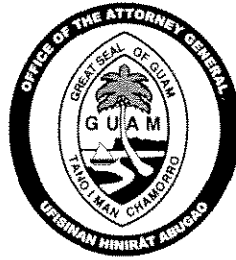


Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

September 12, 2013

32-13-778

MEMORANDUM

To: Governor of Guam
Director, Department of Revenue & Taxation
Speaker, Guam Legislature

From: Assistant Attorney General

Subject: Dismissal of lawsuit, *Dustin O'Brien vs. Eddie Calvo, et al.*, United States Court of Appeal for the Second Circuit, Docket No. 13-1407

Handwritten notes and stamps: "32-13-778", "9/12/13", "1:17 PM", "Received by [Signature]", "2013 SEP 12 PM 1:24", and a signature.

We are pleased to inform you that the United States Court of Appeals for the Second Circuit has dismissed the appeal of Mr. Dustin O'Brien, a former Guam resident, thereby affirming the decision of the Eastern District Court of New York. Mr. O'Brien challenged the Organic Act as being unconstitutional, but his case was deemed frivolous. Copies of the District Court judgment and the Second Circuit's order are attached.

The plaintiff may appeal to the United States Supreme Court, but we expect that court to deny his application summarily.

Respectfully Submitted,

David J. Highsmith
DAVID J. HIGHSMITH
Assistant Attorney General

E.D.N.Y.-Bklyn
12-cv-2700
Ross, J.

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 15th day of July, two thousand thirteen.

Present:

Jon O. Newman,
Ralph K. Winter,
Christopher F. Droney,
Circuit Judges.

Dustin J. O'Brien,

Plaintiff-Appellant,

v.

13-1407

Eddie B. Calvo, Governor of Guam, *et al.*,

Defendants-Appellees.

Appellant, *pro se*, moves for leave to file an oversized brief in support of a future motion, and an extension of time to file his appellate brief. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it lacks an arguable basis in law or fact. *See Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (regarding the Court's inherent authority to dismiss an appeal that lacks an arguable basis in law or fact); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (defining when an action lacks an arguable basis in law or fact).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk




D/F

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ **MAR 27 2013** ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
DUSTIN J. O'BRIEN,

Plaintiff,

-against-

EDDIE B. CALVO, JOHN CAMACHO, GUAM
DEPARTMENT OF REVENUE AND TAXATION,
LEGISLATURE OF GUAM, and THE UNITED STATES
OF AMERICA,

Defendants.
----- X

BROOKLYN OFFICE
12-CV-2700 (ARR)(MDG)

NOT FOR ELECTRONIC
OR PRINT PUBLICATION

MEMORANDUM AND
ORDER

ROSS, United States District Judge:

Plaintiff, a resident of New York, challenges the Island of Guam's authority to withhold income tax from paychecks he received while working in Guam. Plaintiff seeks a judgment from this court invalidating the Act of Congress that establishes Guam's representative government and ordering return of his tax monies. The problem with plaintiff's suit is that the money withheld from his paychecks already has been returned. Despite multiple and prolix filings, plaintiff has failed to establish any injury in fact that would confer standing to bring this case in federal court. Therefore, for reasons explained more fully below, the court finds that the action presents no genuine case or controversy, and grants defendants' motion to dismiss. As further amendment of the pleadings would be futile, the court denies leave to amend.¹

¹The court also denies plaintiff's request for a hearing and his request to file an additional brief. The court also denies defendants' motion to transfer venue.