

United States District Court
Southern District of Texas

ENTERED

July 25, 2018

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

ERIC FLORES,
Petitioner,

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v.

Civil Action No. 1:18-cv-00072

LORIE DAVIS,
Respondents.

ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Before the Court is “Magistrate Judge’s Report and Recommendation” (hereafter “R&R”) (Docket No. 6). The R&R recommends dismissing Eric Flores’ (hereafter “Petitioner”) “Petition for a Writ of Habeas Corpus by a Person in State Custody” (hereafter “Petitioner’s Habeas Petition”) (Docket No. 1). *See* Docket No. 6 at 3.

On June 29, 2018, Petitioner filed “Objection to Magistrate Report and Recommendation to Dismiss Case [sic]” (hereafter “Petitioner’s Objection”) (Docket No. 8)¹, arguing the “imminent danger of serious bodily injury” exception under 28 U.S.C. § 1915(g) precludes dismissal of Petitioner’s Habeas Petition and his “Application to Proceed In Forma Pauperis” (Docket No. 2). Docket No. 8 at 5-6. Section 1915(g) states as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Petitioner’s Objection reasserts frivolous and “fanciful allegations” addressed by the Fifth Circuit Court of Appeals² in Petitioner’s previous adjudications; the


¹ The same objection raised in Petitioner’s Objection is raised in Cause No. 1:18-cv-00070, pending before the Court. *See* No. 1:18-cv-00070, Docket No. 8 at 4.

² *See Flores v. Unknown Defendants*, 713 Fed. App’x 419, 419 (5th Cir. 2018) (sanctioned Petitioner for raising frivolous and repetitive pleadings on appeal, and barred Petitioner from filing any pleading within its jurisdiction without Petitioner first obtaining leave of court); *Flores v. Moore*, 700 Fed. App’x 367, 367 (5th Cir. 2017) (same).

imminent danger exception is not applicable to the frivolous allegations in Petitioner's Habeas Petition and Objection.³ Thus, Petitioner's Objection is **OVERRULED**.

Therefore, after a de novo review of the file, the "Magistrate Judge's Report and Recommendation" (Docket No. 6) is **ADOPTED**. A certificate of appealability shall not issue. The Clerk of the Court is **ORDERED** to close this case.

Signed on this 25th day of July, 2018.



Rolando Olvera
United States District Judge

³ Among other delusional allegations, Petitioner alleges officials "unlawfully execut[ed] the petitioner by electric chair execution" and "caus[ed] the death of the petitioners [sic] entire family household." Docket No. 8 at 4.