

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN CONTRERAS,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10345
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 21, 2019

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff-Appellee

v.

KEVIN CONTRERAS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-191-1

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

Kevin Contreras appeals his 105-month prison sentence arising from his conviction for illegally possessing a firearm after a felony conviction. He contends that the district court erred by elevating his base offense level under U.S.S.G. § 2K2.1(a)(4)(A) based on its classification of his prior Texas aggravated assault conviction as a crime of violence. For purposes of § 2K2.1, a crime of violence is defined, by reference to U.S.S.G. § 4B1.2(a), to include

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-10345

certain enumerated offenses, including aggravated assault, and other offenses requiring the actual, attempted, or threatened use of physical force against a person. *See* § 2K2.1, comment. (n.1); § 4B1.2(a).

We review de novo the district court's characterization of Contreras's prior offense as a crime of violence. *See United States v. Guillen-Alvarez*, 489 F.3d 197, 198 (5th Cir. 2007). As Contreras acknowledges, we have held that the Texas offense of aggravated assault is a crime of violence under the Sentencing Guidelines because it is equivalent to the generic offense of aggravated assault. *See id.* at 199–201 (applying the crime of violence definition found in the commentary to U.S.S.G. § 2L1.2); *United States v. Rayo-Valdez*, 302 F.3d 314, 318 (5th Cir. 2002) (declaring that the crime of violence definitions in §§ 2L1.2 and 4B1.2 should be construed consistently for enumerated offenses).

There is no merit to Contreras's contentions that *Guillen-Alvarez* should be rejected because it conflicts with *United States v. Dominguez-Ochoa*, 386 F.3d 639 (5th Cir. 2004), and has been abrogated by *United States v. Rodriguez*, 711 F.3d 541 (5th Cir. 2013) (en banc), *abrogated in part on other grounds by Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017). Neither is there merit to Contreras's additional challenge to *Guillen-Alvarez* based on contrary extra-circuit precedent. We are bound by our own precedent unless and until that precedent is altered by a decision of the Supreme Court or this court sitting en banc. *See United States v. Setser*, 607 F.3d 128, 131 (5th Cir. 2010).

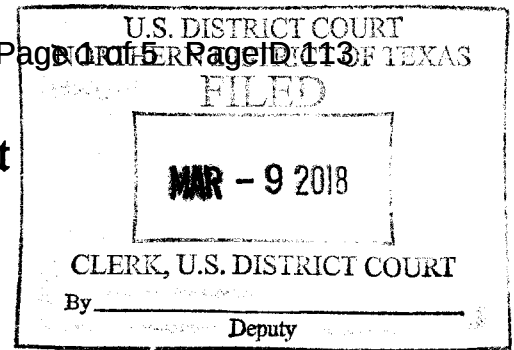
Accordingly, because Texas aggravated assault is an enumerated crime of violence, the district court did not err in sentencing Contreras under § 2K2.1(a)(4)(A), and it is not necessary to consider Contreras's additional argument that aggravated assault is not a crime of violence under the use-of-

No. 18-10345

force prong of § 4B1.2(a)(1). *See Guillen-Alvarez*, 489 F.3d at 198-201 & n.2.
The judgment of the district court is AFFIRMED.

APPENDIX B

United States District Court
Northern District of Texas
Fort Worth Division



UNITED STATES OF AMERICA §
v. §
KEVIN CONTRERAS §

Case Number: 4:17-CR-191-A(01)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, KEVIN CONTRERAS, was represented by Federal Public Defender through Assistant Federal Public Defender Michael A. Lehmann.

The defendant pleaded guilty on October 13, 2017 to the one count indictment filed on September 20, 2017. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2) Felon in Possession of Firearm	06/14/2017	1

As pronounced and imposed on March 9, 2018, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 105 months. This sentence shall run concurrently with any sentences imposed in Case No. 1465946 in Tarrant County Criminal Court No. 9, and Case Nos. 1465941, 1465940, 1465944 in Criminal District Court No. 2 of Tarrant County, Texas.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
6. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.

7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

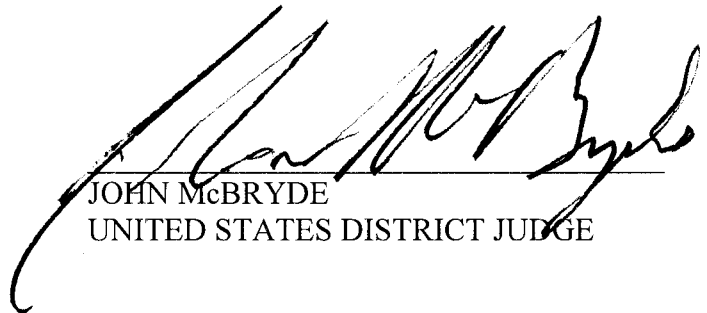
FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: one Remington, 541-S, .22 caliber rifle, bearing serial number 1161182.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 9th day of March 2018.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2018 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal