

FILED
 UNITED STATES DISTRICT COURT
 ALBUQUERQUE, NEW MEXICO

JUN 16 2020

MITCHELL R. ELFERS
 CLERK

UNITED STATES DISTRICT COURT

for the
 District of New Mexico

United States of America

v.

TONY GAUNA
 aka: "Whiskers"
 aka: "Toney Gauna"

Case No. 20mj 1193

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 2000 - 2020 in the county of Bernalillo and elsewhere in the
District of New Mexico, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
Count 1: 18 U.S.C. § 1962(d)	- Racketeer Influenced and Corrupt Organizations (RICO) Act conspiracy;
Count 2: 18 U.S.C. § 1951	- interference with commerce by threats or violence;
Count 3: 18 U.S.C. § 924(c)(1)(A)(ii)	- brandishing a firearm during or in relation to a crime of violence;
Count 4: 18 U.S.C. § 1951	- interference with commerce by threats or violence;
Count 5: 18 U.S.C. § 924(c)(1)(A)(iii)	- discharging a firearm during or in relation to a crime of violence; and
Count 6: 18 U.S.C. § 922(g)(1)	- being a felon in possession of a firearm and ammunition.

This criminal complaint is based on these facts:

Refer to the attached 19-page Affidavit in Support of Criminal Complaint and Arrest Warrant by FBI SA Bryan M. Acee.

☒ Continued on the attached sheet.

Bryan M. Acee

Complainant's signature

Bryan M. Acee, FBI Special Agent

Printed name and title

Electronically submitted and telephonically sworn before me.

Date: June 16, 2020

City and state: Albuquerque, New Mexico

Karen B. Molzen

Judge's signature

Karen B. Molzen, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Bryan M. Acee, being duly sworn, depose and say:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been a sworn law enforcement officer for 20 years, serving as a police officer, detective, task force officer and Special Agent. I have been with the FBI since 2009 and am currently assigned to the Albuquerque Violent Crime Task Force (VCTF),¹ where I primarily investigate violent repeat offenders.

2. In early 2015, I initiated a gang-racketeering investigation into the illegal activities of the New Mexico Syndicate, which is also known as the "Syndicato de Nuevo Mexico" or "SNM." I continue to serve as the lead case agent in the government's on-going racketeering case against the SNM, which has focused on the members, associates, and other support elements that facilitate criminal activities at the direction of the SNM.

3. To date, approximately 150 SNM members and associates have been arrested as a result of this investigation. The majority of the defendants were charged federally and convicted.

4. This affidavit is being submitted in support of a criminal complaint and arrest warrant charging **TONY GAUNA, aka: "WHISKERS,"** with the following violations:

Count 1: 18 U.S.C. § 1962(d) RICO Act conspiracy;

Count 2: 18 U.S.C. § 1951 interference with commerce by threats or violence;

Count 3: 18 U.S.C. § 924(c)(1)(A)(ii) brandishing a firearm during or in relation to a crime of violence;

Count 4: 18 U.S.C. § 1951 interference with commerce by threats or violence;

Count 5: 18 U.S.C. § 924(c)(1)(A)(iii) discharging a firearm during or in relation to a crime of violence; and

Count 6: 18 U.S.C. § 922(g)(1) being a felon in possession of a firearm and ammunition.

¹ The VCTF is an FBI-sponsored task force comprised of investigators from the FBI, Drug Enforcement Administration, New Mexico State Police, New Mexico Corrections Department Probation-Parole Division, Albuquerque Police Department, Bernalillo County Sheriff's Office, and Santa Fe County Adult Detention Facility.

OVERVIEW OF THE INVESTIGATION

5. In late April 2020, I received information from various local law enforcement officers in reference to SNM prison gang member **TONY GAUNA, aka: "WHISKERS,"** being involved in several crimes around the Albuquerque metropolitan area. The various law enforcement officers reported **TONY GAUNA, aka: "WHISKERS,"** was suspected of committing armed robberies, distributing drugs, driving a stolen vehicle, and discharging a 9mm pistol at at least three crime scenes in Albuquerque.² Based on that information, I initiated an investigation into the criminal activities of **TONY GAUNA, aka: "WHISKERS."** The investigation of **TONY GAUNA, aka: "WHISKERS,"** was contemporaneous with a broader, on-going investigation of the SNM.

