

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

No. 13-41342
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
September 9, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARNOLDO VELASQUEZ-CONTRERAS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:13-CR-563-1

Before PRADO, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:*

Arnoldo Velasquez-Contreras pleaded guilty to one count of being unlawfully present in the United States following a deportation subsequent to being convicted of an aggravated felony, and he was sentenced to 46 months in prison and three years of supervised release. On appeal, Velasquez-Contreras contends that the district court erred in considering a New York Certificate of Disposition to determine whether his 2012 attempted second-degree assault

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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conviction constituted a crime of violence warranting a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii). A Certificate of Disposition from New York is a judicial record under state law and contains sufficient indicia of reliability to be used as rebuttable evidence that a defendant was convicted under a specific statutory subsection. *United States v. Neri-Hernandes*, 504 F.3d 587, 591-92 (5th Cir. 2007). The Certificate of Disposition reflects that Velasquez-Contreras was convicted under N.Y. PENAL LAW § 120.05(2) (McKinney 2012), which constitutes a crime of violence. *See id.* Velasquez-Contreras concedes that his arguments against the use of the Certificate of Disposition are foreclosed by *Neri-Hernandes*, but he seeks to preserve the issue for further review.

The appellant's motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.