

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

United States Court of Appeals  
Fifth Circuit

**FILED**

January 8, 2015

Lyle W. Cayce  
Clerk

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No. 14-40208  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ABRAHAM HERNANDEZ-ALDAY,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:13-CR-409-1

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Before HIGGINBOTHAM, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Abraham Hernandez-Alday pleaded guilty to being found unlawfully present in the United States following removal; he received a below-guidelines range sentence of 30 months of imprisonment.

The parties agree that, because Hernandez-Alday was sentenced to deferred adjudication for a prior burglary conviction, he was not convicted of an aggravated felony and, thus, the judgment improperly reflects that he was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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convicted and sentenced under 8 U.S.C. § 1326(b)(2). *See United States v. Mondragon-Santiago*, 564 F.3d 357, 368 (5th Cir. 2009). Because Hernandez-Alday's offense was a § 1326(b)(1) violation rather than a § 1326(b)(2) violation, we REMAND for the limited purpose of reforming the judgment to reflect the proper statute of conviction. *See* 28 U.S.C. § 2106. In all other respects, the judgment is AFFIRMED.