

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-5281

September Term, 2018

1:16-cv-00828-APM

Filed On: September 5, 2018

Jean-Gabriel Bernier,

Appellant

v.

Donald J. Trump, President of the United
States, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Henderson, Srinivasan, and Katsas, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, the motion to appoint counsel, and the motion to remand as to appellant's housing claims, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's August 24, 2016 order denying appellant's motion for a preliminary injunction be affirmed. Although appellant's transfer to a different prison would ordinarily moot his request for injunctive relief based on allegedly unconstitutional conditions of confinement, see Scott v. District of Columbia, 139 F.3d 940, 941 (D.C. Cir. 1998), the government has not met its "heavy burden of showing it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," Aref v. Lynch, 833 F.3d 242, 251 (D.C. Cir. 2016) (citation and internal quotation marks omitted). However, appellant has not shown that the district court's decision denying his motion for a preliminary injunction to move him to a two-man cell constituted an abuse of discretion. See Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006). It is

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FURTHER ORDERED that the motion to remand be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam