

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

LEWIS-JAY PORTER

§

VS.

§

CIVIL ACTION NO. 9:17-CV-75

STATE OF TEXAS

§

ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Lewis-Jay Porter, a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil action against the State of Texas.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge construed the action as a successive petition for writ of habeas corpus and recommended dismissing the petition as a successive petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties. Plaintiff does not deny that this is a successive petition, but he requests the court to stay this proceeding while he seeks authorization from the United States Court of Appeals for the Fifth Circuit. Because plaintiff should have sought leave from the Fifth Circuit before filing this action, the motion will be denied.

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 2) is **ADOPTED**. Plaintiff's motions regarding a stay (document nos. 4 and 5) are **DENIED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** this **17** day of **July, 2017**.



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Ron Clark, United States District Judge