6. In early 2015, the FBI initiated an investigation into the SNM which primarily focused on several homicides and other violent crimes being perpetrated by members of the gang. By way of background, the SNM is New Mexico's largest gang, and it has historically controlled the majority of New Mexico's prisons and Hispanic street gangs. The SNM is an ultra-violent prison gang and wield significant influence on the streets of New Mexico. Over the past thirty years, SNM members have murdered four New Mexico police officers.³

7. Prior to 2015, the SNM had been on-and-off federal and state law enforcement's radar for many years; however, no prior investigations resulted in substantial prosecutions of SNM members. The 2015 investigation began after leaders of the gang directed SNM members on the street to locate and murder the then cabinet secretary of the NMCD. The SNM leaders also called for the murder of two additional NMCD administrators and their families. The investigation was further predicated by the fact the SNM had a decades-long history of murder, kidnapping, extortion, drug trafficking, aggravated assault and other

² Spent 9mm casings were located at three separate crime scenes in Albuquerque: (1) the shooting of a dog at an apartment complex, (2) the shooting into the front door of an apartment, and (3) the discharge of a round during an armed robbery of a restaurant. The spent casings were examined by the APD Crime Lab and matched via the National Integrated Ballistic Information Network (NIBIN).

³ Mesilla Marshal's Office Sergeant Thomas Richmond (1988), Albuquerque Police Sergeant Cheryl Tiller (1998), Bernalillo County Deputy James McGrane (2006) and Rio Rancho Police Officer Nigel Benner (2015).

violent crimes. The investigation was subsequently designated a United States Department of Justice Organized Crime Drug Enforcement Task Force (OCDETF) investigation, titled "Operation Atonement."

8. While the investigation remains active, I am able to report the FBI significantly disrupted the SNM through persistent and advanced investigative techniques, to include:

- a. 101 undercover drug and firearm buys from SNM members/associates;
- b. 47 confidential informants developed within the gang and utilized operationally;
- c. 9 court-authorized telephone wiretaps with 11 extension orders;
- d. 11 pen register/trap and trace orders to locate an SNM murder fugitive in Mexico;
- e. More than 500 hours of electronic surveillance recordings of gang meetings;
- f. 10 homicides solved and charged as RICO Act or Violent Crimes in Aid of Racketeering (VICAR) violations, the vast majority being cold-case murders;
- g. RICO Conspiracy charges comprised of more than 325 overt acts committed by members of the SNM.

9. The five year investigation was segmented into four stages, to include: four separate large-scale takedown operations (Phases 1-4); extensive trial preparation and motions hearings; three separate racketeering trials in Las Cruces and Albuquerque, New Mexico; tracking and arresting fugitive SNM member ANGEL DELEON in Mexico; post-trial hearings; sentencings, which remain on-going; and the continued pro-active monitoring of the gang by law enforcement and corrections officials.

10. To date, case agents have arrested approximately 150 SNM members and associates, and seized more than 88 firearms. Over the course of the investigation, I have interviewed more than 100 SNM members (including current and former SNM leaders) regarding the various aspects of the organization. These experiences form much of the basis upon which I support my beliefs, opinions, and assertions throughout this affidavit.

INTRODUCTORY ALLEGATIONS

11. Based on my investigation, I believe at various times relevant to this Complaint, the defendant, **TONY GAUNA**, aka: "**WHISKERS**," was a member of the SNM, a criminal organization

whose members/prospects/associates engaged in acts of violence and other criminal activities, including murder, kidnapping, attempted murder, conspiracy to manufacture/distribute narcotics, and firearms trafficking. At all relevant times, the SNM operated in the District of New Mexico and elsewhere.

12. I believe the SNM, including its leadership, membership, prospects, and associates, constitutes an enterprise as defined in 18 U.S.C. §§ 1959(b)(2) and 1961(4), that is, a group of individuals associated in fact that engaged in, and the activities of which, affect interstate and foreign commerce. The enterprise constitutes an ongoing organization whose members and associates functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

THE HISTORY OF THE SNM

13. The SNM was formed at the Penitentiary of New Mexico after a prison riot in February 1980. During the prison riot, 14 correctional officers were taken hostage and several of them were seriously assaulted and raped by inmates. Thirty-three inmates were killed during the riot, and more than 200 were injured. The majority of inmates killed were perceived to be "rats" or informants.

