

JAN 26 2010

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NOT FOR PUBLICATION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.

ABRAHAM FERREL GUTIERREZ,

Defendant - Appellant.

No. 09-50080

D.C. No. 2:03-cr-00460-RSWL

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Abraham Ferrel Gutierrez appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Gutierrez contends that the district court erred when it denied his motion for a sentence reduction, pursuant to 18 U.S.C. § 3582(c)(2). The district court correctly determined that it did not have the authority to reduce Gutierrez's sentence because Amendment 706 did not affect the applicable sentencing range. *See* 18 U.S.C. § 3582(c); *see also United States v. Leniear*, 574 F.3d 668, 674 (9th Cir. 2009). We reject Gutierrez's contention that application of § 3582(c)(2) to the drug quantity in his case renders his Guidelines' range mandatory.

AFFIRMED.