

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 22-6292**

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BRANDON EARL BARKER,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Michael Stefan Nachmanoff, District Judge. (1:22-cv-00058-MSN-JFA)

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Submitted: June 23, 2022

Decided: June 28, 2022

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Before WYNN and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed as modified by unpublished per curiam opinion.

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Brandon Earl Barker, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brandon Earl Barker, a federal prisoner, appeals the district court's order dismissing his 28 U.S.C. § 2241 petition in which he sought to challenge his conviction by way of the savings clause in 28 U.S.C. § 2255. Pursuant to § 2255(e), a prisoner may challenge his conviction in a traditional writ of habeas corpus pursuant to § 2241 if a § 2255 motion would be inadequate or ineffective to test the legality of his detention.

[Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

*In re Jones*, 226 F.3d 328, 333-34 (4th Cir. 2000).

We have reviewed the record and find no reversible error. Accordingly, we affirm the judgment of the district court. However, we modify the dismissal order, *Barker v. United States*, No. 1:22-cv-00058-MSN-JFA (E.D. Va. filed Feb. 11, 2022 & entered Feb. 14, 2022), to reflect a dismissal without prejudice for lack of jurisdiction, *see United States v. Wheeler*, 886 F.3d 415, 426 (4th Cir. 2018), and affirm the order as modified, 28 U.S.C. § 2106. 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.

*AFFIRMED AS MODIFIED*