

No.

In The Supreme Court of the United States

JUAN LUIS RIVERA ARREOLA, PETITIONER

V.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

APPENDIX

1. *United States v. Juan Luis Rivera Arreola*, 4:17cr176(5) (E.D.Tx. February 26, 2020)
2. *United States v. Juan Luis Rivera Arreola*, 831 Fed. Appx. 690, 2020 WL 765848) (5th Cir. October 12, 2020)

District Court Judgment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

UNITED STATES OF AMERICA

v.

JUAN LUIS RIVERA ARREOLA**§ JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **4:17-CR-00176-ALM-CAN(5)**§ USM Number: **75694-279**§ **Camille M Knight**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	1 of the First Superseding Indictment

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §846	Conspiracy to Possess with the Intent to Manufacture and Distribute Methamphetamine	02/14/2018

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 All remaining Count(s) and Underlying Indictment is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 25, 2020

Date of Imposition of Judgment



Signature of Judge

AMOS L. MAZZANT, III
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

February 26, 2020

Date

DEFENDANT: JUAN LUIS RIVERA ARREOLA
CASE NUMBER: 4:17-CR-00176-ALM-CAN(5)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 360 months.

The court makes the following recommendations to the Bureau of Prisons: The Court recommends that Defendant be designated to BOP in South Texas, if appropriate.

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JUAN LUIS RIVERA ARREOLA
CASE NUMBER: 4:17-CR-00176-ALM-CAN(5)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **five (5) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: JUAN LUIS RIVERA ARREOLA
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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JUAN LUIS RIVERA ARREOLA
CASE NUMBER: 4:17-CR-00176-ALM-CAN(5)

SPECIAL CONDITIONS OF SUPERVISION

As a condition of supervised release, immediately upon release from confinement, you must be surrendered to a duly authorized immigration official for deportation proceedings in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. §1101, et seq. If ordered deported, you must remain outside of the United States. In the event you are not deported, or for any reason re-enter the country after having been deported, you must comply with all conditions of supervised release, to include reporting to the nearest United States Probation Office within 72 hours of release by immigration officials or re-entry into the country.

You must provide the probation officer with access to any requested financial information for purposes of monitoring your efforts to obtain and maintain lawful employment.

DEFENDANT: JUAN LUIS RIVERA ARREOLA
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or
- D Payment in equal 20 *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: JUAN LUIS RIVERA ARREOLA
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DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

ineligible for all federal benefits for a period of
 ineligible for the following federal benefits for a period of
(specify benefit(s))

OR

Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

be ineligible for all federal benefits for a period of 5 years.
 be ineligible for the following federal benefits for a period of
(specify benefit(s))
 successfully complete a drug testing and treatment program.
 perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

Fifth Circuit

831 Fed.Appx. 690 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff—Appellee,
v.

Juan Luis RIVERA ARREOLA,
also known as **Juan Arreola**,
Defendant—Appellant.

No. 20-40145

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Summary Calendar

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FILED October 12, 2020

Appeal from the United States District Court for the Eastern District of Texas, USDC No. 4:17-CR-176-5

Attorneys and Law Firms

Stephan Edward Oestreicher, Jr., Ernest Gonzalez, Assistant U.S. Attorney, Bradley Elliot Visosky, Assistant U.S. Attorney, U.S. Attorney's Office, Eastern District of Texas, Plano, TX, for Plaintiff-Appellee

Donald Lee Bailey, Sherman, TX, for Defendant-Appellant

Before King, Smith and Wilson, Circuit Judges.

Opinion

Per Curiam:^{*}

Juan Luis Rivera Arreola appeals the 360-month sentence imposed following his conviction of conspiracy to possess with intent to manufacture and distribute 500 grams or more of a mixture or substance containing methamphetamine or 50 grams or more methamphetamine (actual). He argues that the district court erred by applying a two-level enhancement for the possession of a dangerous weapon when calculating his guidelines range. He urges this court to abandon its

jurisprudence stating that firearms are tools of the illegal narcotics trade and allowing district courts to consider that fact when evaluating whether a coconspirator's possession of a firearm was reasonably foreseeable for purposes of an enhancement under U.S.S.G. § 2D1.1(b)(1).

Rivera Arreola challenges this court's jurisprudence stating that firearms are tools of the trade in illegal narcotics activity. One panel of this court may not overrule another panel's decision without en banc reconsideration or a superseding contrary Supreme Court decision. *United States v. Lipscomb*, 299 F.3d 303, 313 n.34 (5th Cir. 2002). **Rivera Arreola** presents no superseding en banc decision from this court or contrary Supreme Court decision in support of his argument. Therefore, this court is bound by its prior jurisprudence. See *id.*

A two-level increase in the offense level of a drug-trafficking defendant is warranted if a dangerous weapon was possessed. ***691** See § 2D1.1(b)(1) & comment. (n.11(A)). Whether to apply § 2D1.1(b)(1) is a factual question reviewed for clear error. *United States v. Zapata-Lara*, 615 F.3d 388, 390 (5th Cir. 2010). “Nonetheless, we examine de novo the district court's purely legal application of the sentencing guidelines.” *Id.* (internal quotation marks and citation omitted). **Rivera Arreola** is contesting both the district court's factual finding that his coconspirator's possession of a firearm was reasonably foreseeable to him and whether the facts found by the district court are legally sufficient to support the enhancement. Consequently, this court reviews the district court's factual finding for clear error and reviews de novo **Rivera Arreola's** challenge to the application of the dangerous weapon enhancement based on those facts. See *id.*

During an investigation into **Rivera Arreola's** drug activities, he engaged in three multikilogram methamphetamine deals. Two of those deals were with the same buyer, and the third deal, which provided the basis for the dangerous weapon enhancement, was with an unrelated buyer. The record reflects that **Rivera Arreola** and his couriers on the third deal were jointly involved in the sale of 10 kilograms of methamphetamine. Given the amount of drugs and cash involved in the transaction and the facts that (1) **Rivera Arreola** and his coconspirators were not familiar with the buyer, (2) **Rivera Arreola** had lost a substantial amount of drugs and cash in the two prior unrelated deals, and (3) firearms are “tools of the trade” for people involved in illegal narcotics activity, **Rivera Arreola** should have reasonably

foreseen that at least one of his couriers would have a firearm during the drug deal. *United States v. Aguilera-Zapata*, 901 F.2d 1209, 1215 (5th Cir. 1990) (internal quotation marks and citation omitted).

The district court's factual finding that Rivera Arreola should have reasonably foreseen the possession of a firearm by a coconspirator is not clearly erroneous. *See Zapata-Lara*, 615 F.3d at 390; *Aguilera-Zapata*, 901 F.2d at 1215. The district

court did not err by determining that the application of the dangerous weapon enhancement was warranted under the facts of the case. *Zapata-Lara*, 615 F.3d at 390; *Aguilera-Zapata*, 901 F.2d at 1215–16. Accordingly, the judgment of the district court is AFFIRMED.

All Citations

831 Fed.Appx. 690 (Mem)

Footnotes

* Pursuant to 5th Circuit Rule 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 Circuit Rule 47.5.4.

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