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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Phillip Totherow)
9 Plaintiff,)
10 v.)
11 Dora B. Schriro, et al.,)
12 Defendants.)

CV 07-2218-PHX-PGR (MEA)

ORDER

NON-DEATH PENALTY

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14 Currently before the Court is the Report and Recommendation of Magistrate Judge
15 Aspey (Doc. 49) based on Plaintiff Motion to Add or Join Parties. (Doc. 31) Plaintiff’s
16 motion seeks to add Ivan Bartos as a defendant based on Petitioner’s contention that “Mr.
17 Bartos is now decision maker in my current protection issues...”

18 Plaintiff states that Mr. Bartos is replacing Mr. Rollins as Director of Operations and
19 concludes that Mr. Bartos will deny him protective segregation as punishment for Plaintiff
20 bringing this suit. Defendants assert that Mr. Bartos is not Mr. Rollins’ successor at this
21 position, instead Mr. Rollins’ successor is James Branch. This Court agrees with Magistrate
22 Judge Aspey and the Defendants that Plaintiff’s unfounded allegation of future harm, namely
23 that Mr. Bartos may harm Plaintiff in the future, constitutes a frivolous claim. Consequently,
24 because the claim alleged by Plaintiff as the basis for joining Mr. Bartos¹ as a party to this
25 matter is frivolous, Plaintiff’s motion to add Mr. Bartos as a Defendant is denied.

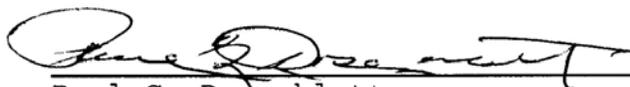
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27 ¹ This conclusion would apply equally to Mr. Branch or any other individual who
28 might replace Mr. Rollins. Unsupported allegations of future harm is not a sufficient basis
to join a party as a defendant.

1 Accordingly,

2 IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation
3 **(Doc. 49)** is **ACCEPTED** and **ADOPTED** by the Court.

4 IT IS FURTHER ORDERED **DENYING** Plaintiff's Motion for Leave to Add or Join
5 Parties. **(Doc. 31.)**

6 DATED this 3rd day of August, 2009.

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10 Paul G. Rosenblatt
11 United States District Judge
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