

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

United States Court of Appeals
Fifth Circuit

FILED

September 26, 2013

No. 13-40099
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROELMIRO GARCIA-HERNANDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:12-CR-662-1

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

Roelmiro Garcia-Hernandez (Garcia) appeals his conviction for being an alien unlawfully present in the United States following removal. He argues that the district court erred by providing in the written judgment that he was convicted of being an alien unlawfully present in the United States following removal subsequent to a conviction for an aggravated felony because none of his prior convictions were aggravated felony convictions. He does not challenge his guilty plea or his sentence, and he requests only that the case be remanded to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-40099

the district court for reformation of the written judgment or that we reform the written judgment.

As the Government concedes, Garcia's prior conviction for aggravated arson was not an aggravated felony conviction because he was sentenced to less than one year of imprisonment for that offense. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 368-69 (5th Cir. 2009). His other prior convictions for bail jumping and disorderly conduct were also not aggravated felony convictions. *See* 8 U.S.C. § 1101(a)(43). Accordingly, Garcia's conviction was properly under 8 U.S.C. § 1326(b)(1), not § 1326(b)(2).

While the written judgment identifies Garcia's conviction as being under § 1326(a) and (b) without specifying the subsection of § 1326(b), the written judgment states that the offense was being an "Alien Unlawfully Found in the United States After Deportation, Having Been Previously Convicted of an Aggravated Felony." The written judgment is REFORMED to provide that the offense was being an "Alien Unlawfully Found in the United States After Deportation Having Been Previously Convicted of a Felony." As reformed, the judgment of the district court is AFFIRMED.