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

Karl Louis Guillen,

Plaintiff,

vs.

Gerald Thompson, et al.,

Defendants.

) No. CV 08-1279-PHX-MHM (LOA)

ORDER

Plaintiff Karl Louis Guillen brought this civil rights action under 42 U.S.C. § 1983 against Dora Schriro, former Arizona Department of Corrections (ADC) Director, and Ronolfo Macabuhay, Lewis Complex physician (Doc. #11).¹ Plaintiff alleged that Defendants were deliberately indifferent in treating Plaintiff’s pain and symptoms associated with postherpetic neuralgia (*id.* at 3-3A).²

Before the Court are two of Plaintiff’s motions seeking preliminary injunctive relief: “Motion for Order: Returning Journal & Legal Book” (Doc. #143) and “Request for Emergency 3-Judge Panel, Release Order, and Federal Receivership” (Doc. #154).

The Court will deny both motions.

¹Upon screening, the Court dismissed 22 other individuals as Defendants (Doc. #13).

²The complete background facts are set forth in the Court’s prior Order at Document #127.

1 **I. Plaintiff's Motions**

2 **A. Motion for Order: Returning Journal & Legal Book**

3 In his Motion for Order, Plaintiff seeks an order from the Court directing Defendant
4 Ryan, current ADC Director, and his agents to return Plaintiff's journal, which includes a log
5 of 2008-2009 events related to medical visits and officer information (Doc. #143). Plaintiff
6 also seeks the return of his "Jailhouse Manual," which provides legal citations and case law
7 information specific to prisoner issues (*id.*).

8 Defendants did not file a response to Plaintiff's Motion for Order.

9 **B. Request for Emergency 3-Judge Panel, Release Order, and
10 Federal Receivership**

11 ***1. Plaintiff's Motion***

12 Plaintiff requests an order from the Court placing the ADC healthcare system under
13 federal receivership on the grounds that severe overcrowding and lack of staff have left
14 Defendants unable to provide adequate medical care to Plaintiff (Doc. #154). He also seeks
15 an order to convene a 3-judge panel, pursuant to 18 U.S.C. § 3626, to issue a prisoner release
16 order so that he may be released on a medical furlough (*id.* at 5-6).

17 Plaintiff asserts that Defendants have misrepresented to the Court the serious danger
18 posed by overcrowding (*id.* at 2). He maintains that ADC is 11.1% overcapacity and cannot
19 meet basic standards for chronic and emergency medical care (*id.*). Plaintiff contends that,
20 as a result, he has not received refills of prescription medication or treatment for high blood
21 pressure, and other inmates "are dying each week" due to delays and denials of health
22 services (*id.* at 2-3, 5). Plaintiff further contends that Defendants have violated their own
23 policies related to transportation and custody placement (*id.* at 3-4). He states that the
24 supermax isolation unit he is housed in presents an increasingly unbearable strain and
25 aggravates his serious medical condition (*id.* at 4). Plaintiff concludes that he must be
26 released and provided a medical furlough (*id.* at 5).

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1 curiam) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure
2 § 2948, pp. 129-130 (2d ed. 1995)).

3 In attempting to establish either eligibility for an injunction or that a party is not
4 entitled to injunctive relief, the parties may rely on developments that postdate the pleadings
5 and pretrial motions. Farmer v. Brennan, 511 U.S. 825, 846 (1994).

6 **III. Analysis**

7 **A. Motion for Order**

8 Plaintiff's Motion for Order simply sets out his request for the return of his journal
9 and "Jailhouse Manual" (Doc. #143). Plaintiff fails to allege any facts demonstrating that
10 an injunction is warranted. There is no showing that he is likely to succeed on the merits,
11 likely to suffer irreparable harm, or that the balance of equities tips in his favor. Winter, 129
12 S. Ct. at 374. Consequently, his Motion for Order will be denied.

