

**FILED**

**NOV 20 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO JOSE ESPINOZA,

Defendant - Appellant.

No. 05-56780

D.C. Nos. CV-05-00396-JTM  
CR-01-03423-JTM

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, District Judge, Presiding

Submitted October 22, 2007\*\*

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Mario Jose Espinoza appeals pro se from the district court's judgment denying his 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Espinoza contends that his trial attorney was ineffective because she failed to conduct a reasonable investigation. We conclude that Espinoza has failed to prove prejudice resulting from the allegedly unreasonable investigation. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984).

To the extent that Espinoza is raising an “actual innocence” claim in his reply brief, a claim not raised before the district court or in his opening brief, we construe that argument as a motion to expand the certificate of appealability and we deny the motion. *See Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999) (per curiam).

**AFFIRMED.**