14. Following the prison riot, the SNM expanded throughout the New Mexico penal system and has bolstered more than 500 members since the early 1980s. NMCD officials estimated the SNM is currently comprised of more than 250 active members, who are known as "hermanos," "brothers," "carnales," "dons," "jefes," "big homies," or "Zia manos."

15. Despite being imprisoned and closely scrutinized by prison officials and the FBI, SNM leaders still manage to convey their orders to gang members and associates throughout the prison system and outside the prison system through a variety of means, including contraband cellular telephones, secret notes called "kites" or "welas," coded letters, and messages conveyed by complicit visitors.⁴ When SNM members or associates complete their sentences and rejoin their communities, they are expected to remain loyal to the SNM and work to further the goals of the SNM outside the prison environment. One of the

⁴ The SNM utilizes female family members and girlfriends/wives to pass messages to other members of the gang. Female associates and family members have also been used to smuggle drugs into prison facilities on behalf of the SNM.

significant goals of the SNM is to control and profit from drug trafficking inside the penal system and on the street.

16. In addition to exerting its control in the NMCD and U.S. Bureau of Prisons (BOP), the SNM also operates on the streets of New Mexico by intimidating and influencing smaller New Mexico Hispanic gangs for the purpose of establishing a larger network for the SNM's illegal activities. If a gang does not accede to the SNM, the SNM will assault or kill the gang's members. In addition to intimidation through direct assaults, the SNM is also able to assert control and influence over gang members outside the prison walls because gangs do not want their members outside the penal system to be assaulted or killed, and because the gang members know that, if they are incarcerated, they may encounter SNM members while they serve their sentences.

17. In years past, the SNM engaged in a violent war with rival prison gangs, to include the Aryan Brotherhood, Barrio Azteca, Burqueños, and Los Carnales. I believe the SNM currently maintains peace treaties with the Aryan Brotherhood and Los Carnales; however, the SNM remains in conflict with the Burqueños and all Texas-based prison gangs, to include the Barrio Azteca and Texas Syndicate. Within the prison system, this rivalry manifests itself in beatings and stabbings, which often result in death. Outside the prison system, the SNM fights for control of territory in which to conduct narcotics trafficking and other crimes, as well as to recruit and influence non-gang members. In addition to fighting for control over numerous illegal activities and using violence and terror for the purpose of enriching members, the SNM also engages in violence simply to assert its gang identity, to claim or protect territory, to challenge or respond to a challenge, to retaliate against a rival gang or member, to gain notoriety, and to show superiority over others. I believe the gang's greatest legacy is its reputation as an ultra-violent organization.

18. The SNM strives to have a reputation for being strong and powerful and must maintain its membership to continue functioning as an organization in prison and on the streets. If the SNM is perceived as being weak, then rival gangs could challenge and assault its members and take over its territory. If the SNM maintains a large membership and a reputation for being dominant, rival gangs may

think twice before they challenge it. Similarly, victims and witnesses may think twice about assisting authorities with any prosecution attempt against the gang. I have encountered potential witnesses and victims who were too afraid to speak with law enforcement and much less willing to testify against the SNM.

19. A member of the SNM is expected to seek out and beat, stab, or shoot rival gang members. Similarly, a member of the SNM is expected to confront and attack suspected law enforcement informants and sex offenders. Such opportunities are referred to as "smash on sight."

20. SNM members identify themselves with the Zia symbol and the letters "SNM" or "S." The SNM members also utilize the numbers "19," which represents the 19th letter of the alphabet, "S," and "505," which corresponds with the area code for the greater Albuquerque area. The SNM claims the entire state of New Mexico as its territory, which is broken up by four geographical regions: North, South, East and West. SNM members display these numbers, letters, and symbols in tattoos, graffiti, drawings, and on clothing as a way of displaying their affiliation, loyalty, and commitment to the SNM.

21. Only men can be members of the SNM.⁵ The term "Zia Lady" is used by the SNM to describe highly respected and influential female associates of the gang.

22. SNM members frequently commit "branded" criminal acts, in other words, they commit crimes in the name of the gang. Examples of branded criminal acts include: gang members shouting references to SNM before or during a crime; gang members demanding property or services because of their membership; and killing or attempting to kill members of rival gangs. SNM members have been known to kill or attempt to kill law enforcement officers as well (see footnote 2 for additional details). Weapons, to include blunt force and edged weapons, and firearms, to include handguns, rifles, and shotguns, are important tools of the trade and instrumentalities of the SNM.

