

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

No. 15-41735
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MOISES ULLOA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:15-CR-1036-1

Before KING, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Moises Ulloa pleaded guilty to reentering the United States after having previously been removed and was sentenced to 41 months of imprisonment, followed by three years of supervised release. In this appeal, he challenges the district court's entry of a judgment under 8 U.S.C. § 1326(b)(2), which provides for a maximum sentence of 20 years for an alien whose prior removal was subsequent to a conviction for an "aggravated felony." Ulloa correctly

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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maintains that the qualifying prior felony, a 2012 New York conviction for attempted robbery, did not constitute an “aggravated felony” because he was not sentenced to a term of imprisonment of at least one year. *See* § 1326(b)(2); 8 U.S.C. § 1101(a)(43)(F). Accordingly, Ulloa’s conviction and sentence are **AFFIRMED**. We **REMAND** the case to the district court for the limited purpose of reforming the judgment to reflect Ulloa’s conviction under § 1326(b)(1) instead of § 1326(b)(2).