

# APPENDIX

**TAB A: FIFTH CIRCUIT'S OPINION**

United States Court of Appeals  
for the Fifth Circuit

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No. 23-50922

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 5, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LONGINO LOPEZ FLORES, IV,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:22-CR-17-1

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Before WIENER, WILLETT, and DUNCAN, *Circuit Judges.*

PER CURIAM:\*

Defendant-Appellant Longino Lopez Flores, IV, pleaded guilty to possessing a firearm after a felony conviction. The district court enhanced Flores's sentence because he possessed the firearm in connection with methamphetamine possession. We affirm.

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I.

On September 6, 2021, Temple Police Department officers attempting to serve a warrant on Flores observed him leaning into the trunk of a BMW registered in his name. As he was arrested, Flores instructed two nearby women to take items from the car, which the officers prevented. The officers then searched the BMW and discovered a black case containing twenty-three grams of meth, a loaded Luger 9mm pistol, a clear baggie of marijuana, and a cell phone.

Flores pleaded guilty to being a felon in possession of a firearm. In the presentence investigation report (“PSR”), the probation officer included a sentence enhancement because Flores possessed the pistol in connection with a felony drug possession offense. The offense level, together with Flores’s violent criminal history, rendered a United States Sentencing Guidelines (“Sentencing Guidelines”) range of 51 to 63 months. The government requested an upper-end sentence of 63 months, which the district court imposed.

Flores timely appealed. We review the district court’s application of the Sentencing Guidelines *de novo* and its factual findings for clear error. *United States v. Luyten*, 966 F.3d 329, 332 (5th Cir. 2020). “[T]he district court may draw reasonable inferences from the facts, and we . . . may affirm on any ground supported by the record.” *Id.*

II.

Section 2K2.1(b)(6)(B) of the Sentencing Guidelines provides a four-level enhancement for a conviction under 18 U.S.C. § 922(g)(1) when “the defendant used or possessed any firearm . . . in connection with another felony offense[.]” U.S.S.G. § 2K2.1(b)(6)(B). When the other felony offense is drug possession, the firearm is connected if it “facilitated[] or had the potential of facilitating” the drug possession. *Id.* at cmt. n.14(A). This

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requirement is satisfied if the firearm was present for protection or to embolden the actor. *See United States v. Jeffries*, 587 F.3d 690, 695 (5th Cir. 2009) (citing *United States v. Jenkins*, 566 F.3d 160, 164 (4th Cir. 2009)).

Flores contends the record is insufficient to support the enhancement. We disagree. The PSR and sentencing memorandum show that Flores stored his loaded pistol in the same case as the twenty-three grams of meth.<sup>1</sup> Officers were also informed that, only a few nights before the arrest, shots had been fired between Flores and his brother.

From these facts, the district court could have reasonably inferred that Flores's firearm had at least "the potential" to protect his considerable meth stash. In particular, the storage of the loaded Luger in the same case as a substantial amount of meth supports the inference that the gun's presence was not a mere fortuity. *Compare Jenkins*, 566 F.3d at 164 ("To say that the only evidence of facilitation in this case was the evidence of simultaneous possession implies that the presence of the firearm was the result of mere 'accident or coincidence,' which certainly was not the case." (citation omitted)), *with Jeffries*, 587 F.3d at 691-94 (concluding the record was too sparse to support the enhancement when officers discovered only "a single rock of crack cocaine" on the floor of a car and apart from the firearm), *and United States v. Garza*, No. 22-20338, 2023 WL 3918993, at \*4 (5th Cir. June 9, 2023) (per curiam) (unpublished) (holding the record was insufficient to support the enhancement when it merely showed the defendant "possessed

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<sup>1</sup> In general, PSRs and sentencing memoranda are sufficiently reliable to support factual findings at sentencing, and Flores did not present any evidence to contest their accuracy here. *See United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (per curiam) ("Mere objections to such supported facts are generally insufficient."); *United States v. Bates*, No. 99-40360, 2000 WL 1672709, at \*4 n.3 (5th Cir. Oct. 17, 2000) (per curiam) (unpublished) ("The district court can . . . rely upon the sentencing memorandum[] . . .").

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the drugs and firearm at the same time”). Accordingly, the district court did not clearly err in imposing the sentencing enhancement.<sup>2</sup>

**AFFIRMED.**

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<sup>2</sup> We therefore need not reach the government’s argument, raised for the first time on appeal, that the significant meth amount itself plausibly connects the firearm to a felony trafficking offense.

**TAB B: JUDGMENT IN A CRIMINAL CASE**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
Waco DIVISION

UNITED STATES OF AMERICA

v.

Longino Lopez Flores IV

Case Number: 6:22-CR-00017(1)- ADA

USM Number: 15931-510

Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, Longino Lopez Flores IV, was represented by Phil Martinez.


The defendant pled guilty to Count(s) One of the Indictment on June 6, 2023. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1) (a)(2)	Possession of a Firearm by a Convicted Felon	September 6, 2021	One (1)

As pronounced on December 13, 2023, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall 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.

Signed this 18th day of December, 2023.

  
ALAN D. ALBRIGHT  
United States District Judge



DEFENDANT: Longino Lopez Flores IV  
CASE NUMBER: 6:22-CR-00017(1)-ADA

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **SIXTY-THREE (63) Months as to count One (1)**.

The Court makes the following recommendation to the Bureau of Prisons:

That the defendant serve this sentence at F. C. I. Bastrop, Texas.

**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: Longino Lopez Flores IV  
CASE NUMBER: 6:22-CR-00017(1)-ADA

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) Years as to count One (1)**.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

- The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. §1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.
- The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program shall include testing and examination to determine if the defendant has reverted to the use of drugs and alcohol. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment if financially able.
- The defendant shall provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
- The defendant shall not incur new credit charges, or open additional lines of credit without the approval of The Court.
- If the defendant is ordered by the government to make child support payments or to make payments to support a person caring for a child, the defendant shall make the payments and comply with the other terms of the order.

DEFENDANT: Longino Lopez Flores IV  
CASE NUMBER: 6:22-CR-00017(1)-ADA

## CONDITIONS OF SUPERVISION

### Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

### Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.
- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

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- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

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### **CRIMINAL MONETARY PENALTIES/SCHEDULE**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment.

Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be paid through the Clerk, United States District Court, Attn: Mail Log, 800 Franklin, Suite 380, Waco, TX, 76701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through Pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW622CR000017-001 to ensure proper application to your criminal monetary penalty.** The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

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

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Federal Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the U.S. Probation office and approved by the Court.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTAL:	\$100.00	\$1,000.00	\$0.00	\$0.00	\$0.00

#### **Special Assessment**

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00. The debt is incurred immediately.

#### **Fine**

The defendant shall pay a fine of \$1,000.00. The Court finds the defendant has the present and future ability to pay a reduced fine. This is the total of the fines imposed on individual counts, as follows. \$1,000.00 on count One (1).

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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.

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.