⁵ The NMCD has identified some female inmates as suspected members of the SNM; however, I do not believe a female can be a "suspected" or "validated" (the two classifications NMCD designates gang members) SNM member. My belief is based on my interviews of dozens of validated SNM members, to include leaders and founding members of the gang.

23. SNM members operate under a "blood in, blood out" philosophy, which prohibits them from dropping out of the gang. The term "blood in, blood out" means a prospective member must assault or kill a person to gain entrance into the gang, and the only way out is death. A prospective member of the SNM must be sponsored by at least three SNM members, who "raise their hand," or vote-in the prospect.

24. Members who are in "bad standing" within the gang are put on a "greenlight" list, which means they are to be assaulted or killed by other members of the gang. If a member is to be killed by the gang, the responsibility often falls on the senior member(s) that sponsored, or brought, that member into the gang. Similarly, if a leader is put on the greenlight list, then the younger members who were brought in by that leader may be asked to take out the leader.

25. SNM members are forbidden to speak with law enforcement officials and to do so may result in the SNM member's violent death at the hands of his fellow gang members, as was the case on multiple occasions in this investigation.

ROLES OF THE MEMBERS AND ASSOCIATES

26. I believe leaders of the enterprise directed or delegated the power to direct other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs. Under the direction and leadership of the enterprise, I believe defendant **TONY GAUNA, aka: "WHISKERS,"** was a member who participated in unlawful and other activities in furtherance of the conduct of the enterprise's affairs.

PURPOSES OF THE SNM

27. I believe the purposes of the SNM enterprise include the following:

- a. Preserving and protecting the power, territory, reputation, and profits of the enterprise through the use of intimidation, violence, threats of violence, assaults, and murder;
- b. Promoting and enhancing the enterprise and the activities of its members and associates through criminal acts, including, but not limited to, murder, attempted murder, narcotics trafficking, theft of vehicles, robberies and other criminal activities;

- c. Keeping victims, potential victims, witnesses, and community members in fear of the enterprise and its members and associates through violence and threats of violence;
- d. Protecting the enterprise's members and associates who commit crimes by hindering, obstructing, and preventing law enforcement officers from identifying the offenders, apprehending the offenders and successfully prosecuting and punishing the offenders;
- e. Providing information to members and associates of the enterprise, including those who are incarcerated, for the purpose of committing acts of violence, robbery, distribution of controlled substances, and other offenses; and
- f. Providing financial support and information to SNM Gang members and associates, including those members and associates who are incarcerated.

MEANS AND METHODS OF THE ENTERPRISE

28. I believe among the means and methods by which the defendant and his associates conduct and participate in the conduct of the affairs of the SNM were the following:

- a. Members and associates of the enterprise committed, conspired, attempted, and threatened to commit acts of violence, including murders and assaults to protect and expand the enterprise's criminal operations.
- b. To generate income, members and associates of the enterprise trafficked in controlled substances and extorted narcotics traffickers and committed robbery.
- c. To perpetuate the enterprise, members and associates of the enterprise discussed the membership, rules, and enforcement of the rules of the SNM; the status of SNM members and associates who were arrested or incarcerated; the discipline of SNM members; SNM members' encounters with law enforcement; the identities of individuals suspected of cooperating with law enforcement and the proposed actions to be taken against them; and plans and agreements regarding the commission of future crimes, including murder, drug distribution, possession of firearms, and assault, as well as ways to conceal these crimes.

- d. It is further part of the means and methods of the enterprise that members and associates of the enterprise conceal from law enforcement the way in which the enterprise conducts its affairs; the locations where enterprise members discussed and conducted the affairs of the enterprise; the locations where enterprise members stored and possessed weapons and narcotics; and the locations where enterprise members maintained the proceeds from narcotics trafficking.
- e. Members of the SNM also used violence to impose discipline within the SNM. It is further part of the means and methods of the enterprise that members and associates of the SNM agreed to distribute narcotics and commit other crimes, and to conceal their criminal activities by obstructing justice, threatening and intimidating witnesses, and other means.

