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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDRE PATRICK HOLLAND,

Defendant - Appellant.

No. 08-50434

D.C. No. 5:01-cr-0011-VAP-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Argued and Submitted November 6, 2009
Pasadena, California

Before: SCHROEDER and IKUTA, Circuit Judges, and SEDWICK,** District
Judge.

The district court did not err in denying Holland’s request to apply the
“safety valve” in 18 U.S.C. § 3553(f) on a motion for reduction of sentence under
18 U.S.C. § 3582(c)(2), because modification of a sentence under § 3582(c)(2)

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable John W. Sedwick, United States District Judge for the
District of Alaska, sitting by designation.

“does not amount to a new sentencing for purposes of the safety valve statute.”
United States v. Stockdale, 129 F.3d 1066, 1068 (9th Cir. 1997). Moreover,
Sentencing Commission policy statements prevent use of § 3553(f) in § 3582(c)
proceedings. *See* U.S.S.G. §§ 1B1.10(a)(3), 1B1.10(b)(1). “[C]onsistency with
the policy statements is a mandatory condition” under § 3582(c)(2). *United States*
v. Sipai, 582 F.3d 994, 995 (9th Cir. 2009).

AFFIRMED.