

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

LUIS ALBERTO SUAREZ,
Petitioner-Appellant,

v.

KEVIN ROONEY, Acting
Commissioner, Immigration and
Naturalization Service; JOHN
ASHCROFT, Attorney General, United
States Department of Justice; LOUIS
D. CROCETTI, JR., District Director,
Immigration and Naturalization
Service; DOUGLAS DEVENUYNS,
Wicomico County Detention
Facility; U.S. IMMIGRATION AND
NATURALIZATION SERVICE,
Respondents-Appellees.

No. 02-6170

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
William M. Nickerson, Senior District Judge.
(CA-01-1722-WMN)

Argued: December 5, 2002

Decided: January 6, 2003

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

ARGUED: Jay Schine Marks, MARKS & KATZ, L.L.C., Silver Spring, Maryland, for Appellant. Papu Sandhu, Senior Litigation Counsel, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees. **ON BRIEF:** Robert D. McCallum, Jr., Assistant Attorney General, Emily Anne Radford, Assistant Director, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION**PER CURIAM:**

Luis Suarez appeals the district court's procedural dismissal of his 28 U.S.C.A. § 2241 (West 1994) petition in which he sought to challenge his removal from the United States by the Immigration and Naturalization Service, claiming that he is a United States citizen. The merits of Suarez's case are currently before this court in a separate proceeding, *see Suarez v. INS*, No. 02-1813, in which Suarez advances the same challenge under 8 U.S.C.A. § 1252(b)(5) (West 1999) and which is presently in the briefing stage. Suarez's petition for review on the merits renders moot the jurisdictional issue in the current appeal by causing it to lose "its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law." *Maryland Highways Contractors Ass'n, Inc. v. Maryland*, 933 F.2d 1246, 1249 (4th Cir. 1991) (quoting *Diffenderfer v. Central Baptist Church*, 404 U.S. 412, 414 (1972)). Accordingly, we dismiss this appeal without prejudice to the right of either party to move the district court, under Federal Rule of Civil Procedure 60(b), to vacate its judgment. *See Pressley Ridge Schools v. Shimer*, 134 F.3d 1218, 1222 (4th Cir. 1998) (dismissing

an appeal without vacatur because the parties were not cognizant of, nor briefed the court on, whether vacatur was proper); *see also Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 121 (4th Cir. 2000) (holding that district courts should consider the same factors of voluntariness and extraordinary circumstances in considering vacatur as courts of appeals).

DISMISSED