

UNPUBLISHED

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

JOSE PICHARDO, a/k/a Jose, a/k/a  
Eddy Hernandez,  
*Defendant-Appellant.*

No. 03-6370

Appeal from the United States District Court  
for the Eastern District of Virginia, at Richmond.  
James R. Spencer, District Judge.  
(CR-97-362)

Submitted: May 20, 2003

Decided: June 11, 2003

Before WIDENER, WILKINSON, and MOTZ, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Jose Pichardo, Appellant Pro Se. Gurney Wingate Grant, II, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

**OPINION**

## PER CURIAM:

Jose Pichardo seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2241 (2000) petition, which it construed as a 28 U.S.C. § 2255 (2000) motion. Pichardo's petition sought a declaratory judgment permanently enjoining the United States from seeking his deportation, or, at the least, his deportation to the Dominican Republic. Because Pichardo does not challenge the validity of his conviction or sentence, the district court improperly construed Pichardo's petition as a § 2255 motion. *See In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997). Thus, no certificate of appealability is required to appeal the district court's order and the standards therefor are inapplicable to this case. *See Miller-El v. Cockrell*, 123 S. Ct. 1029, 1040 (2003). Furthermore, Pichardo sought relief under § 2241 because the sentencing order for his conviction under 21 U.S.C. § 846 (2000) did not memorialize any agreement by the Government not to deport him. Indeed, the district court would have had no jurisdiction in Pichardo's criminal proceeding to enjoin his deportation in the future. Because neither the Attorney General nor the INS has ordered Pichardo's departure, his petition must be and is denied without prejudice as premature. We express no opinion as to whether the Government has failed to fulfill any agreement not to have Pichardo deported. Accordingly, we affirm the district court's denying relief on that alternate ground. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*AFFIRMED*