STATEMENT OF PROBABLE CAUSE

29. In the pages that follow, I have outlined the information I believe establishes probable cause to charge **TONY GAUNA, aka: "WHISKERS,"** with the following violations:

Count 1: 18 U.S.C. § 1962(d) RICO Act conspiracy;

Count 2: 18 U.S.C. § 1951 interference with commerce by threats or violence;

Count 3: 18 U.S.C. § 924(c)(1)(A)(ii) brandishing a firearm during or in relation to a crime of violence;

Count 4: 18 U.S.C. § 1951 interference with commerce by threats or violence;

Count 5: 18 U.S.C. § 924(c)(1)(A)(iii) discharging a firearm during or in relation to a crime of violence; and

Count 6: 18 U.S.C. § 922(g)(1) being a felon in possession of a firearm and ammunition.

30. The facts and circumstances detailed below are based on interviews with victims, witnesses, cooperating defendants, SNM members and leaders, previous trial testimony, police reports, corrections department reports, video evidence, recorded interviews, discussions with law enforcement and correctional officers and my knowledge and experience pertaining to the SNM gang.

COUNT 1: 18 U.S.C. § 1962(D) RICO ACT CONSPIRACY

31. Paragraphs one through twenty-eight of this Criminal Complaint are re-alleged and incorporated by reference as though fully set forth herein.

32. Based on my investigation, I believe beginning on or about 1980 and continuing through the present, in the District of New Mexico and elsewhere, the defendant, **TONY GAUNA**, aka: "**WHISKERS**," together with others known and unknown, each being a person employed by and associated with the SNM, an enterprise engaged in, and the activities of which affect, interstate and foreign commerce, unlawfully, knowingly, and intentionally did conspire to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the SNM enterprise through a pattern of racketeering activity, as defined in 18 U.S.C. §§ 1961(1) and (5), which pattern of racketeering activity consisted of:

- a. Multiple acts and threats involving
 - i. murder in violation of NMSA 1978, Sections 30-2-1, 30-1-13, 30-28-1, 30-28-2 and 30-28-3;
 - ii. robbery, in violation of NMSA 1978, Sections 30-16-2, 30-1-13, 30-28-1, 30-28-2 and 30-28-3;
- b. multiple acts involving trafficking in controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and 846; and
- c. multiple acts indictable under:
 - i. 18 U.S.C. § 1512 (relating to tampering with a witness, victim, or an informant);
 - ii. 18 U.S.C. § 1513 (relating to retaliating against a witness, victim, or an informant);
 - and
 - iii. 18 U.S.C. § 1503 (relating to obstruction of justice).

33. It was part of the conspiracy that the defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

OVERT ACTS

34. In furtherance of the conspiracy, and to accomplish the object of the conspiracy, the defendant **TONY GAUNA, aka: "WHISKERS,"** and others known and unknown to the Government, committed various overt acts, on or about the following times and dates, in the District of New Mexico, and elsewhere. Based upon source interviews, cooperating defendant statements and testimony of individuals with personal knowledge of the acts set forth below, law enforcement reports, recordings, and information provided by other law enforcement officials familiar with the SNM and with the acts set forth below, I am aware of the following overt acts:

Overt Act 1

In 1980, a group of inmates at the Penitentiary of New Mexico formed the SNM.

Overt Act 2

Beginning in the 1980s, the SNM designated the prison gangs Los Carnales and the Norteños as their rivals and issued orders to all SNM members to assault their rivals whenever possible.

Overt Act 3

Beginning in the 1980s and continuing up to the present time, the SNM established a hierarchy within the gang, rules and procedures, and recruited street gang members and inmates from around New Mexico to commit and aid in the commission of robberies, burglaries, assaults, kidnappings, murders, drug sales, drug smuggling, drug manufacturing, and the intimidation of witnesses, informants, and rivals, to strengthen and propagate the SNM.

Overt Act 4

In or about 2001, while incarcerated within the Bernalillo County Detention Center (BCDC) in Albuquerque, **TONY GAUNA, aka: "WHISKERS,"** was a member of a Hispanic street gang and recruited into the SNM.

Overt Act 5

In 2003, **TONY GAUNA, aka: "WHISKERS,"** and two other SNM members picked up a person in Albuquerque who had failed to pay an SNM member for drugs. **TONY GAUNA, aka: "WHISKERS,"** stabbed the victim in the neck with a knife and the other SNM members pushed the victim out of the car in the Foothills neighborhood of Albuquerque.

Overt Act 6

In 2003, **TONY GAUNA, aka: "WHISKERS,"** caused 2.5 ounces of heroin to be smuggled into the Central New Mexico Correctional Facility in Los Lunas, New Mexico, where it was distributed among the SNM and sold to other inmates.

