

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
7 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
8 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
9 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED
10 CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES
11 JUDICATA.
12

13 At a stated term of the United States Court of Appeals for
14 the Second Circuit, held at the Thurgood Marshall United States
15 Courthouse, at Foley Square, in the City of New York, on the 6th
16 day of October, two thousand and four.
17

18 PRESENT:
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20 Hon. John M. Walker, Jr.,
21 Chief Judge,
22 Hon. Pierre N. Leval,
23 Hon. Robert A. Katzmann,
24 Circuit Judges.
25

26 -----X

27 OSCAR PENA,
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29 Plaintiff-Appellant,
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31 v.

03-0172

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33 JAMES RECORE, Director Temporary Release Programs;
34 SONIA VARGAS, Corrections Counselor;
35 ELNORA PORTER, Sr. Corrections Counselor,
36

37 Defendant-Appellees.
38 -----X

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40 FOR PLAINTIFF-APPELLANT

Oscar Pena, pro se,
Chateaugay, N.Y.

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43 FOR DEFENDANT-APPELLEES

Julie Loughran, Assistant
Solicitor General (Eliot
Spitzer, Attorney General
of the State of New York,
and Michelle Aronowitz,
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1 Deputy Solicitor General,
2 on the brief), New York,
3 NY.
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5 Appeal from the United States District Court for the Eastern
6 District of New York (Frederic Block, Judge).
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8 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
9 **DECREED** that the judgment of said district court be and it hereby
10 is **AFFIRMED**.

11 Plaintiff-Appellant Oscar Pena appeals from a March 20, 2001
12 judgment of the United States District Court for the Eastern
13 District of New York (Frederic Block, Judge), granting defendant-
14 appellees' motion for summary judgment with regard to Pena's due
15 process claim under 42 U.S.C. § 1983, and denying Pena's cross-
16 motion for further leave to amend his complaint. Familiarity
17 with the facts and procedural history is assumed. We affirm.

18 On appeal, Pena argues that the district court erred in: 1)
19 determining that Pena had not made out a viable due process claim
20 so as to withstand defendant-appellees' summary judgment motion;
21 2) concluding that the defendant-appellees sufficiently advised
22 him of his burden in opposing summary judgment, see Local Civil
23 Rule 56.2; 3) denying his motion to further amend his complaint
24 as futile and as having been made with inordinate delay; and 4)
25 denying his Fed. R. Civ. P. 60(b) motion for reconsideration of
26 the court's judgment. Pena also argues, for the first time on
27 appeal, that he is entitled to further discovery pursuant to Fed.
28 R. Civ. P. 56(f) and 37(b) (2) (C).

29 Affording Pena all reasonable inferences upon defendant-
30 appellees' summary judgment motion, Make The Road by Walking,
31 Inc. v. Turner, 378 F.3d 133, 142 (2d Cir. 2004), with regard to
32 Pena's § 1983 claim, we agree with the district court that Pena
33 did not adequately establish, even at the summary judgment stage,
34 that defendants violated his due process rights. The undisputed
35 facts show that, before he was removed from the temporary work
36 release program, Pena was afforded all of the procedural
37 protections required by due process under the circumstances. See
38 Friedl v. City of New York, 210 F.3d 79, 84-85 (2d Cir. 2000).

39 We have carefully reviewed Pena's remaining arguments and
40 find them to be without merit.

41 Accordingly, for the foregoing reasons, the judgment of the
42 district court is hereby **AFFIRMED**.

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44 FOR THE COURT:

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Roseann B. MacKechnie, Clerk

By: _____
Lucille Carr, Deputy Clerk