

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 24 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-30192

Plaintiff-Appellee,

D.C. No. 1:13-cr-00123-DCN-1

v.

HERNAN GOMEZ-GUTIERREZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Submitted March 16, 2022**

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Hernan Gomez-Gutierrez appeals pro se from the district court's orders denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) and motion for reconsideration. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

In the district court, the government argued that Gomez-Gutierrez's motion should be denied because he had not exhausted his administrative remedies as § 3582(c)(1)(A) requires. The district court assumed, without deciding, that Gomez-Gutierrez had exhausted and denied his motion on the merits. After the district court's decision, we held that the exhaustion requirement "is mandatory and must be enforced when properly raised by the government." *United States v. Keller*, 2 F.4th 1278, 1282 (9th Cir. 2021). In light of this authority, and Gomez-Gutierrez's concession on appeal that he did not exhaust his administrative remedies, we affirm the district court's denial of Gomez-Gutierrez's motion. We do not reach Gomez-Gutierrez's remaining arguments. *See id.* at 1283 n.2.

This disposition is without prejudice to Gomez-Gutierrez filing a new motion for compassionate release in the district court after he exhausts his administrative remedies.

AFFIRMED.