

1 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

2 The Court may take judicial notice of court records. *United States v. Howard*, 381 F.3d
3 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of *Trujillo*¹ v. *Sherman*, 1:14-cv-0140-
4 BAM (PC), which was dismissed and closed on April 24, 2015, for failure to state a claim,
5 affirmed by the Ninth Circuit on February 23, 2016; *Trujillo v. Ruiz, et al.*, 1:14-cv-0975-SAB,
6 which was dismissed and closed on January 6, 2016, for failure to state a claim, affirmed by the
7 Ninth Circuit on May 9, 2017; and *Trujillo v. Gonzalez-Moran, et al.*, which was dismissed and
8 closed on January 19, 2017 (Plaintiff’s appeal was dismissed by the Ninth Circuit as frivolous on
9 July 28, 2017). Thus, Plaintiff had three strikes under §1915(g) before he filed this action on
10 November 20, 2017.

11 Accordingly, the only way Plaintiff may proceed *in forma pauperis* in this action is if his
12 allegations demonstrate he was under imminent danger of serious physical injury at the time this
13 action was filed. Plaintiff alleges that the violation in this action occurred at High Desert State
14 Prison (“HDSP”), and that Correctional Officer R. Leyva is employed at Kern Valley State Prison
15 (“KVSP”). However, when Plaintiff filed this action, he was housed at Pelican Bay State Prison
16 (“PBSP”) in Crescent City, California. (*See* Doc. 1, p. 1.) The Complaint contains allegations
17 regarding acts by Officer Leyva that occurred either at HDSP or KVSP. Plaintiff does not state
18 any allegations of wrongdoing at PBSP and was not in imminent danger of serious physical injury
19 at the time he filed suit, which precludes him from proceeding *in forma pauperis* in this action.
20 *Andrews v. Cervantes*, 493 F.3d 1047, 1056-57 (9th Cir. 2007).

21 Plaintiff had three strikes under 28 U.S.C. §1915(g) before he filed this action. The
22 allegations in this action do not establish that Plaintiff was facing imminent danger of serious
23 physical injury at the time the Complaint was filed when he was housed at PBSP.

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27 ¹ Plaintiff intermittently transposes his surnames in his legal filings, i.e “Trujillo Cruz” and “Cruz Trujillo.”
28 However, Plaintiff’s identity in these prior actions was confirmed via his California Department of Corrections and
Rehabilitation inmate number #AA-2974.

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Accordingly, it is **HEREBY ORDERED** that, within twenty-one days of the date of service of this order, Plaintiff **SHALL** show cause why his application to proceed *in forma pauperis* status should not be denied. Alternatively, Plaintiff may file a notice of voluntary dismissal.

IT IS SO ORDERED.

Dated: December 19, 2017

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE