

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

DAVID WAYNE SMITH	)	
(TDCJ # 02010208),	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BRAD LIVINGSTON,	)	
Executive Director,	)	
Texas Department of Criminal Justice,	)	
	)	
Defendant.	)	Civil Action No. 1:16-CV-091-C

**ORDER**

In the Findings, Conclusions and Recommendation filed July 5, 2017, the Magistrate Judge recommends that the Court deny Plaintiff's Motion for Temporary Restraining Order and dismiss this action with prejudice. Further, the Magistrate Judge recommends that the dismissal count as a "strike" or "prior occasion" within the meaning of 28 U.S.C. § 1915(g). Neither party filed a timely objection to the Findings, Conclusions and Recommendation.<sup>1</sup>

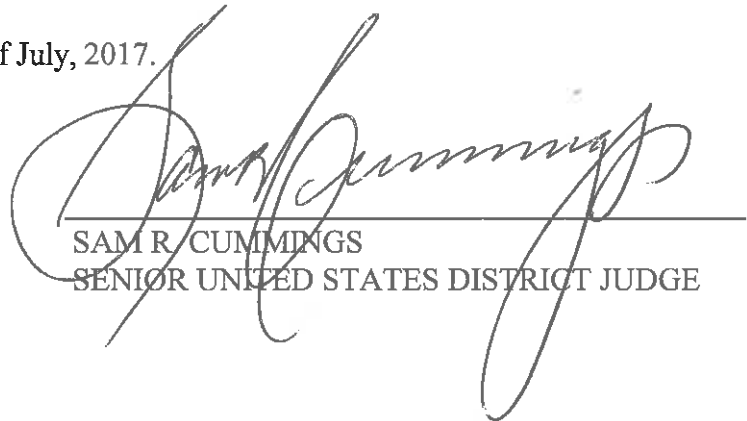
After reviewing the cogent Report and Recommendation for plain error, the Court finds that the findings and conclusions of the Magistrate Judge are correct and **ADOPTS** them as the findings and conclusions of the Court.

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<sup>1</sup>Plaintiff has filed a "Motion to Withdraw Civil Action" following the entry of the Report and Recommendation. Likely in an effort to avoid having a "strike" assessed against him, he now attempts to "withdraw" his action. The Court denies his motion to withdraw and the strike will be assessed as recommended in the Report and Recommendation.

Accordingly, the Court finds that the above-styled and -numbered cause of action should be **DISMISSED WITH PREJUDICE** to the claims being asserted again until the *Heck* conditions are met. *Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996). The dismissal will count as a strike within the meaning of 28 U.S.C. § 1915(g). The Motion for Temporary Restraining Order is contemporaneously **DENIED**.

SO ORDERED this 25<sup>th</sup> day of July, 2017.



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SAM R. CUMMINGS  
SENIOR UNITED STATES DISTRICT JUDGE