

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2208

In Re: JORGE L. LERMA-DUENAS,

Petitioner.

On Petition for Writ of Mandamus.
(0:13-cv-01076-RBH)

Submitted: November 6, 2013

Decided: November 21, 2013

Before SHEDD, FLOYD, and THACKER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Jorge L. Lerma-Duenas, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jorge L. Lerma-Duenas petitions for a writ of mandamus seeking an order directing the district court to grant his petition filed pursuant to 28 U.S.C.A. § 2241 (West 2006 & Supp. 2013),* and order his release from custody and removal to Mexico. We conclude that Lerma-Duenas is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007).

The relief sought by Lerma-Duenas is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for writ of

* To the extent the petition for a writ of mandamus asserts that the district court has unduly delayed acting on Lerma-Duenas' § 2241 petition, such claim is mooted by the court's entry of judgment dismissing the petition without prejudice. Lerma-Duenas v. Atkinson, No. 0:13-cv-01076-RBH (D.S.C. Oct. 11, 2013).

mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED