

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEMARCUS KENARD JOE	§	
(TDCJ No. 1047716),	§	
	§	
Petitioner,	§	
	§	
V.	§	No. 3:16-cv-2667-B
	§	
LORIE DAVIS, Director	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE AND DENYING
A CERTIFICATE OF APPEALABILITY**

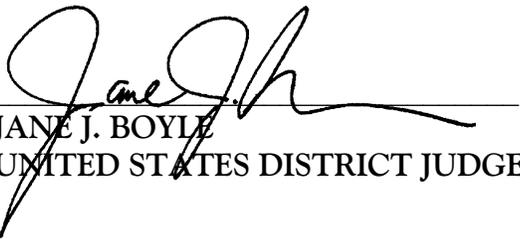
The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. No objections were filed. The District Court reviewed the proposed findings, conclusions, and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

Because the Court is transferring this successive habeas application to the United States Court of Appeals for the Fifth Circuit for appropriate action, the Court need not address whether Petitioner is entitled to a certificate of appealability (“COA”). *See United States v. Fulton*, 780 F.3d 683, 688 (5th Cir. 2015) (“[A] transfer order under 28 U.S.C. § 1631 is not a final order within the meaning of [28 U.S.C.] § 2253(c)(1)(B), and the appeal of such an order does not require a COA.”); *Guel-Rivas v. Stephens*, 599 F. App’x 175, 175 (5th Cir. 2015) (per curiam) (applying *Fulton*’s holding to transfer of a successive Section 2254 application).

But in the event the Petitioner will file a notice of appeal, the Court notes that the Petitioner must pay the filing fee or file a motion for leave proceed *in forma pauperis* on appeal.

SO ORDERED.

DATED: FEBRUARY 1, 2017



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE