

JAN 07 2015

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NOT FOR PUBLICATION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.

LUCIANO RAMIREZ-SALAZAR,

Defendant - Appellant.

No. 12-16786

D.C. Nos. 2:11-cv-03206-JAM-
GGH2:97-cr-00591-JAM-
GGH-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Argued and Submitted November 18, 2014
San Francisco, California

Before: GOULD and WATFORD, Circuit Judges, and MARTINEZ, District
Judge.**

The district court dismissed Luciano Ramirez-Salazar's most recent 28
U.S.C. § 2255 motion as second or successive. Ramirez-Salazar concedes that his
motion contains at most one claim that is not so barred—a claim of ineffective

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

** The Honorable Ricardo S. Martinez, District Judge for the U.S.
District Court for the Western District of Washington, sitting by designation.

assistance of counsel during his 18 U.S.C. § 3582(c)(2) sentence reduction proceeding.

We need not decide whether that claim is also second or successive, because the claim is without merit in any event. Ramirez-Salazar did not have a constitutional right to counsel during his § 3582(c)(2) proceeding. *United States v. Townsend*, 98 F.3d 510, 512–13 (9th Cir. 1996) (per curiam). Ramirez-Salazar argues that our holding in *Townsend* is no longer good law, but the intervening Supreme Court decisions he cites are not “clearly irreconcilable” with *Townsend*, see *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). With “no constitutional right to counsel, [Ramirez-Salazar] could not be deprived of the effective assistance of counsel.” *Wainwright v. Torna*, 455 U.S. 586, 587–88 (1982) (per curiam).

AFFIRMED.