gray hooded sweatshirt, a red scarf and white and red sneakers. MARTINEZ-ALVARENGA can be seen wearing a black vest over a gray hooded sweatshirt, black pants and black Nike sneakers.

14. On February 4, 2019 – the day after Abel Mosso’s murder – RAMIRO GUTIERREZ was arrested by the NYPD for Mosso’s murder.² Following his arrest, GUTIERREZ waived his Miranda rights and agreed to be interviewed, which interview was video-recorded. During the interview, GUTIERREZ initially claimed that the day before he had been at home on 172nd Street, before going to eat soup at his mother’s house at approximately 6 p.m. or 7 p.m. GUTIERREZ claimed to have stayed at his mother’s house until approximately 9 p.m. GUTIERREZ also claimed that he was not in a gang.

15. Thereafter, GUTIERREZ explained that the above-described statements were not true and stated the following, in substance and in part: GUTIERREZ was involved in a fight that began on the subway. The men fighting nearly fell on top of GUTIERREZ. Then GUTIERREZ saw a silver gun in between the men, which GUTIERREZ picked up.

² GUTIERREZ is currently charged in Queens County Supreme Court with, among other things, Murder – Intentional and Gang Assault in the First Degree – Cause Serious Physical Injury, in violation of New York State Penal Law Sections 125.25(1), 20.00 and 120.07. GUTIERREZ is currently in state custody on these charges.

GUTIERREZ and the men who were involved in the fight fell to the ground. The gun went off in GUTIERREZ's hands and hit one of the men. After the shooting, GUTIERREZ took a taxi with a friend to a location in Queens. GUTIERREZ then threw his clothes and the gun away.

16. On February 21, 2019, VICTOR LOPEZ was arrested by the NYPD for Mosso's murder.³ Following his arrest, LOPEZ waived his Miranda rights and agreed to be interviewed, which interview was video-recorded. During the interview, LOPEZ explained that he knew he was being questioned because "there was a small problem" "with some guy who died"⁴ on the 7-train at 90th Street and Elmhurst on February 3, 2019. LOPEZ then stated the following, in substance and in part: LOPEZ, Ramiro (GUTIERREZ) and Ramiro's friend took the subway to Manhattan. LOPEZ later clarified that he was friends with this third man as well and that his name is Tito (MARTINEZ-ALVARENGA). The day of the shooting, LOPEZ had been wearing a black shirt, camouflage pants, white Nikes and a gray hat with a red scarf. Once they were all on the subway, LOPEZ claimed that he first noticed that there was a Mexican man wearing white Nike Cortez shoes with a black swoosh. This man made 18th Street gang signs at LOPEZ and his friends. The men started fighting, and the Mexican man pulled out a gun. Ramiro (GUTIERREZ) wrestled the gun away from the Mexican man and shot the Mexican man in self-defense. LOPEZ heard six shots. After the

³ LOPEZ is currently charged in Queens County Supreme Court with, among other things, Murder – Intentional and Gang Assault in the First Degree – Cause Serious Physical Injury, in violation of New York State Penal Law Sections 125.25(1), 20.00 and 120.07. LOPEZ is currently in state custody on these charges.

⁴ The interview was conducted in Spanish. These quotations from the interview, and others set forth below, are based on draft translations of LOPEZ's statements from Spanish to English.

shooting, LOPEZ walked by himself to Kissena Park. LOPEZ threw away the clothes he wore during the shooting. LOPEZ later admitted that he burned his clothes in Kissena Park.

17. After initially claiming that the first time he saw the Mexican man was on the train, LOPEZ later admitted that he first saw the Mexican man on the street. LOPEZ further explained that the fight began prior to the events captured on the Facebook Video of the attack and stated the following, in substance and in part: LOPEZ and Tito (MARTINEZ-ALVARENGA) were in one subway car and Ramiro (GUTIERREZ) and the Mexican man were in another subway car. Ramiro (GUTIERREZ) and the Mexican man flashed gang signs at each other. Tito (MARTINEZ-ALVARENGA) then began fighting the Mexican man. When LOPEZ entered the car where the fight was, the Mexican man had a gun. LOPEZ did not see who pulled out the gun.

18. At one point during the interview, LOPEZ referred to the gun as “my firearm.” When the detective informed LOPEZ that he had said the firearm was his, LOPEZ said, “If you are saying it is my firearm and you are aware that it is my firearm, then ok. Fine.” LOPEZ later denied that the gun was his. He described the gun as a silver revolver. LOPEZ explained that he and Tito (MARTINEZ-ALVARENGA) did not hit the victim “too much.”

