



1 or notify the Court of his desire to proceed only on the claims found cognizable against Defendant  
2 Romero for failure to protect in violation of the Eighth Amendment.

3 **II. Legal Standard**

4 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v.  
5 Natural Resources Defense Council, Inc., 129 S. Ct. 365, 376 (2008) (citation omitted). “A plaintiff  
6 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is  
7 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips  
8 in his favor, and that an injunction is in the public interest.” Marlyn Nutraceuticals, Inc. v. Mucos  
9 Pharma GmbH & Co., 571 F.3d 873, 877 (9th Cir. 2009) quoting Winter, 129 S. Ct. at 374. An  
10 injunction may only be awarded upon a *clear showing* that the plaintiff is entitled to relief. Winter,  
11 129 S. Ct. at 376 (citation omitted) (emphasis added).

12 For each form of relief sought in federal court, Plaintiff must establish standing. Mayfield  
13 v. United States, 599 F.3d 964, 969 (9th Cir. 2010), *cert.denied*, 131 S. Ct. 503 (2010). This requires  
14 Plaintiff to “show that he is under threat of suffering ‘injury in fact’ that is concrete and  
15 particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be  
16 fairly traceable to challenged conduct of the defendant; and it must be likely that a favorable judicial  
17 decision will prevent or redress the injury.” Summers v. Earth Island Institute, 129 S. Ct. 1142, 1149  
18 (2009) (citation omitted); Mayfield, 599 F.3d at 969 (citation omitted).

19 In addition, any award of equitable relief is governed by the Prison Litigation Reform Act,  
20 which provides in relevant part, “[p]rospective relief in any civil action with respect to prison  
21 conditions shall extend no further than necessary to correct the violation of the Federal right of a  
22 particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless  
23 the court finds that such relief is narrowly drawn, extends no further than necessary to correct the  
24 violation of the Federal right, and is the least intrusive means necessary to correct the violation of  
25 the Federal right.” 18 U.S.C. § 3626(a)(1)(A).

26 **A. Motion for Preliminary Injunction**

27 Plaintiff alleges that his life is in danger from retaliation due to his filing a staff misconduct  
28 complaint and civil law suit and he has been threatened by several correctional officers. (Mot. for

1 Preliminary Injunction 1, ECF No. 3.) Plaintiff requests an emergency transfer to Mule Creek State  
2 Prison or Donovan State Prison. Plaintiff alleges that he was assaulted on June 8, 2010, because he  
3 wrote an appeal that Defendants Romero and Gallagher didn't like and requests the Court to  
4 "imagine what they and their officer friends [sic] and co-workers are gonna [sic] do to me now that  
5 they know I have told Internal Affairs what happened." (Id. at 2-3.) On November 30, 2010,  
6 Plaintiff was placed in administrative segregation to protect him from retaliation by the officers. The  
7 officers are pointing Plaintiff out to all these officers on the yard whenever he goes outside. "Why  
8 would they be pointing [Plaintiff] out to all these officers on this yard [he is] now on???" Because  
9 they are planning to retaliate against [him]." (Id. at 3.) Plaintiff claims that he has personally seen  
10 Defendant Gallagher set up other inmates to be assaulted. (Id. at 3-4.)

11 Plaintiff states that after he was interviewed regarding the incident that occurred on June 8,  
12 2010, Sgts. Kirby, Betzinger and Sica became upset and began retaliating against and threatening  
13 Plaintiff. (Affidavit ¶ 10, ECF No. 3.) Lt. Spiedel was openly hostile toward Plaintiff and acted like  
14 he was mad at Plaintiff for writing a staff complaint. (Id., ¶ 12.) On November 30, 2010, several  
15 officers handcuffed Plaintiff and "rough handled" him as they took him to the program office so he  
16 could be placed in administrative segregation. (Id., ¶¶ 11, 13.) Plaintiff was told by Lt. Waddel that  
17 he was being placed in administrative segregation to protect him from retaliation by Defendants  
18 Romano and Gallagher or any of their fellow officers in facility "C". (Id., ¶¶ 15, 17.)

19 Sgt. Sica told Plaintiff that he was going to have all his legal papers and law books packed  
20 up and taken to receiving and release and that his property would be sent home so Plaintiff would  
21 not have it to litigate his case. (Id., ¶ 16.) On December 4, 2010, Plaintiff was placed in the sensitive  
22 needs yard. (Id., ¶ 18.) Officers who know Plaintiff from facility C are pointing him out to their  
23 friends. (Id., ¶ 20.) On December 1, 2010, an unidentified officer walked by Plaintiff's cell door  
24 and said, "you are gonna get yours [sic] snitch." (Id., ¶ 22.) On December 6, 2010, an unidentified  
25 officer asked Plaintiff if he had a will and stated that he would need one. (Id., ¶ 23.) On December  
26 9, 2010, an unidentified officer told Plaintiff that they would get him no matter where he was. (Id.,  
27 ¶ 24.) On December 15, 2010, Officer Conception was peeking out the clinic door and, when he saw  
28

