

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-7804**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CARLOS ENRIQUEZ HERNANDEZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, District Judge. (CR-95-262; CA-03-484)

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Submitted: May 7, 2004

Decided: May 24, 2004

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Before WILLIAMS, MICHAEL, and MOTZ, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Carlos Enriquez Hernandez, Appellant Pro Se. Anna Mills Wagoner, United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Carlos Enriquez Hernandez appeals the district court's order denying his motion to modify his term of imprisonment.\* We have reviewed the record and find no reversible error. As the district court held, Amendment 640 to the Sentencing Guidelines is a substantive amendment, which cannot be retroactively applied absent express authorization in U.S.S.G. § 1B1.10(c). See U.S. Sentencing Guidelines Manual § 1B1.10(a) (2002); United States v. Hernandez, No. CR-95-262 (M.D.N.C. Oct. 28, 2003). Amendment 640 is not listed in § 1B1.10(c). Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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\*Hernandez correctly argues that a certificate of appealability is not required for review of the district court's denial of his motion to modify his term of imprisonment under 18 U.S.C. § 3582(c)(2) (2000). See 28 U.S.C. § 2253(c)(1)(B) (2000).