

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-10476

United States Court of Appeals
Fifth Circuit

FILED

March 27, 2017

CALLETANO GALARZA-MORALES,

Lyle W. Cayce
Clerk

Plaintiff-Appellant

v.

TERRY R. MEANS, United States District Judge; JEFFREY L. CURETON, United States Magistrate Judge; SHAWN SMITH, Assistant United States Attorney; WILLIAM R. BIGGS, Federal Court Attorney; ZELMA SHANNON, United States Probation Officer; MARK A. BRONIE, United States Probation Officer; MARC MOORE, United States Immigration and Customs Enforcement Field Director; CARLOS PEREZ, United States Department of Homeland Security Immigration Officer; JOHN DEO #1, Border Agent, United States Border Customs and Protection; JOHN DEO #2, Supervisor, United States Immigration and Customs Enforcement,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CV-140

Before HIGGINBOTHAM, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-10476

Calletano Galarza-Morales, federal prisoner # 41291-177, moves for leave to proceed in forma pauperis (IFP) in his appeal from the dismissal of his civil rights complaint, filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). He is challenging the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Galarza-Morales's conclusional assertions of error by the district court, without citation to the record or cogent legal argument, do not show that his appeal involves legal points arguable on their merits and that it is not frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Although pro se briefs are liberally construed, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), even pro se litigants must brief arguments in order to preserve them, *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Because Galarza-Morales has not shown that the district court erred in decertifying his IFP status, the request for leave to proceed IFP is DENIED. *See Baugh*, 117 F.3d at 202. The appeal is DISMISSED. *See id.* at 202 & n.24; 5TH CIR. R. 42.2. The district court's dismissal of Galarza-Morales's complaint as frivolous and this court's dismissal of his appeal as frivolous count as strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). If Galarza-Morales accumulates three strikes he will no longer be allowed to proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).