Overt Act 7

In 2006, while incarcerated at the Metropolitan Detention Center (MDC) in Albuquerque, **TONY GAUNA, aka: "WHISKERS,"** assaulted FNU LNU "Chaparro," because he had been greenlit by the SNM.

Overt Act 8

In 2007 and 2008, while out of custody and living in Albuquerque, **TONY GAUNA, aka: "WHISKERS,"** sold heroin on a daily basis to a steady stream of clientele.

Overt Act 9

In 2007 and 2008, while out of custody and living in Albuquerque, **TONY GAUNA, aka: "WHISKERS,"** caused heroin to be smuggled into the MDC on a least three occasions, where it was used and distributed by other SNM members.

Overt Act 10

In 2007 and 2008, while out of custody and living in Albuquerque, **TONY GAUNA, aka: "WHISKERS,"** mailed heroin into the Southern New Mexico Correctional Facility (SNMCF) in Las Cruces, New Mexico, on at least six occasions, where it was used and distributed by other SNM members.

Overt Act 11

In 2009, TONY GAUNA, aka: "WHISKERS," obtained an SNM tattoo on his right arm, while incarcerated at the SNMCF.

Overt Act 12

In 2009, TONY GAUNA, aka: "WHISKERS," and another SNM member lured FNU LNU, "Little Phillip," to a park in Roswell, New Mexico, and beat him severely because the victim had been greenlit by the SNM.

Overt Act 13

In 2009, TONY GAUNA, aka: "WHISKERS," burglarized a home in Roswell, New Mexico, because he knew there were several firearms within the residence. TONY GAUNA, aka: "WHISKERS," acquired five rifles and two pistols during the burglary, and subsequently sold them to SNM members in Albuquerque.

Overt Act 14

In 2009, while at a party in Roswell, New Mexico, TONY GAUNA, aka: "WHISKERS," stabbed a rival gang member in the face with a screwdriver.

Overt Act 15

In 2011, while incarcerated at the SNMCF, TONY GAUNA, aka: "WHISKERS," had a Zia symbol with the number 19 tattooed on his chin, which is a common SNM tattoo (S is the 19th letter of the alphabet).

Overt Act 16

In 2012, while incarcerated at the SNMCF, TONY GAUNA, aka: "WHISKERS," had the numbers 1 and 9 tattooed on his hands to symbolize the number 19, which is a common SNM tattoo (S is the 19th letter of the alphabet).

Overt Act 17

In 2013, TONY GAUNA, aka: "WHISKERS," served as the SNM leader of Blue Pod at the SNMCF. In that capacity, TONY GAUNA, aka: "WHISKERS," disciplined SNM members within Blue Pod for failing to exercise, or for other minor violations.

Overt Act 18

In 2014, TONY GAUNA, aka: "WHISKERS," went to the NMCD Restore to Population Program (RPP) with SNM member FREDDY MUNOZ, aka: "Playboy." TONY GAUNA, aka: "WHISKERS," did not complete the program and was thrown out after NMCD officials suspected him of gang activities and he was caught selling drugs to other inmates.

Overt Act 19

In May 2019, TONY GAUNA, aka: "WHISKERS," was released from prison and moved to Las Vegas, New Mexico. TONY GAUNA, aka: "WHISKERS," communicated with other SNM members in the Las Vegas area to determine who was active, what the latest happenings with the gang were, what rivals or other threats were in the area, and who had work.

Overt Act 20

In January-February 2020, TONY GAUNA, aka: "WHISKERS," moved to Albuquerque and began selling heroin on the street.

Overt Act 21

On March 2, 2020, TONY GAUNA, aka: "WHISKERS," stole approximately \$250 worth of clothing from a Burkes store in Albuquerque. A store security guard attempted to block TONY GAUNA's, aka: "WHISKERS," vehicle from leaving the scene; however, TONY GAUNA's, aka: "WHISKERS," vehicle struck the security vehicle and he escaped. TONY GAUNA, aka: "WHISKERS," sold some of the clothing to other SNM members, and to other people who needed it.

Overt Act 22

On or about April 13, 2020, TONY GAUNA, aka: "WHISKERS," shot a dog with a 9mm pistol in Albuquerque and fled the scene because he was a convicted felon.

Overt Act 23

On or about April 15, 2020, TONY GAUNA, aka: "WHISKERS," used a 9mm pistol to rob a Dollar Store in Albuquerque.

