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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO JAVIER OROZCO-
BORBOA,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Respondents - Appellees.

No. 05-16344

D.C. No. CV-05-00231-DCB

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted November 13, 2007**

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Federal prisoner Francisco Javier Orozco-Borboa appeals *pro se* from the district court's judgment dismissing his habeas petition under 28 U.S.C. § 2241.

We have jurisdiction under 28 U.S.C. § 1291.

* 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).

On January 25, 2007, a motions panel of this court certified for appeal the issue of whether “the district court erred in recharacterizing appellant’s 28 U.S.C. § 2241 petition as an initial 28 U.S.C. § 2255 motion.” Upon further review of the record, we conclude that the district court did not, in fact, so recharacterize appellant’s petition. Hence we vacate the certificate of appealability previously granted. Because we therefore lack subject-matter jurisdiction, we dismiss the appeal. *See* 28 U.S.C. § 2253(c)(2); *Phelps v. Alameda*, 366 F.3d 722, 730-31 (9th Cir. 2004).

DISMISSED.