

United States District Court
Southern District of Texas

ENTERED

October 19, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

GUSTAVO LOPEZ MIRELES
Petitioner

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§

§

VS.

§

CIVIL ACTION NO. 7:15-CV-255

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LORIE DAVIS, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISIONS
Respondent

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ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner's motion for leave to proceed in forma pauperis ("IFP) on appeal from the Court's dismissal of his claims pursuant to 28 U.S.C. 2254 (D.E. No. 34). On August 24, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's motion for leave to proceed IFP on appeal be denied because Petitioner's notice of appeal is untimely under Rule 4(a) of the Federal Rules of Appellate Procedure—no matter how the notice of appeal is construed under Rule 4(a), and Petitioner fails to meet the requirements for any other avenue provided under Rule 4(a). Also pending before the Court are Petitioner's objections to the Report and Recommendation.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has conducted a de novo review of the Report and Recommendation. Finding no clearly erroneous error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Defendant's motion for leave to proceed IFP on appeal (D.E. No. 34) is **DENIED**.

SO ORDERED this 18th day of October, 2017, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive style with a horizontal line underneath it.

Randy Crane
United States District Judge