

CAROL GREER WATKINS, JR.	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-28
DALLAS B. JONES	§	

generally must be brought under 28 U.S.C. § 2255, not § 2241. *Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000).

Circuit precedent holds that the savings clause of § 2255, which in some instances allows a petitioner to proceed under § 2241, “applies to a claim: (i) that is based on a retroactively applicable Supreme Court decision which establishes that the petitioner may have been convicted of a nonexistent offense and (ii) that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner’s trial, appeal, or first § 2255 motion.” *Reyes-Requena v. United States*, 243 F.3d 893 (5th Cir. 2001). As the Magistrate Judge concluded, petitioner failed to meet the first prong of the *Reyes-Requena* test. Petitioner’s claims do not demonstrate that he was convicted of “a nonexistent offense” as required by the actual innocence prong of *Reyes-Requena*. Therefore, the petitioner may not pursue his claims concerning his sentence under § 2241.

### **ORDER**

Accordingly, petitioner’s objections (document no. 14) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 8) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge’s recommendation.

So **ORDERED** and **SIGNED** this **17** day of **July, 2017**.



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Ron Clark, United States District Judge