

N.D.N.Y.  
17-cv-892  
McAvoy, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31<sup>st</sup> day of May, two thousand eighteen.

Present:

Dennis Jacobs,  
Christopher F. Droney,  
*Circuit Judges,*  
Stefan R. Underhill,\*  
*District Judge.*

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Dontie S. Mitchell,

*Plaintiff-Appellant,*

v.

18-89

Andrew Cuomo, Governor; sued in official capacity, et al.,

*Defendants-Appellees.*

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Appellant, pro se, moves for appointment of counsel, an injunction pending appeal, removal of opposing counsel, expedited consideration of the motion for counsel, and permission to file an oversized reply brief. In two non-final orders, the district court dismissed Appellant's claims that he was denied his right to rehabilitation and that supervisory officials were liable for various actions of their subordinates, transferred some of Appellant's claims to another judicial district, and denied Appellant's motions for appointed counsel, leave to supplement the complaint, and a preliminary injunction. Appellant challenges each of these rulings on appeal.

Upon due consideration, it is hereby ORDERED that, to the extent Appellant challenges the dismissal of his supervisory claims, the transfer of claims to another judicial district, and the denial

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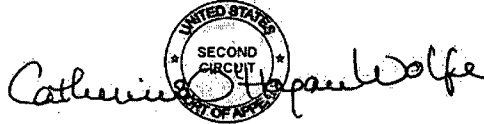
\* Judge Stefan R. Underhill, of the United States District Court for the District of Connecticut, sitting by designation.

of appointed counsel, the appeal is DISMISSED for lack of jurisdiction because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291. *See Petrello v. White*, 533 F.3d 110, 113 (2d Cir. 2008).

However, we have jurisdiction over Appellant's challenge to the denial of a preliminary injunction, *see* 28 U.S.C. § 1292(a)(1), and we exercise pendent appellate jurisdiction over his challenges to the dismissal of his rehabilitation claim and denial of leave to supplement the complaint because those aspects of the district court's orders are "inextricably intertwined" with the denial of injunctive relief. *SEC v. Smith*, 710 F.3d 87, 94 (2d Cir. 2013). Nevertheless, upon due consideration of the merits of Appellant's challenge to those parts of the district court's orders, it is further ORDERED that Appellant's motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in cursive over the official seal of the United States Court of Appeals for the Second Circuit. The seal is circular with "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom.

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12<sup>th</sup> day of July two thousand and eighteen.

Before: Christopher F. Droney,  
*Circuit Judge.*

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Dontie S. Mitchell,

Plaintiff - Appellant,

v.

Andrew Cuomo, et al.,

Defendants - Appellees.

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ORDER

Docket No. 18-89

Appellant, pro se, moves for an extension to July 26, 2018 to file a motion for reconsideration or reconsideration en banc.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

  
*Catherine O'Hagan Wolfe*

A4

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

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15<sup>th</sup> day of October, two thousand and eighteen.

Before: Dennis Jacobs,  
Christopher F. Droney,  
*Circuit Judges,*  
Stefan R. Underhill,\*  
*District Judge.*

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Dontie S. Mitchell,

Plaintiff - Appellant,

v.

Andrew Cuomo, Governor; et al.,

Defendants - Appellees.

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**ORDER**



Docket No. 18-89

Appellant, *pro se*, moves for a recall of the mandate and for leave to file a motion for reconsideration.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

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\*Judge Stefan R. Underhill, of the United States District Court for the District of Connecticut, sitting by designation.