

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 18-10039  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

October 11, 2018

Lyle W. Cayce  
Clerk

IBUKUN OLOWA WASHINGTON,

Plaintiff-Appellant

v.

MICHAEL R. MACKEY, Warden; JOHN BERRY, Chaplain; C. M. MADYUN, Chaplain; KIMBERLY L. GARZA, Assistant Warden; VANCE DRUM, Chief Chaplain of Operations; LEAH JEAN O'LEARY, Assistant Attorney General,

Defendants-Appellees

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Appeals from the United States District Court  
for the Northern District of Texas  
USDC No. 3:16-CV-1374  
\_\_\_\_\_

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:\*

Ibukun Olowa Washington, Texas prisoner # 1941101, moves for leave to appeal in forma pauperis (IFP) from an order denying a preliminary injunction relating to his 42 U.S.C. § 1983 civil rights action, in which Washington alleges that the defendants violated his constitutional and statutory rights by refusing to provide religious services specific to Shiite

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Muslims. The district court denied IFP status, certifying that Washington's appeal is not taken in good faith.

We have jurisdiction over this interlocutory appeal. *See* 28 U.S.C. § 1292(a)(1); *Byrum v. Landreth*, 566 F.3d 442, 449 (5th Cir. 2009). We review the district court's IFP certification for abuse of discretion. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). We will grant IFP status if we find that Washington's appeal "involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

To obtain a preliminary injunction, Washington must (1) establish a substantial likelihood of success on the merits of his appeal; (2) show a substantial threat of irreparable injury if the injunction is not granted; and (3) demonstrate that the threatened injury to himself outweighs the threatened injury to the defendants. *See Harris Cty., Tex. v. CarMax Auto Superstores Inc.*, 177 F.3d 306, 312 (5th Cir. 1999). He neither attempts to make that showing here nor contends that he did so in the district court, and he has therefore abandoned his appeal of the injunction. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). For that reason, Washington cannot show that the district court abused its discretion in denying IFP status. *See Carson*, 689 F.2d at 586; *Howard*, 707 F.2d at 220. Accordingly, we DENY the motion to proceed IFP.

Moreover, because Washington appeals only the denial of his request for a preliminary injunction, the merits of his appeal are "so intertwined with the [IFP] certification decision as to constitute the same issue." *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997). Consequently, we DISMISS the appeal as frivolous. *See id.*; 5TH CIR. R. 42.2.

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The dismissal of the instant appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 385-87 (5th Cir. 1996). Washington received two additional strikes as a result of this court's dismissal as frivolous of his appeal in *Washington v. Collier*, No. 17-20641. Accordingly, Washington is BARRED from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is "under imminent danger of serious physical injury." § 1915(g).

IFP DENIED; APPEAL DISMISSED; SANCTION IMPOSED.