Overt Act 24

On or about April 17, 2020, TONY GAUNA, aka: "WHISKERS," and an SNM prospect argued with an individual at an apartment complex in Albuquerque. TONY GAUNA, aka: "WHISKERS," provided a 9mm pistol to an SNM prospect who fired several shots into the front door of the person with whom they had been arguing. TONY GAUNA, aka: "WHISKERS," and the prospective member fled the scene.

Overt Act 25

On or about April 30, 2020, TONY GAUNA, aka: "WHISKERS," robbed a Subway restaurant in Albuquerque, with a 9mm pistol. During the robbery, TONY GAUNA, aka: "WHISKERS," discharged the firearm and bullet fragments struck the victim teller.

Overt Act 26

On or about May 4, 2020, TONY GAUNA, aka: "WHISKERS," traded an ounce of methamphetamine for two stolen APD tactical vests, which were equipped with police gear, badges and police patches. TONY GAUNA, aka: "WHISKERS," intended to utilize the vests for protection, and during armed robberies.

Overt Act 27

On or about May 7, 2020, TONY GAUNA, aka: "WHISKERS," robbed a Walgreens store in Albuquerque at knifepoint.

Overt Act 28

On or about May 7, 2020, TONY GAUNA, aka: "WHISKERS," possessed methamphetamine and heroin for sale, and resisted arrest when stopped in a stolen vehicle.

**COUNT 2: 18 U.S.C. § 1951 INTERFERENCE WITH COMMERCE BY
THREATS OR VIOLENCE**

35. On April 15, 2020, TONY GAUNA, aka: "WHISKERS," robbed the Family Dollar store, located at 1625 Rio Bravo Boulevard SW, Albuquerque. TONY GAUNA, aka: "WHISKERS," filled a shopping cart with laundry detergent, a laundry basket, and other household goods, and displayed a 9mm pistol at an employee during the robbery. The total value of goods stolen was approximately \$150. Most of the stolen items were manufactured outside the State of New Mexico, and therefor travelled in or affected interstate commerce. TONY GAUNA, aka: "WHISKERS," was identified as the armed robber via store surveillance video and a reliable cooperating defendant who is willing to testify in court about the matter.

**COUNT 3: 18 U.S.C. § 924(c)(1)(A)(ii) BRANDISH A FIREARM DURING OR IN
RELATION TO A CRIME OF VIOLENCE**

36. On April 15, 2020, TONY GAUNA, aka: "WHISKERS," brandished a 9mm pistol at an employee during the robbery of the Family Dollar store, located at 1625 Rio Bravo Boulevard SW, Albuquerque. The brandishing of the firearm was reported by a victim employee and captured on store surveillance video.

**COUNT 4: 18 U.S.C. § 1951 INTERFERENCE WITH COMMERCE BY
THREATS OR VIOLENCE**

37. On April 30, 2020, TONY GAUNA, aka: "WHISKERS," robbed the Subway restaurant, located at 13110 Central Avenue SE, Albuquerque. TONY GAUNA, aka: "WHISKERS," discharged a 9mm pistol round into the ground near an employee during the robbery. TONY GAUNA, aka: "WHISKERS," stole approximately \$110 from the cash register during the robbery. The Subway store briefly closed after the robbery to enable an investigation of the crime scene. The majority of the products sold within the Subway store were manufactured outside the State of New Mexico, and therefor travelled

in or affected interstate commerce. **TONY GAUNA, aka: "WHISKERS,"** was identified as the armed robber via store surveillance video and a reliable cooperating defendant who is willing to testify in court about the matter.

**COUNT 5: 18 U.S.C. § 924(c)(1)(A)(iii) DISCHARGE OF A FIREARM DURING
OR IN RELATION TO A CRIME OF VIOLENCE**

38. On April 30, 2020, **TONY GAUNA, aka: "WHISKERS,"** discharged a 9mm pistol into the ground near an employee during the robbery of the Subway restaurant at 13110 Central Avenue SE, Albuquerque. The discharging of the firearm was reported by a victim employee and captured on store surveillance video.

