

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

SIMON MAKANGULA, A079-001-399
Petitioner,

v.

**ELAINE DUKE, Acting Secretary,
of the Department of Homeland Security,
et al.,**
Respondents.

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CIVIL NO. 3:17-CV-2245-M-BK

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

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.

IT IS THEREFORE ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction. *See* FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

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. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge’s Findings, Conclusions, and Recommendation. *See* [Baugh v. Taylor](#), 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous.

[Howard v. King](#), 707 F.2d 215, 220 (5th Cir. 1983).¹ In the event of an appeal, Petitioner may

¹ Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice

challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. See *Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

If petitioner files a notice of appeal,

() petitioner may proceed *in forma pauperis* on appeal.

(X) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED this 10th day of October, 2017.


BARBARA M. G. LYNN
CHIEF JUDGE

of appeal must be filed even if the district court certifies an appeal as not taken in good faith.