

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

No. 96-10302

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS RIVAS;

Defendant-Appellant.

Appeals from the United States District Court
for the Northern District of Texas

January 29, 1999

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC
(Opinion 10/2/98, 5 Cir., 157 F.3d 364)

Before DUHÉ, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:

The petition for panel rehearing is DENIED. In denying rehearing the panel emphasizes that we do not suggest that there are no circumstances under which force might be appropriate to effectuate a border search. These are fact intensive inquiries.

The court having been polled at the request of one of its members and a majority of the judges who are in regular active service not having voted in favor (Fed. R. App. P. 35, 5th Cir. R. 35) the suggestion for rehearing en banc is DENIED.