

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 13 2020

FOR THE NINTH CIRCUIT

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

OSCAR RAFAEL ALVARADO  
HENRIQUEZ, AKA Oscar R. Alvarado,  
AKA Oscar Rafael Alvarado-Henriquez,

Petitioner-Appellant,

v.

WILLIAM P. BARR, Attorney General;  
WENDELL ANDERSON, Sheriff Coroner  
of Yuba County,

Respondents-Appellees.

No. 19-16790

D.C. No. 2:18-cv-03128-KJM-KJN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Kimberly J. Mueller, District Judge, Presiding

Submitted May 6, 2020\*\*

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Former federal prisoner Oscar Rafael Alvarado Henriquez appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas corpus

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\* 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).

petition and denying his motion for stay of removal. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

On appeal, Henriquez challenges only the dismissal of his § 2241 habeas petition, contending the district court erred by failing to address the merits of his petition. We review de novo. *See Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011). The district court properly concluded that Henriquez cannot bring a § 2241 habeas petition under the escape hatch of 28 U.S.C. § 2255(e). Henriquez did not establish that he is actually innocent of the crime of conviction. *See Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006). Moreover, Henriquez cannot demonstrate that he has not had an “unobstructed procedural shot” at presenting his claims; he could have raised them in a timely 28 U.S.C. § 2255 motion and may still seek other collateral relief in the sentencing court. *See Harrison v. Ollison*, 519 F.3d 952, 960-61 (9th Cir. 2008). Accordingly, the district court properly dismissed Henriquez’s petition for lack of jurisdiction. *See id.* at 961-62.

Appellee’s motion to take judicial notice is granted.

**AFFIRMED.**