19. After initially denying an association with the MS-13, LOPEZ admitted being an MS-13 “observacion.”⁵ LOPEZ explained that Tito (MARTINEZ-ALVARENGA) was also an MS-13 “observacion.” LOPEZ said that they were supposed to follow the

⁵ I am aware based on my training, experience and participation in this investigation that an “observacion” is a prospective MS-13 member who associates with the gang and performs tasks on the gang’s behalf at the direction of “homeboys,” or full-fledged MS-13 members.

shooting victim and then jump him. LOPEZ stated that Ramiro (GUTIERREZ) wanted to see how LOPEZ and Tito (MARTINEZ-ALVARENGA) would act during the fight.

20. LOPEZ's description of the clothing he was wearing on the day of the shooting during his post-arrest interview is consistent with the clothing observed in the Subway Video of one of the two individuals who entered the Main Street Subway Station approximately 23 seconds after Abel Mosso and what he was wearing in the Facebook Video.

21. On February 21, 2019, TITO MARTINEZ-ALVARENGA was arrested by the NYPD for Mosso's murder.⁶ Following his arrest, MARTINEZ-ALVARENGA waived his Miranda rights and agreed to be interviewed, which interview was video-recorded. During the interview, MARTINEZ-ALVARENGA explained that he had previously lived with GUTIERREZ, who is a member of MS-13. MARTINEZ-ALVARENGA thereafter stated the following, in substance and in part: On the day of the shooting, MARTINEZ-ALVARENGA needed shoes for work and went to buy them on 90th Street. MARTINEZ-ALVARENGA got on the 7-train at the Main Street Station. On the day of the shooting, he was wearing a black vest, a gray sweater and a scarf. MARTINEZ-ALVARENGA was riding the train with Victor (LOPEZ). When the train stopped, MARTINEZ-ALVARENGA heard Ramiro (GUTIERREZ) arguing. LOPEZ went into the subway car where the argument was taking place. MARTINEZ-ALVARENGA went to try and break up the fight but Ramiro (GUTIERREZ) was very tense. MARTINEZ-ALVARENGA hit the victim. MARTINEZ-

⁶ MARTINEZ-ALVARENGA is currently charged in Queens County Supreme Court with, among other things, Murder – Intentional and Gang Assault in the First Degree – Cause Serious Physical Injury, in violation of New York State Penal Law Sections 125.25(1), 20.00 and 120.07. MARTINEZ-ALVARENGA is currently in state custody on these charges.

ALVARENGA next saw Ramiro (GUTIERREZ) pick up a gun and heard three gun shots before he (MARTINEZ-ALVARENGA) ran away. Ramiro (GUTIERREZ) and MARTINEZ-ALVARENGA took a cab, but MARTINEZ-ALVARENGA got out along the way. Later in the interview, MARTINEZ-ALVARENGA admitted that he and Ramiro (GUTIERREZ) took a cab to Northern Boulevard and Parsons Avenue and went to MARTINEZ-ALVARENGA's apartment. Ramiro (GUTIERREZ) still had the gun, which Ramiro (GUTIERREZ) took with him when he left.

22. MARTINEZ-ALVARENGA thereafter stated, in substance and in part, the following: Ramiro (GUTIERREZ) started the fight with the victim. The victim told Ramiro (GUTIERREZ) that he was 18th Street in response to Ramiro (GUTIERREZ) saying that he (GUTIERREZ) was MS-13. MARTINEZ-ALVARENGA claimed not to have known that Ramiro (GUTIERREZ) was on the train until the fight started. Prior to getting on the train, MARTINEZ-ALVARENGA noticed that the victim was wearing black and white Nike Cortez sneakers, which he knew to be shoes worn by gang members. The victim was also wearing a Mets shirt with the number "18."⁷ While MARTINEZ-ALVARENGA was hitting the victim, GUTIERREZ told the other people present not to get involved because he was MS-13. Following the shooting, MARTINEZ-ALVARENGA threw away the black Nike shoes and clothes that he was wearing during the shooting. MARTINEZ-ALVARENGA also admitted to being in photographs with GUTIERREZ throwing up MS-13 signs.

23. MARTINEZ-ALVARENGA's description of the clothing he was

⁷ I am aware based on my training, experience and participation in this investigation, that members of the 18th Street gang often wear the number 18 to signify their affiliation with this gang.

wearing on the day of the shooting during his post-arrest interview is consistent with the clothing observed in the Subway Video of one of the two individuals who entered the Main Street Subway Station approximately 23 seconds after Abel Mosso and what he is wearing in the Facebook Video.

