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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Thomas Edmond Cochran,

Plaintiff,

vs.

Bennie Rollins, et al.,

Defendants.

) No. CV 07-1714-PHX-MHM (JRI)

) **ORDER**

Plaintiff Thomas Edmond Cochran, who is confined at the Arizona State Prison Complex-Florence Special Management Unit (SMU) I, filed this civil rights action against various officials of the Arizona Department of Corrections (ADC). The remaining claims in this case involve the denial of Plaintiff’s request for placement in Protective Segregation. (Doc. #47.)

Plaintiff moved for a Temporary Restraining Order and Preliminary Injunction to prevent his removal from SMU I and placement “in the vicinity of any inmates.” (Doc. #51.) The Court denied the request for a TRO and directed Defendants to file a response to Plaintiff’s Motion for a Preliminary Injunction. (Doc. #52.) Defendants responded. (Doc. #53.) Plaintiff did not reply, and the time to do so has expired.

The Court will deny the motion.

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1 **II. Plaintiff's Motion for Preliminary Injunction**

2 **A. Legal Standard**

3 A preliminary injunction is an extraordinary and drastic remedy and “one that should
4 not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.”
5 Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (*per curiam*) (quoting 11A C. Wright, A.
6 Miller, & M. Kane, Federal Practice and Procedure § 2948, pp 129-130 (2d ed. 1995)
7 (emphasis added)). A preliminary injunction will not be granted absent a clear showing of
8 likely success in the underlying claim and a significant threat of irreparable injury.
9 Warsoldier v. Woodford, 418 F.3d 989, 993-94 (9th Cir. 2005); Pratt v. Rowland, 65 F.3d
10 802, 805 (9th Cir. 1995). Alternately, a party may show that serious questions going to the
11 merits were raised and the balance of hardships tips sharply in his favor. Warsoldier, 418
12 F.3d at 994. These two alternatives are extremes of a single continuum, rather than two
13 separate tests. Nike, Inc. v. McCarthy, 379 F.3d 576, 580 (9th Cir. 2004). Thus, the greater
14 the relative hardship to the moving party, the less probability of success must be shown. Id.
15 (citing Walczak v. EPL Prolong, Inc., 198 F.3d 725, 731 (9th Cir. 1999)). Under either test,
16 the movant bears the burden of persuasion, Mattel, Inc. v. Greiner & Hausser GmbH, 354
17 F.3d 857, 869 (9th Cir. 2003), and must *demonstrate* a significant threat of irreparable injury.
18 AGCC v. Coalition for Economic Equity, 950 F.2d 1401, 1410 (9th Cir. 1991).

19 **B. Parties' Contentions**

20 Plaintiff asks the Court for an Order placing a “hold” on him “from being transferred
21 to or placed in the vicinity of any inmates until the conclusion of these proceedings.” (Doc.
22 #51.) He alleges that while he was in general population (GP), he was assaulted in his cell
23 by two inmates in May 2007. He asserts that he is at significant risk of serious harm because
24 he renounced his affiliation to the Skinheads and he has a reputation as a snitch, which makes
25 him a target for assaults by other inmates.

26 In opposition, Defendants submit the declaration of Herb Haley, Plaintiff's certified
27 AIMS file, and Director's Instruction (DI) 67, Protective Segregation (Doc. #53, Ex. 1, Haley
28 Decl., Attachs. 1-2.)

1 Haley is the Chair of the Protective Segregation Committee. (Haley Decl ¶ 1.) He
2 attests that Plaintiff has been housed at ASPC – Eyman / SMU I and SMU I Detention since
3 May 30, 2007. (Id. ¶ 4.) He contends that inmates housed at SMU I, a maximum security
4 facility, spend most of their time in their individual cells and have very limited contact with
5 other inmates. (Id. ¶ 5.) The cells have solid fronts and inmates are only able to have limited
6 visual contact with each other when they are walking past cells. (Id.) Inmates in SMU I
7 have an opportunity for recreation three times a week. (Id. ¶ 6.) But, unlike lower custody
8 environments, only one inmate at a time may have recreation in an enclosed environment;
9 inmates at SMU I do not have recreation together. (Id.) Movement of inmates in SMU I is
10 strictly controlled by correctional officers; single inmates are directly escorted, and multiple
11 inmates are never moved within the living area at the same time. (Id.) Defendants argue
12 that the threat to Plaintiff’s safety is minimal in this environment. (Doc. #53.)

13 Defendants note that in his complaint and throughout the protective segregation
14 investigation process with the ADC, Plaintiff alleged that Skinhead gang members had
15 indicated that a “hit” had been put on him and that he had been placed on a list of people to
16 be killed. (See e.g., Haley Decl. ¶¶ 26, 29, 41.) But they assert that ADC found no
17 corroboration of this alleged threat. (See id. ¶¶ 31, 32.) Additionally, ADC has placed all
18 of the individuals identified by Plaintiff, and confirmed by staff, on his Do Not House With
19 (“DNHW”) list, which means that he will not be housed in the same institution where there
20 is the possibility that he will share housing cells, institutional activities, meals, and transport
21 with the DNHW inmates on his list. (See e.g., id. ¶¶ 31, 43.)

22 Defendants further assert that although Plaintiff has been transferred laterally between
23 SMU I and SMU I Detention, there is no indication of when, or even if, a transfer to GP will
24 occur or when his present adequate housing situation will end. (Id. ¶ 8.) There are no
25 documents in Plaintiff’s file evidencing any type of anticipated move in the near future to a
26 general population yard. (Id.) Defendants contend that Plaintiff is in a secure housing
27 facility where he has little, if any, contact with other inmates. Thus, there does not exist a
28 significant threat of irreparable injury, and Plaintiff fails to carry his burden of persuasion

1 to show any exigent need for a preliminary injunction. (Doc. #53.) Plaintiff's situation has
2 not changed in the past 15 months and has been without incident. (Id. at 5.)

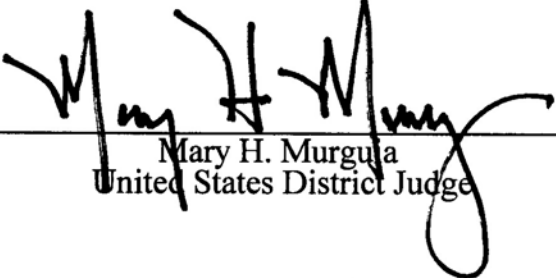
3 **C. Analysis**

4 Mere “[s]peculative injury does not constitute irreparable harm sufficient to warrant
5 granting a preliminary injunction.” Caribbean Marine Services Co., Inc. v. Baldrige, 844 F.
6 2d 668, 674-675 (9th Cir. 1988) (emphasis added). To meet the “irreparable harm”
7 requirement, a plaintiff must do more than merely allege imminent harm; he must
8 demonstrate it. Id. at 674.

9 Plaintiff fails to meet his burden to demonstrate an immediate threat of irreparable
10 harm. Plaintiff does not dispute that he has little chance of contact with other inmates in
11 SMU I or that there have been no incidents regarding a threat to his safety within his last 15
12 months in SMU I. Moreover, Defendants indicate that they have no plans at this time to
13 move Plaintiff from SMU I, and Plaintiff offers no evidence to the contrary. Plaintiff's
14 request for a temporary restraining order fails to set forth specific facts showing immediate
15 and irreparable harm.

16 **IT IS ORDERED** that Plaintiff's Motion for a Preliminary Injunction (Doc. #51) is
17 **denied.**

18 DATED this 30th day of September, 2008.

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23 Mary H. Murgula
24 United States District Judge
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