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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DAVID GARLAND ATWOOD II,

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12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA; and
15 U.S. PROBATION,

16 Defendants.

Case No.: 17cv1315-MMA (BLM)

**ORDER RESPONDING TO
REFERRAL NOTICE**

[Doc. No. 10]

**REVOKING IN FORMA PAUPERIS
STATUS ON APPEAL**

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18 On June 27, 2017, Plaintiff David Garland Atwood II (“Plaintiff”) proceeding *pro*
19 *se*, filed a complaint against the United States of America and the U.S. Probation Office
20 (collectively “Defendants”). *See* Doc. No. 1. On June 30, 2017, the Court dismissed
21 Plaintiff’s complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). *See* Doc. No. 5. The Court
22 construed the matter as arising under *Bivens v. Six Unknown Named Fed. Narcotics*
23 *Agents*, 403 U.S. 388 (1971), and concluded Plaintiff failed to state a plausible claim
24 upon which relief could be granted. *See id.* The Court entered judgment against
25 Plaintiff, and Plaintiff appealed the judgment. *See* Doc. Nos. 6, 7.

26 The Ninth Circuit Court of Appeals now refers this matter for the “limited purpose
27 of determining whether in forma pauperis status should continue for this appeal or
28 whether the appeal is frivolous or taken in bad faith.” Doc. No. 10. Rule 24(a)(3) of the

1 Federal Rules of Appellate Procedure provides that a party granted leave to proceed *in*
2 *forma pauperis* (“IFP”) in district court may continue that status on appeal unless the
3 district court certifies that the appeal is not taken in good faith, which in this context
4 means that it is frivolous. *See Ellis v. United States*, 356 U.S. 674, 674-75 (1958). Title
5 28 of the United States Code, section 1915(a)(3) similarly provides that an appeal may
6 not be taken IFP if the trial court certifies it is not taken in good faith. For purposes of §
7 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *See Neitzke v.*
8 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1225 (9th Cir.
9 1984).

10 After review of the record herein, the Court concludes that Plaintiff’s appeal lacks
11 any arguable basis in law or fact, and thus is considered as not being taken “in good
12 faith” pursuant to 28 U.S.C. § 1915(a)(3). Accordingly, the Court hereby **REVOKES**
13 Plaintiff’s IFP status. *See Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent
14 appellant is permitted to proceed in forma pauperis on appeal only if appeal would not be
15 frivolous).

16 The Clerk of Court is directed to notify the Ninth Circuit Court of Appeals of this
17 Order. *See Fed. R. App. P. 24(a)(4)*.

18 **IT IS SO ORDERED.**

19 Dated: July 19, 2017

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21 HON. MICHAEL M. ANELLO
22 United States District Judge
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