**COUNT 6: 18 U.S.C. 922(G)(1) BEING A CONVICTED FELON IN POSSESSION OF A
FIREARM AND AMMUNITION**

39. I have reviewed court records and criminal history reports for **TONY GAUNA, aka: "WHISKERS,"** and am aware he has several prior felony convictions within the State of New Mexico, to include:

- a. On or about November 12, 2002, **TONY GAUNA, aka: "WHISKERS,"** was convicted of shooting at or from a motor vehicle in the 4th Judicial District Court, Guadalupe County, New Mexico, Case No. D424-CR-2001-00028;
- b. On or about November 12, 2002, **TONY GAUNA, aka: "WHISKERS,"** was convicted of battery upon a peace officer in the 4th Judicial District Court, Guadalupe County, New Mexico, Case No. D424-CR-2001-00028;
- c. On or about April 16, 2007, **TONY GAUNA, aka: "WHISKERS,"** was convicted of auto burglary in the 2nd Judicial District Court, Bernalillo County, New Mexico, Case No. D-202-CR-2007-01228;
- d. On or about February 20, 2007, **TONY GAUNA, aka: "WHISKERS,"** was convicted of unlawful taking of a motor vehicle in the 2nd Judicial District Court, Bernalillo County, New Mexico, Case No. D-202-CR-2006-04099;

- e. On or about February 20, 2007, **TONY GAUNA, aka: "WHISKERS,"** was convicted of receiving or transferring a stolen vehicle and conspiracy in the 2nd Judicial District Court, Bernalillo County, New Mexico, Case No. D-202-CR-2006-04161;
- f. On or about February 20, 2007, **TONY GAUNA, aka: "WHISKERS,"** was convicted of unlawful taking of a motor vehicle in the 2nd Judicial District Court, Bernalillo County, New Mexico, Case No. D-202-CR-2007-00276;
- g. On or about September 21, 2007, **TONY GAUNA, aka: "WHISKERS,"** was convicted of possession of a deadly weapon by a prisoner and tampering with evidence in the 2nd Judicial District Court, Bernalillo County, New Mexico, Case No. D-202-CR-2007-01839;
- h. On or about November 30, 2009, **TONY GAUNA, aka: "WHISKERS,"** was convicted of aggravated burglary with a deadly weapon and aggravated battery with a deadly weapon in the 5th Judicial District Court, Chaves County, New Mexico, Case No. D-504-CR-2009-00330;
- i. On or about September 27, 2009, **TONY GAUNA, aka: "WHISKERS,"** was convicted of possession of a deadly weapon by a prisoner in the 5th Judicial District Court, Chaves County, New Mexico, Case No. D-504-CR-2016-00129;
- j. On or about April 16, 2017, **TONY GAUNA, aka: "WHISKERS,"** was convicted of bringing contraband onto prison grounds in the 8th Judicial District Court, Union County, New Mexico, Case No. D-818-CR-2016-00020.

40. On the following dates, within the County of Bernalillo, New Mexico, **TONY GAUNA, aka: "WHISKERS,"** knowing that he had prior felony convictions, possessed a firearm and ammunition:

- a. On April 13, 2020, **TONY GAUNA, aka: "WHISKERS,"** possessed a 9mm pistol and shot a dog;
- b. On April 15, 2020, **TONY GAUNA, aka: "WHISKERS,"** robbed a Family Dollar store with a 9mm pistol;

- c. On April 17, 2020, **TONY GAUNA, aka: "WHISKERS,"** provided a loaded 9mm pistol to an associate, who fired several rounds into an occupied apartment;
- d. On April 30, 2020, **TONY GAUNA, aka: "WHISKERS,"** robbed a Subway restaurant and discharged a round into the floor during the robbery.

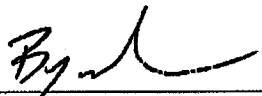
41. The aforementioned incidents were either captured on surveillance video and/or reported by a reliable cooperating defendant, who is willing to testify regarding the described incidents.

42. I am aware there are no firearms manufacturers in New Mexico, thus the 9mm pistol utilized in the aforementioned crimes travelled in or affected interstate commerce. I am also aware the ammunition utilized in the aforementioned shooting incidents was not manufactured in New Mexico and therefore travelled in or affected interstate commerce.

CONCLUSION:


43. Based on the information herein, I believe that there is probable cause to charge **TONY GAUNA, aka: "WHISKERS,"** with violations of 18 U.S.C. §§ 1962(d), 1951 (2-counts), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii) and 922(g)(1); and that the violation(s) took place within the District of New Mexico.

Respectfully submitted,



Bryan M. Acee
Special Agent
Federal Bureau of Investigation

Electronically submitted and telephonically sworn before me.



THE HONORABLE KAREN B. MOLZEN
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF NEW MEXICO