13 **B. Request for 3-Judge Panel, Release Order, and Federal Receivership**

14 Under 18 U.S.C. § 3626(a)(3), a court cannot enter a prisoner release order unless

15 (i) a court has previously entered an order for less intrusive relief that has
16 failed to remedy the deprivation of the Federal right sought to be remedied
through the prisoner release order; and

17 (ii) the defendant has had a reasonable amount of time to comply with the
18 previous court orders.

19 In this case, the Court has not previously entered an order for relief; thus, it cannot
20 issue a release order.

21 With respect to Plaintiff's request for an order placing the ADC healthcare system
22 under federal receivership, Plaintiff has not made the required showing for such a
23 widespread, mandatory injunction. There is heightened scrutiny where the movant seeks to
24 alter rather than maintain the status quo. Dahl v. HEM Pharms. Corp., 7 F.3d 1399, 1403
25 (9th Cir. 1993) (holding that mandatory, as opposed to prohibitory, injunctions are subject
26 to heightened scrutiny). The Ninth Circuit has held that this type of mandatory injunctive
27 relief is disfavored and should be denied unless the facts and law clearly favor the movant.
28 Anderson v. United States, 612 F.2d 1112, 1114 (9th Cir. 1979) (citations omitted).

1 To support his claims that “[i]nmates are dying each week,” and that overcrowding
2 has led to “inmate suffering, . . . suicides [and] deaths,” Plaintiff cites to paragraphs 12 and
3 14 in his Statement of Facts filed in support of his summary judgment motion (Doc. #154 at
4 5, citing “PSOF ¶ 12, 14”). But these paragraphs in his Statement of Facts do not mention
5 inmate suicides or deaths; rather, they set forth that Plaintiff and other inmates have to wait
6 months for care and Plaintiff has not received any pain medications for over a year (Doc.
7 #162 ¶¶ 12, 14). Even taking these statements as true, they are insufficient to support a
8 drastic, mandatory measure such as appointing a federal receivership to oversee prison
9 healthcare. See 18 U.S.C. § 3626(a)(1)(B) (preliminary injunctive relief must be narrowly
10 drawn and the least intrusive means necessary).

11 Moreover, Plaintiff has recently filed a declaration specifically stating that in January
12 and February 2010, he received epidural injections for pain, and he is currently taking
13 Methadone for pain, as well as Gabapentin—an anti-seizure medication—and he receives
14 Lidocaine patches for topical skin pain (Doc. #176 at 1-2). On this record, Plaintiff cannot
15 show that he is currently likely to suffer an irreparable injury. See Am. Trucking, 559 F.3d
16 at 1052 (injunction not warranted “merely because it is possible that there will be an
17 irreparable injury to the plaintiff; it must be likely that there will be”). He therefore is not
18 entitled to injunctive relief or an order for a federal receivership.

19 Plaintiff’s request for reconsideration of a prior Order related to medical-injunctive
20 relief is improperly raised in his reply memorandum. Arguments or requests for relief
21 presented for the first time in the reply will not be considered. See Cuevas-Gaspar v.
22 Gonzales, 430 F.3d 1013, 1021 n. 4 (9th Cir. 2005). The Court notes that Plaintiff submitted
23 a separate motion for reconsideration (Doc. #129), which is addressed in a separate Order.


24 **IT IS ORDERED:**

25 (1) The reference to the Magistrate Judge is **withdrawn** as to Plaintiff’s “Motion for
26 Order: Returning Journal & Legal Book” (Doc. #143) and “Request for Emergency 3-Judge
27 Panel, Release Order, and Federal Receivership” (Doc. #154).

28 (2) Plaintiff’s “Motion for Order: Returning Journal & Legal Book” (Doc. #143) and

1 “Request for Emergency 3-Judge Panel, Release Order, and Federal Receivership” (Doc.
2 #154) are **denied**.

3 DATED this 24th day of March, 2010.

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8 Mary H. Murgula
9 United States District Judge
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