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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

 Plaintiff,

 v.

R. LEYVA,

 Defendant.

No. 1:17-cv-01549-DAD-SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF’S MOTION TO PROCEED *IN
FORMA PAUPERIS*

(Doc. Nos. 5, 9, 10, 13)

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 4, 2017, plaintiff filed a motion to proceed *in forma pauperis*. (Doc. No. 5.) On January 18, 2018, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff’s motion to proceed *in forma pauperis* be denied under 28 U.S.C. § 1915(g), since plaintiff had suffered at least three prior strike dismissals before the filing of this action and that his allegations failed to show that he was in imminent danger of serious physical injury at the time he filed this suit. (Doc. No. 13.) The findings and recommendations were served on plaintiff and contained notice that objections to the findings and recommendations were

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1 to be filed within twenty-one days. (*Id.*) Plaintiff filed objections on February 12, 2018. (Doc.
2 No. 17.)

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
4 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
5 including plaintiff's objections, the court finds the findings and recommendations to be supported
6 by the record and by proper analysis.

7 The court has reviewed plaintiff's objections and finds that they fail to present any basis
8 for rejecting the findings and recommendations. Plaintiff admits that he has suffered three strike
9 dismissals of prior cases he has brought, but contends that his application to proceed *in forma*
10 *pauperis* should nonetheless be granted because he is currently in imminent danger. Plaintiff's
11 argument in this regard is unpersuasive. As noted in the findings and recommendations, at the
12 time this action was filed, plaintiff was housed at Pelican Bay State Prison. (Doc. No. 13 at 2.)
13 Plaintiff in his objections contends that he is in imminent danger because on July 20, 2017, he
14 was assaulted while confined at Kern Valley State Prison in retaliation for continuing to exercise
15 his rights through the prison grievance system. (Doc. No. 17 at 2.) However, even accepting this
16 claim as true, the alleged assault plaintiff relies on took place four months prior to the filing of the
17 instant action, and occurred at an entirely different prison than where plaintiff is presently
18 confined. Plaintiff has provided no authority suggesting that such circumstances satisfy the
19 imminent danger exception under 28 U.S.C. § 1915(g). *See Andrews v. Cervantes*, 493 F.3d
20 1047, 1053 (9th Cir. 2007) (Concluding that § 1915(g) required a showing of imminent danger
21 "at the time the prisoner filed the complaint" because of the section's use of the present tense and
22 its concern with the initial act of "bring[ing] the action."); *see also Williams v. Paramo*, 775 F.3d
23 1182, 1187-89 (9th Cir. 2015) (statute requires that plaintiffs must allege the continued existence
24 of imminent danger at the time the notice of appeal is filed).

25 For these reasons,

- 26 1. The findings and recommendation issued January 18, 2018 (Doc. No. 13) are
27 adopted in full;

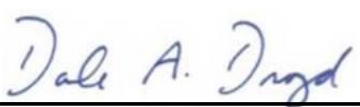
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2. Plaintiff's motions to proceed *in forma pauperis* (Doc. Nos. 5, 10) are denied;
3. Within twenty-one days from the date of service of this order, plaintiff is required to pay in full the \$400.00 filing fee for this action; and
4. Plaintiff is warned that failure to comply with this order will result in the dismissal of this action without prejudice to refile upon prepayment of the filing fee.

IT IS SO ORDERED.

Dated: April 9, 2018


UNITED STATES DISTRICT JUDGE