



1 party officially, and is required to take action in that capacity, only upon service of summons or  
2 other authority-asserting measure stating the time within which the party serve must appear to  
3 defend.). Furthermore, the pendency of this action does not give the Court jurisdiction over  
4 prison officials in general. Summers v. Earth Island Inst., 555 U.S. 488, 491–93 (2009); Mayfield  
5 v. United States, 599 F.3d 964, 969 (9th Cir. 2010). The Court’s jurisdiction is limited to the  
6 parties in this action and to the viable legal claims upon which this action is proceeding.  
7 Summers, 555 U.S. at 491–93; Mayfield, 599 F.3d at 969.

8 A temporary restraining order is an extraordinary measure of relief that a federal court  
9 may impose without notice to the adverse party if, in an affidavit or verified complaint, the  
10 moving party “clearly show[s] that immediate and irreparable injury, loss, or damage will result  
11 to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A).  
12 The standard for issuing a temporary restraining order is essentially the same as that for issuing a  
13 preliminary injunction. Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7  
14 (9th Cir. 2001) (analysis for temporary restraining orders and preliminary injunctions is  
15 “substantially identical”).

16 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter  
17 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted). “A plaintiff seeking a  
18 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to  
19 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
20 favor, and that an injunction is in the public interest.” Id. at 20 (citations omitted). An injunction  
21 may only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at 22 (citation  
22 omitted). “Under Winter, plaintiffs must establish that irreparable harm is *likely*, not just  
23 possible, in order to obtain a preliminary injunction.” Alliance for the Wild Rockies v. Cottrell,  
24 632 F.3d 1127, 1131 (9th Cir. 2011).

25 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the  
26 Prison Litigation Reform Act, which requires that the Court find the “relief [sought] is narrowly  
27 drawn, extends no further than necessary to correct the violation of the Federal right, and is the  
28 least intrusive means necessary to correct the violation of the Federal right.” Section 3626(a)(2)

1 also places significant limits upon a court’s power to grant preliminary injunctive relief to  
2 inmates. “Section 3626(a) therefore operates simultaneously to restrict the equity jurisdiction of  
3 federal courts and to protect the bargaining power of prison administrators – no longer may courts  
4 grant or approve relief that binds prison administrators to do more than the constitutional  
5 minimum.” Gilmore v. People of the State of California, 220 F.3d 987, 999 (9th Cir. 2000).

6 **II.**  
7 **DISCUSSION**

8 In his motion, Plaintiff seeks a temporary restraining order and a preliminary injunction  
9 restraining Defendants Diaz, Allison, and Ndoh, and all persons acting on their behalf from  
10 merging or mixing the Sensitive Needs Yard prisoners with the General Population prisoners at  
11 Avenal State Prison.

12 However, initially, the Court notes that, on June 10, 2019, Plaintiff filed a notice of  
13 change of address stating that, on May 28, 2019, he was transferred from Avenal State Prison to  
14 California Medical Facility. (ECF No. 13.) Since Plaintiff has been transferred from Avenal and  
15 has not presented the Court with any evidence demonstrating that he has a reasonable expectation  
16 of returning to Avenal State Prison, his request for injunctive relief relating to the application of  
17 the Non-Designated Programming Facilities (“NDPF”) policy to Avenal State Prison is moot.  
18 Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (*per curiam*); see also Andrews v.  
19 Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007).

20 Further, even if Plaintiff’s request for injunctive relief is not moot, Plaintiff has not made  
21 a sufficient showing to warrant the granting of a temporary restraining order and a preliminary  
22 injunction. First, Plaintiff filed this motion along with his complaint and no defendant has been  
23 served with process. Until one or more of the defendants have been served with process, this  
24 Court lacks personal jurisdiction over them, and may not grant the injunctive relief Plaintiff  
25 requests. See Fed. R. Civ. P. 65(d)(2); Murphy Bros., Inc., 526 U.S. at 350.

26 Second, when the Court screened Plaintiff’s complaint, the Court found that Plaintiff  
27 failed to state any cognizable claim upon which § 1983 relief can be granted. Therefore, Plaintiff  
28 has necessarily failed to show, for purposes of justifying preliminary injunctive relief, any

1 likelihood of success on the merits of his claims. Winter, 555 U.S. at 20.

2 Third, in order to establish that preliminary injunctive relief should be granted, a plaintiff  
3 must “demonstrate that irreparable injury is *likely* in the absence of an injunction.” Id. at 22.  
4 This requires that plaintiff allege ‘specific facts in an affidavit or a verified complaint [which]  
5 clearly show” a credible threat of “immediate and irreparable injury, loss, or damage.” Fed. R.  
6 Civ. P. 65(b)(1)(A). Plaintiff first provides the declaration of Kim McGill, an organizer with the  
7 Youth Justice Coalition, describing the association’s efforts to challenge CDCR’s implementation  
8 of the NDPF yards, based on the association’s concerns about safety. (ECF No. 2, at 6-10.)  
9 However, McGill’s declaration does not clearly demonstrate that Plaintiff has been, or is  
10 currently, assigned to a NDPF yard and faces imminent harm.

11 Plaintiff has also provided his own declaration. (ECF No. 2, at 17-22.) In his declaration,  
12 Plaintiff asserts that, in researching about the NDPF program, he and his family discovered  
13 fourteen incidents of violence that occurred in relationship with the NDPF program from May  
14 2018 through December 2018. (Id. at 19-20.) Plaintiff further declares that, on the date of his  
15 declaration, numerous rape cases and violent incidents between Sensitive Needs Yards and  
16 General Population prisoners have occurred and are occurring in “F” yard and other Avenal State  
17 Prison yards due to the NDPF program. (Id. at 22.) Plaintiff states that, based on all the mergers  
18 thus far, it is highly likely that continued violence will occur or erupt on his yard or any CDCR  
19 facility unless the Court grants injunctive relief. (Id.)

20 However, Plaintiff’s declaration does not contain any allegations that he has been, or is  
21 currently, assigned to a merged yard pursuant to the NDPF policy. In fact, Plaintiff’s declaration  
22 implies that Plaintiff has not been, and is not currently, assigned to a merged yard because he has  
23 received, and been found guilty, of at least one Rules Violation Report for Refusing to Accept  
24 Assigned Housing after Plaintiff refused to program in an NDPF yard. (Id. at 21, 23-32.)  
25 Therefore, Plaintiff’s allegations that he currently faces immediate and irreparable harm are  
26 speculative. Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988)  
27 (“Speculative injury does not constitute irreparable injury sufficient to warrant granting a  
28 preliminary injunction.” (citation omitted)). Consequently, Plaintiff has failed to establish that he

1 currently faces the type of immediate and credible threat of irreparable harm necessary to justify  
2 extraordinary injunctive relief at this stage of the case.

3 For all the foregoing reasons, Plaintiff's request for a temporary restraining order and a  
4 preliminary injunction should be denied.

5 **III.**

6 **ORDER AND RECOMMENDATION**

7 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
8 Fresno District Judge to this action.

9 Further, it is HEREBY RECOMMENDED that Plaintiff's *ex parte* emergency motion for  
10 a temporary restraining order and a preliminary injunction, (ECF No. 2), be DENIED.

11 These Findings and Recommendation will be submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
13 **days** after being served with these Findings and Recommendation, Plaintiff may file written  
14 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
15 Findings and Recommendation." Plaintiff is advised that failure to file objections within the  
16 specified time may result in the waiver of the "right to challenge the magistrate's factual  
17 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
18 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19 IT IS SO ORDERED.

20 Dated: August 29, 2019

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23 UNITED STATES MAGISTRATE JUDGE