

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSE PEQUENO-GARCIA (#33540-177),	§	
	§	
Plaintiff,	§	
v.	§	Civil Action No. 3:17-CV-867-L
	§	
ADRIAN ZARATE, et al.,	§	
	§	
Defendants.	§	

ORDER

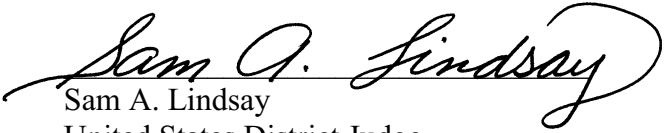
The case was referred for screening to Magistrate Judge David L. Horan, who entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on May 4, 2017, recommending that the court dismiss with prejudice this action pursuant to 28 U.S.C. § 1915(e)(2)(B), as barred by the applicable statute of limitations. Plaintiff filed objections to the Report, which were docketed May 16, 2017.

After carefully reviewing the pleadings, objections, file, Report, and having conducted a de novo review of that portion of the Report to which objection was made, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **overrules** Plaintiff’s objections, **dismisses with prejudice** this action pursuant to 28 U.S.C. § 1915(e)(2)(B), and directs the clerk of the court to term all pending motions in this case.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a)(3). In support of this certification, the court **adopts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21

(5th Cir. 1997). Based on the Report, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Plaintiff, however, may challenge this finding pursuant to *Baugh v. Taylor*, 117 F. 3d 197 (5th Cir. 1997), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within 30 days of this order. The cost to file a motion to proceed on appeal with the Fifth Circuit is \$505.

It is so ordered this 7th day of June, 2017.


Sam A. Lindsay
United States District Judge