



1 **A. LEGAL STANDARD**

2 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter  
3 v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation  
4 omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed  
5 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
6 the balance of equities tips in his favor, and that an injunction is in the public interest.” Id. at 20  
7 (citations omitted). An injunction may only be awarded upon a clear showing that the plaintiff is  
8 entitled to relief. Id. at 22 (citation omitted) (emphasis added).

9 Plaintiff must establish that he has standing to seek preliminary injunctive relief.  
10 Summers, 555 U.S. at 493; Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010). To do  
11 so, he “must show that he is under threat of suffering an ‘injury in fact’ that is concrete and  
12 particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be  
13 fairly traceable to challenged conduct of the defendant; and it must be likely that a favorable  
14 judicial decision will prevent or redress the injury.” Summers, 555 U.S. at 493 (citation  
15 omitted); Mayfield, 599 F.3d at 969.

16 **B. PLAINTIFF’S ALLEGATIONS**

17 Here, as he has in past motions for injunctive relief, Plaintiff requests that the Court  
18 prohibit the enforcement of NCR 13-01, prohibit threats of confiscation or destruction of the  
19 religious items at issue, and/or “maintain the previously approved policies and procedures for  
20 Plaintiff to order and receive religious property and artifacts.” ECF No. 23, at 2.

21 Plaintiff is a Native American inmate and participates in the Native American Spiritual  
22 Circle (“NASC”). NCR 13-01 changed allowable religious property, and omitted several  
23 previously approved items that Plaintiff believes are essential to his Native American religious  
24 practices. The “wear-out” period for non-allowable items ended on June 9, 2014.

25 Plaintiff contends that he has received threats from staff regarding the confiscation and  
26 destruction of his spiritual items, and he has hidden the religious items that are no longer allowed  
27 with other inmates. He explains that on July 13, 2014, he and his “pod-mate,” also a fellow  
28

1 litigant, returned to their living quarters and found their property, especially their spiritual  
2 property, dumped and strewn about. Several items that are allowed were severely damaged.  
3 Other inmates informed Plaintiff that two officers, one who was identified as Officer Rodriguez,  
4 entered the pod and ordered everyone to leave. No other inmates had their property searched.

5 When Plaintiff attempted to gather information on the search, he was told to “let it go,”  
6 and that he was warned that they would be “coming after the Indians.” Plaintiff was also told  
7 that “if you two hadn’t gone to the courts, maybe” their items would not have been destroyed.  
8 ECF No. 23, at 9.

9 Since the July search, Plaintiff and his pod-mate have been subjected to searches of their  
10 personal and religious property about every two weeks. Sometimes the officers have the new  
11 matrix in their hands while they search to check whether the found items are allowable. Plaintiff  
12 contends that the searches are targeting him and his pod-mate because of their membership in the  
13 NASC and as litigants against Defendant Beard. He states that he has been advised that he and  
14 his pod-mate “are being specifically targeted due to their participation in the present litigation.”  
15 ECF No. 23, at 16.

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17 **C. ANALYSIS**

18 This action involves the constitutionality of NCR 13-01. However, the facts underlying  
19 this request for injunctive relief are only tangentially related to NCR 13-01. Instead, Plaintiff is  
20 seeking protection from retaliatory actions taken by various staff members for his involvement in  
21 this litigation. Plaintiff specifically states that he was told he was targeted because of this  
22 litigation. In other words, Plaintiff seeks relief from retaliation, not the enforcement of NCR 13-  
23 01. Under Plaintiff’s facts, enjoining Defendant Beard from enforcing NCR 13-01 will not stop  
24 the officers’ retaliatory searches.

25 Contrary to Plaintiff’s arguments, there is no direct connection between Defendant  
26 Beard’s enforcement of NCR 13-01 and the officers’ retaliatory searches. While the officers  
27 may be referencing NCR 13-01, or checking property to see if it is allowable, the officers were  
28 motivated by Plaintiff’s litigation. Conduct must be fairly traceable to challenged conduct of the

1 defendant, and in this instance, Plaintiff cannot meet this requirement. Summers, 555 U.S. at  
2 493 (citation omitted); Mayfield, 599 F.3d at 969.

3 That the officers are retaliating against Plaintiff is further supported by the officers'  
4 alleged destruction of *allowable* property.

5 Moreover, the Court notes that “[w]here the regulations of a state prison are involved,  
6 ‘federal courts have ... additional reason to accord deference to the appropriate prison  
7 authorities.’” Turner v. Safley, 482 U.S. 78, 85 (citation and internal quotation marks omitted).  
8 Of course, the Court would enjoin a regulation if the regulation was found to violate an inmate’s  
9 constitutional rights. However, the Court will not grant preliminary injunctive relief absent a  
10 clear showing that Plaintiff is entitled to relief.

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12 **RECOMMENDATION**

13 For these reasons, the Court RECOMMENDS that Plaintiff’s motion be DENIED.

14 These Findings and Recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days  
16 after being served with these Findings and Recommendations, Plaintiff may file written  
17 objections with the court. Such a document should be captioned “Objections to Magistrate  
18 Judge's Findings and Recommendations.” Plaintiff is advised that failure to file objections  
19 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
20 Ylst, 951 F.2d 1153, 1157 (9th Cir. 1991).

21  
22 IT IS SO ORDERED.

23 Dated: November 13, 2014

24 /s/ Dennis L. Beck  
25 UNITED STATES MAGISTRATE JUDGE  
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