24. Based on my review of each defendant's video-recorded interviews following their arrests by the NYPD for the murder of Abel Mosso, MARTINEZ-ALVARENGA and LOPEZ were both thin, while GUTIERREZ was quite large, in February 2019.

25. A witness ("Witness-1") has informed law enforcement of the following, in substance and in part: On the afternoon of February 3, 2019, Witness-1 was taking a Manhattan-bound 7-train. At the 90th Street Station, Witness-1 noticed that the car was not moving. Witness-1 looked up and saw three young, Hispanic men arguing. One of the three men arguing was later killed – the other two men involved in the argument were skinny. Witness-1 saw the man who was fighting and wearing gray⁸ pull out a silver revolver. Fearing for his/her safety, Witness-1 then exited the subway car. After leaving the subway car, Witness-1 saw the men exchanging punches while still on the train. A heavy-set man⁹ was in the train car standing near the door watching the fight. The two thin attackers and the

⁸ Based on my review of the Subway Video, the Facebook Video and MARTINEZ-ALVARENGA's post-arrest statements regarding what he was wearing the day of the murder, I believe the man wearing gray that Witness-1 referred to in his/her statements to law enforcement was MARTINEZ-ALVARENGA.

⁹ Based on each defendant's appearance during their respective video-recorded post-arrest interviews with the NYPD in February 2019, I believe the heavy-set man Witness-1 referred to in his/her statements to law enforcement was GUTIERREZ.

heavy-set man then dragged the victim out of the subway car onto the platform. All of the men were fighting and wrestling around on the subway platform. The heavy-set man then took the gun away from the victim, who had somehow gained possession of the gun from the man who was wearing gray, and shot the victim.

26. Another witness (“Witness-2”) has informed law enforcement of the following, in substance and in part: At approximately 12:40 p.m. on February 3, 2019, Witness-2 was standing on the Manhattan-bound 7-train platform at the 90th Street Station. A train then pulled into the station and people on the train were exiting the train and not letting passengers get onto the train. As Witness-2 tried to get on the train, Witness-2 saw two people attacking a third person. The two attackers then pulled the victim off the train and onto the platform. One of the attackers was wearing a gray and black jacket¹⁰. Once on the platform, the two attackers began to kick the victim who was on the ground. Witness-2 tried to go downstairs to call the police. As Witness-2 was making his/her way to the staircase, Witness-2 heard someone shout in Spanish, in substance, “nadie se meta porque somos la mara salvatrucha, lo vamos a matar.”¹¹ As Witness-2 was calling for help, Witness-2 heard multiple gun shots and then saw the attackers running down the stairs.

¹⁰ Based on my review of the Subway Video, the Facebook Video and MARTINEZ-ALVARENGA’s and LOPEZ’s post-arrest statements regarding what they were wearing the day of the murder, both MARTINEZ-ALVARENGA and LOPEZ were wearing gray sweatshirts with black clothing on their torsos – in MARTINEZ-ALVARENGA’s case a vest and in LOPEZ’s case a t-shirt.

¹¹ This statement translates from Spanish to English as “nobody get involved, we’re MS-13, we’re going to kill him.”

27. At the time of his arrest by the NYPD, law enforcement officers seized MARTINEZ-ALVARENGA's cellular telephone from him. That cellular telephone was later searched pursuant to a judicially-authorized search warrant. A review of the contents of MARTINEZ-ALVARENGA's cellular telephone reveals a screenshot of a photograph of Abel Mosso displaying what I know to be, based on my training, experience and participation in this investigation, an 18th Street gang hand sign. The metadata associated with this screenshot indicates that it was taken on January 31, 2019, three days before Abel Mosso was killed.

WHEREFORE, your deponent respectfully requests that the defendants RAMIRO GUTIERREZ, VICTOR LOPEZ and TITO MARTINEZ-ALVARENGA, be dealt with according to law.

I further request that the Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the affidavit and arrest warrant. Based upon my training and experience, I have learned that criminals actively search for criminal affidavits and arrest warrants via the internet. Therefore, premature disclosure of the contents of this affidavit and related documents will seriously jeopardize the investigation, including by giving the defendants' criminal associates who are separately charged by sealed

complaint an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence and change patterns of behavior.



LUZ MONTANEZ
Special Agent, Federal Bureau of Investigation

Sworn to before me this
⁵
__ day of




UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

Signed telephonically on 5/5/20 at 1:50 pm VMS