

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT MALEK,

Plaintiff,

v.

NEW YORK UNIFIED COURT SYSTEM, *et al.*,

Defendants.

ORDER

22-CV-05416 (HG) (RER)

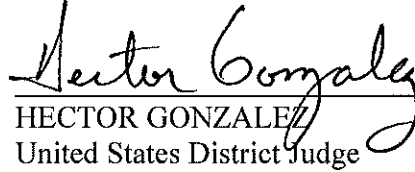
HECTOR GONZALEZ, United States District Judge:

The Court denies Plaintiff's motion for recusal. ECF No. 223. Plaintiff's filing of a notice of appeal has transferred jurisdiction of this case to the U.S. Court of Appeals for the Second Circuit and has "divest[ed] the [Court] of jurisdiction as to any matters involved in the appeal or as to the matters covered by the notice." *New York v. U.S. Dep't of Homeland Sec.*, 974 F.3d 210, 215 (2d Cir. 2020) (internal quotation marks omitted). Rule 4 of the Federal Rules of Appellate Procedure establishes narrow exceptions in which particular types of motions filed after a notice of appeal delay the effectiveness of the notice of appeal, but none of those exceptions apply here. *See* Fed. R. App. P. 4(a)(4)(B).

To the extent that Plaintiff wishes to argue that the concerns expressed in his recusal motion would merit the Second Circuit assigning this case to a different district judge, in the event that the Second Circuit remands Plaintiff's case for further proceedings, Plaintiff is free to make those arguments on appeal. *See Ligon v. City of New York*, 736 F.3d 118, 128–29 (2d Cir. 2013) ("Although the possible recusal of [the district judge] was not raised either by the parties or the judge herself in the district court or this court, there is no barrier to our reassigning the cases *nostra sponte*."), *vacated in part on other grounds*, 743 F.3d 362 (2d Cir. 2014); *United*

States v. Romano, No. 15-992-cr, 2022 WL 402394, at *5 (2d Cir. Feb. 10, 2022) (confirming the Second Circuit's continued authority to reassign a case on remand regardless of whether a party timely made a recusal motion before the district court).

SO ORDERED.


HECTOR GONZALEZ
United States District Judge

Dated: Brooklyn, New York
May 4, 2023