UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

ISRAEL CALLERO MENDEZ, 01679093,
Petitioner,
V.
LORIE DAVIS, Director, Texas
Dept. Of Criminal Justice, Correctional
Institutions Division,
Respondent.

No. 3:14-CV-2973-B (BT)

ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

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The United States Magistrate Judge made findings, conclusions and a recommendation in this case. Plaintiff filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that: (1) the Fed. R. Civ. P. 60(b) motion for relief from judgment based on the Court's denial of Petitioner's second motion for extension of time to file an appeal is DENIED; and (2) Petitioner's remaining claims are construed as filed pursuant to 28 U.S.C. § 2254 and are TRANSFERRED to the United States Court of Appeals for the Fifth Circuit. *See* 28 U.S.C. § 2244(b)(3); 28 U.S.C. § 1631.¹ The Clerk's Office is directed to open a new civil action, nature of suit 530, with direct assignment to District Judge Boyle and Magistrate Judge Rutherford

¹An order transferring a successive application to the court of appeals is not a final order requiring a certificate of appealability. *See United States v. Fulton*, 780 F.3d 683, 688 (5th Cir. 2015).

and terminate the motion in this case.

SO ORDERED this $1^{\mbox{\tiny st}}$ day of August, 2018.

JANJE J. BOYL UNITED STATES DISTRICT JUDGE