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7 Attorneys for Defendants

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 JAMES ELDON ROGERS,

11 Plaintiff,

12 v.

13 DORA SCHRIRO, *et al.*,

14 Defendants.

No. CV 07-0142 PHX MHM (JRI)

**DEFENDANTS RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION/TRO,
AND THREE JUDGE COURT**

(Assigned to the Hon. Mary H. Murguia)

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16 Defendants respond to Plaintiff's Motion for Preliminary Injunction, and urge this
17 Court to deny it because it contains no new factual information, no new proof of
18 imminent danger from overcrowding, and is in fact the same basic motion that this Court
19 denied in its Screening Order dated February 7, 2007. [Dkt. 8].

20
21 Plaintiff again moves for a Preliminary Injunction/Temporary Restraining Order
22 and a hearing before a three judge court. Plaintiff once again argues that he is threatened
23 with irreparable harm due to threats to his safety and that he is likely to succeed on the
24 merits of his claims. Plaintiff alleges that he was assaulted in 2005, but he does not state
25 facts constituting imminent harm. Furthermore, this Court should decline to convene a
26 three-judge court under 18 U.S.C. § 3626 because, under that provision, a prisoner
27
28

1 release order may only be entered if crowding is the primary cause of the violation of the
2 federal right and no other relief will remedy the violation. 18 U.S.C. § 3626(a)(3)(E).
3 Plaintiff has provided no evidence or proof that the alleged over-crowding is the primary
4 cause of any federal right, and that a three judge court hearing is the only way to remedy
5 the violation. Since Plaintiff has not shown that he will prevail on the merits, there is no
6 violation established yet. Plaintiff has shown that he can readily access the court by
7 filing pleadings in this case; Plaintiff is fully able to proceed before this Court with his
8 claims; and he has not submitted any evidence that he is subjected to any imminent
9 threat because of alleged over-crowding.
10
11

12 Therefore, this Court should dismiss Plaintiff's Motion for Preliminary
13 Injunction, and his request for a three judge hearing.
14

15 RESPECTFULLY SUBMITTED this 21st day of June, 2007.

16 TERRY GODDARD
17 Arizona Attorney General

18 s/Darrin J. DeLange
19 Darrin J. DeLange
20 Assistant Attorney General
21 Attorneys for Defendants

22 Original e-filed this 21st day
23 of June, 2007, with:

24 Clerk of the Court
25 United States District Court
26 District of Arizona
27 401 West Washington Street, SPC 1
28 Phoenix, AZ 85003-2118

1 Copy mailed the same date to:

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6 Plaintiff *Pro Per*

7 s/Colleen S. Jordan
8 Secretary to: Darrin J. DeLange
9 IDS07-0122/RSK:G06-21628
10 #1016412
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