

1 8.) Neither filing is responsive to the Court’s order to show cause. The deadline for Plaintiff’s
2 response to the Court’s order to show cause, or payment of the filing fee for this action, has expired.

3 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event shall a
4 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
5 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
6 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
7 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
8 physical injury.”¹ Plaintiff has been informed in a prior case that he is subject to § 1915(g).²

9 The Court reviewed Plaintiff’s complaint and found that his allegations do not satisfy the
10 imminent danger exception to section 1915(g). Andrews v. Cervantes, 493 F.3d 1047, 1053–55
11 (9th Cir. 2007). Plaintiff, who has been sentenced to death by the Superior Court of California for
12 the County of Alameda, argues that the trial court lacked subject matter jurisdiction over that matter,
13 and therefore requests that the judgment be vacated and that Plaintiff be released from incarceration.
14 (ECF No. 1.) Though Plaintiff alleges that he is “always under imminent danger of serious physical
15 injury,” he bases this assertion on the fact that he is under armed guard at all times, with signs posted
16 stating “Danger, no warning shots will be fired.” (Id. at 4.) The mere fact of Plaintiff’s confinement
17 is not sufficient to satisfy the exception from the three strikes bar under 28 U.S.C. § 1915(g).

18 Thus, Plaintiff has not alleged any imminent danger of serious physical injury at the time
19 of filing and has not satisfied the exception from the three strikes bar under 28 U.S.C. § 1915(g).
20 Plaintiff has failed to pay the \$400.00 filing fee required to litigate this action, despite being
21 provided with a further opportunity to do so.

22 Accordingly, the Clerk of the Court is **HEREBY DIRECTED** to randomly assign a
23 District Judge to this action.

24
25 ¹ The Court takes judicial notice of the following United States District Court Cases: (1) Shepard v. Connolly, Case
26 No. 2:11-cv-01262-UA-MAN (C.D. Cal.) (dismissed on February 17, 2011, for being frivolous, malicious, or failing
27 to state a claim); (2) Shepard v. Johnson, Case No. 1:11-cv-01726-SKO PC (dismissed on August 7, 2012, for failure
28 to state a claim); (3) Shepard v. Munoz, Case No. 1:12-cv-01470-GSA PC (dismissed on October 8, 2013, for failure
to state a claim).

² The Court takes judicial notice of Documents 25 and 26 in Shepard v. Podsakoff, Case No. 1:12-cv-00495-AWI-
EPG (E.D. Cal.).

