

UNPUBLISHED  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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.  
KENNETH JOSEPH FARWELL,  
*Defendant-Appellant.*

No. 02-7118

Appeal from the United States District Court  
for the Eastern District of Virginia, at Alexandria.  
T. S. Ellis, III, District Judge.  
(CR-01-13-A, CA-02-728-AM)

Submitted: September 16, 2002

Decided: October 10, 2002

Before WILKINS, MOTZ, and TRAXLER, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Kenneth Joseph Farwell, Appellant Pro Se. Gerald J. Smagala,  
OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Vir-  
ginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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**OPINION**

## PER CURIAM:

Kenneth Joseph Farwell seeks to appeal the district court's orders denying his petition filed under 28 U.S.C. § 2241 (2000), which the district court construed as Farwell's first motion under 28 U.S.C. § 2255 (2000), and his motion for reconsideration. The district court did not give Farwell notice and an opportunity to respond before recharacterizing his motion as one filed under § 2255, as required by this court's recent decision in *United States v. Emmanuel*, 288 F.3d 644 (4th Cir. 2002). We therefore grant a certificate of appealability, vacate the district court's orders, and remand in light of *Emmanuel* for the district court to provide Farwell with notice of its intention to recharacterize his filing and an opportunity for him to respond by proceeding with the recharacterization as a § 2255 motion or by electing to have the district court address the merits of his § 2241 petition. *See id.* at 649-50. 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.

VACATED AND REMANDED