

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-21242  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS ALBERTO ALVA-OTOYA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-01-CR-517-ALL  
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February 20, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Luis Alberto Alva-Otoya pleaded guilty to an indictment charging him with being found illegally in the United States following deportation and has appealed his sentence. Alva contends that his prior state conviction for possession of cocaine was not an "aggravated felony" under amendments to U.S.S.G. § 2L1.2(b)(1)(C), which became effective on November 1, 2001. Alva contends that the amendments overruled this court's decision in United States v. Hinojosa-Lopez, 130 F.3d 691, 693-94

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 1997). This argument was rejected recently in United States v. Caicedo-Cuero, 312 F.3d 697, 705-11 (5th Cir. 2002).

Alva states also that he wishes to preserve for possible further review the question whether simple possession of a controlled substance is not a "drug trafficking crime" and hence is not an "aggravated felony" for purposes of 8 U.S.C. §§ 1101(a)(43)(B) and 1326(b)(2). He concedes that this court has held to the contrary. See Hinojosa, 130 F.3d at 693-94; see also Caicedo, 2002 WL 31521599, \*8-11. The judgment is

AFFIRMED.