

**FILED**

August 17, 2004

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 04-30367  
Conference Calendar

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MARCELO ESPINOSA,

Petitioner-Appellant,

versus

WARDEN, UNITED STATES PENITENTIARY POLLOCK,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 1:03-CV-2208  
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Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:\*

Marcelo Espinosa, federal prisoner # 16482-018, appeals the district court's order denying and dismissing with prejudice his application for writ of habeas corpus. Espinosa argues that the district court erred in finding that he did not satisfy the requirements for filing a 28 U.S.C. § 2241 application under 28 U.S.C. § 2255's "savings clause." Espinosa argues that because he was charged with a violation of 18 U.S.C. § 2(b), he was convicted of a non-existent offense; that the jury must

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

determine the drug quantity used for sentencing; that he was subject to a maximum sentence of only 20 years of imprisonment; and that he is actually innocent of the career offender enhancement of U.S.S.G. § 4B1.1. He asserts that he should be allowed to raise his claims via a § 2241 application and requests that this court reconsider its holding in Reyes-Requena v. United States, 243 F.3d 893 (5th Cir. 2001).

Espinosa has not met his burden of showing that he meets the requirements for filing a 28 U.S.C. § 2241 application under the savings clause of 28 U.S.C. § 2255. He has not pointed to a retroactively applicable Supreme Court decision which establishes that he may have been imprisoned for conduct that was not prohibited by law. Nor has he shown that his claim was foreclosed by circuit law at the time of his guilty-plea conviction, appeal, or first § 2255 motion. See Reyes-Requena, 243 F.3d at 903-04.

AFFIRMED.