

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 17 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 16-56805

Plaintiff-Appellee,

D.C. Nos. 3:16-cv-02081-DMS
3:12-cr-04965-DMS

v.

WILMER ALEXIS ERAZO HERNANDEZ,
a.k.a. Lacra,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted May 15, 2018**

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

Wilmer Alexis Erazo Hernandez appeals pro se from the district court's
order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Hernandez contends that he is eligible for a sentence reduction under

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

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

Amendment 794 to the Sentencing Guidelines. We review de novo whether a district court had authority to modify a sentence under section 3582(c)(2). *See United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009). A court may not grant a sentence reduction under section 3582 unless such a reduction would be consistent with the applicable policy statements issued by the Sentencing Commission, as reflected in U.S.S.G. § 1B1.10. *See* 18 U.S.C. § 3582(c)(2); *United States v. Ornelas*, 825 F.3d 548, 549-50 (9th Cir. 2016). Section 1B1.10 does not include Amendment 794 in its list of covered amendments. *See* U.S.S.G. § 1B1.10(d). As a result, although we have held that Amendment 794 is retroactive, *see United States v. Quintero-Leyva*, 823 F.3d 519, 523 (9th Cir. 2016), the district court properly determined that Amendment 794 cannot serve as the basis for a sentence reduction under section 3582(c)(2). *See* U.S.S.G. § 1B1.10 cmt. n.1(A) (“Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d).”); *Ornelas*, 825 F.3d at 550 (court has discretion to lower a sentence if the guideline range has been lowered as a result of an amendment listed in section 1B1.10(d)).

AFFIRMED.