

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-50674



A True Copy
Certified order issued Apr 17, 2018

In re: MICHAEL LARA SALAS,

Movant

John W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Motion for an order authorizing
the United States District Court for the
Western District of Texas to consider
a successive 28 U.S.C. § 2255 motion

Before SMITH, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:

Michael Lara Salas, federal prisoner # 54427-080, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. In accordance with a written plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), Salas is serving a 288-month sentence for trafficking in cocaine and heroin. None of Salas’s proposed claims are based on newly discovered evidence. *See* § 2255(h)(1).

In pertinent part, Salas asserts that he is entitled to relief under *Burrage v. United States*, 134 S. Ct. 881 (2014). In *Burrage*, the Supreme Court held that, in order to apply the mandatory sentence under 21 U.S.C. § 841(b)(1)(C) for a death resulting from the defendant’s drug trafficking, it is necessary to establish beyond a reasonable doubt that the death would not have occurred “but for” the defendant’s conduct. *Burrage*, 134 S. Ct. at 887-92. However,

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Burrage was decided on direct appeal, and nothing suggests that the Supreme Court has made *Burrage* retroactive to cases on collateral review. See § 2255(h)(2). Moreover, in *Burrage* the Court was interpreting a statute, § 841(b)(1)(C), and did not announce a new rule of constitutional law. See *Burrage*, 134 S. Ct. at 885-92; *Santillana v. Upton*, 846 F.3d 779, 783 (5th Cir. 2017) (addressing savings clause issue and concluding that *Burrage* was a new rule of statutory law). Salas fails to satisfy the requirements of § 2255(h).

IT IS ORDERED that Salas's motion for authorization to file a successive § 2255 motion is DENIED.