1 Plaintiff looking at him, the door was closed. (Id., ¶ 25.) On December 15, 2010, an unidentified  
2 officer told Plaintiff to “get [his] ass out of this building.” (Id., ¶ 26.) On January 4, 2011, Plaintiff  
3 was joking with a female officer about being paroled and she responded, “You’ll be paroling to hell  
4 and it won’t be long.” (Id., ¶ 32.) On January 11, 2011, Plaintiff was walking by the control booth  
5 and the officer pointed his assault rifle at Plaintiff and Plaintiff was terrified he was going to be  
6 killed. (Id., ¶ 33.) On January 27, 2011, an officer told Plaintiff, “I heard you almost got your ass  
7 shot the other day. You better keep your mouth shut.” (Id., ¶ 34.) On February 17, 2011, an officer  
8 pointed at Plaintiff and made a slashing gesture across his throat with his finger. (Id., ¶ 35.)

9 Plaintiff believes that correctional officers are harassing so he will be moved to  
10 administrative segregation where it would be easier for them to have him hurt. (Id., ¶ 27.) Several  
11 inmates in administrative segregation have been murdered in their cell by other inmates and there  
12 have been several alleged suicides by inmates that are actually murders by staff. (Id., ¶¶ 29, 30.) A  
13 massive position swap occurred on February 1, 2011, and Plaintiff is afraid that some of the officers  
14 from C yard will be transferred to his housing unit. (Id., ¶ 36.)

15 The pendency of this action does not give the court jurisdiction to correct the conduct  
16 Plaintiff is complaining about, verbal harassment and threats by officers who are not defendants in  
17 this action. The order sought by Plaintiff cannot be issued even assuming Plaintiff is able to amend  
18 to state additional cognizable claims. Generally, past misconduct does not confer standing to seek  
19 an order aimed at preventing future harm. City of Los Angeles v. Lyons, 461 U.S. 95, 111, 103 S.  
20 Ct. 1660 (1983); Mayfield, 599 F.3d 970. Plaintiff’s Eighth Amendment claims in this action would  
21 not give the Court jurisdiction over the California Department of Corrections and Rehabilitation to  
22 order Plaintiff to be transferred to a specific institution. Plaintiff has failed to state any facts to  
23 indicate that he is in danger from Defendant Romero and states merely speculative claims that he  
24 may suffer harm. Accordingly, Plaintiff’s motion for a preliminary injunction is denied.

25 **B. Supplemental Motion for Preliminary Injunction**

26 Plaintiff moves for an emergency injunction granting him permanent single cell status and  
27 requests an emergency hearing on the motion. (Supplemental Mot. For Preliminary Injunction 1,  
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1 ECF No. 8.) On March 20, 2011, an unidentified correctional officer stated they are going to have  
2 someone cut Plaintiff's throat while he is sleeping in his cell. Plaintiff assumes that this means  
3 officers are going to get an inmate to slit his throat.<sup>2</sup> (Id. at 2.) Plaintiff alleges that on April 12,  
4 2011, Correction Officer Aguinaldo came to the yard with a riot gun, pointed the gun at Plaintiff's  
5 head, and said that he should have an accidental discharge and shoot Plaintiff in the head.  
6 (Supplemental Mot. for Preliminary Injunction 4, ECF No. 11.)

7 The pendency of this action does not confer on the Court jurisdiction to issue an order  
8 directing that Plaintiff be permanently housed in a single cell, because such an order would not  
9 remedy the underlying legal claim, which involves Defendant Romero's past conduct. 18 U.S.C.  
10 § 3626(a)(1)(A); Summers, 129 S. Ct. 1142 at 1149; Lyons, 461 U.S. at 101; Mayfield, 599 F.3d at  
11 969. Since the Court lacks jurisdiction to remedy Plaintiff's complaint, the Court declines to have  
12 a hearing as requested. Accordingly, Plaintiff's motion for a preliminary injunction is denied.<sup>3</sup>

13 **III. Conclusion and Order**

14 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motions for a preliminary  
15 injunction, filed March 17, 2011; April 8, 2011; May 2, 2011; and June 9, 2011, are DENIED.

16  
17 IT IS SO ORDERED.

18 **Dated: June 21, 2011**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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23  
24 <sup>2</sup>Plaintiff requests the Court take judicial notice of the affidavit of truth he has submitted simultaneously  
25 with his motion. While the Court will consider the affidavit it is not a document that is subject to judicial notice.  
Fed. R. Evid. 201(b).

26 <sup>3</sup>Prison officials appear to be aware of Plaintiff's concerns regarding retaliation by Defendants Romero and  
27 Gallagher and have taken appropriate steps to protect him by placing him on the sensitive needs yard. However,  
28 given Plaintiff's allegations of verbal harassment that are causing him to be concerned for his safety, the Court will,  
by separate order, have a copy of this order served upon the warden so Plaintiff's concerns may be addressed.