

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-41026  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TRACY ALLEN PRICHARD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-01-CR-280-ALL  
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August 1, 2002

Before JONES, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Tracy Allen Prichard appeals from his sentence for transportation of illegal aliens by means of a motor vehicle for private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). Prichard argues that the district court erred in imposing an enhancement pursuant to U.S.S.G. § 2L1.1(b)(5) for intentionally or recklessly creating a substantial risk of death or serious bodily injury to another. Prichard was found transporting

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

three illegal aliens tightly packed in the bed of a pickup truck underneath and among a toolbox and pottery. We conclude that it was plausible in light of the record as a whole that the aliens were subject to a serious risk of harm by being transported in such a manner, and the district court's judgment was not clearly erroneous. See United States v. Edwards, 65 F.3d 430, 432 (5th Cir. 1995); see also U.S.S.G. § 2L1.1, comment. (n.6).

Prichard also argues that the district court's written judgment that he must make payments toward the costs of a drug aftercare program as part of his supervised release conflicts with the oral pronouncement, which made no mention of such payments. He argues in the alternative that the district court unlawfully delegated to the probation officer the authority to determine his ability to pay the costs. We have recently rejected nearly identical arguments. See United States v. Warden, \_\_ F.3d \_\_ (5th Cir. May 14, 2002, No. 01-40961), 2002 WL 977273 at \*2-3.

**AFFIRMED.**