NOT FOR PUBLICATION

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MAY 13 2020

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

* 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.