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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENE RAYMOND MATTHEWS, III
Plaintiff,
v.
S. RAMOS, et al.
Defendants.

No. 1:22-cv-01508-JLT-SAB (PC)
FINDINGS AND RECOMMENDATION
RECOMMENDING PLAINTIFF’S REQUEST
FOR INJUNCTIVE RELIEF BE DENIED
(ECF No. 30)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for a preliminary injunction, filed August 18, 2023.

A temporary restraining order may issue upon a showing “that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose of such an order is to preserve the status quo and to prevent irreparable harm “just so long as is necessary to hold a hearing, and no longer.” Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423, 439 (1974). In ruling on a motion for temporary restraining order, district courts apply the same factors used to evaluate a request for preliminary injunctive relief: whether plaintiff “is likely to succeed on the merits, ... likely to suffer irreparable harm in the absence of preliminary relief, ... the balance of equities tips in his favor, and ... an injunction is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); see also Stuhlberg Int’l. Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001) (“Because our analysis is substantially identical for the

1 injunction and the TRO, we do not address the TRO separately.”).

2 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter,
3 555 U.S. at 24 (citation omitted). Federal courts are courts of limited jurisdiction and in
4 considering a request for preliminary injunctive relief, the court is bound by the requirement that
5 as a preliminary matter, it have before it an actual case or controversy. City of L.A. v. Lyons, 461
6 U.S. 95, 102 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church &
7 State, Inc., 454 U.S. 464, 471 (1982). If the court does not have an actual case or controversy
8 before it, it has no power to hear the matter in question. Id. Further, requests for prospective
9 relief are limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act (“PLRA”),
10 which requires that the court find the “relief [sought] is narrowly drawn, extends no further than
11 necessary to correct the violation of the Federal right, and is the least intrusive means necessary to
12 correct the violation of the Federal right.”

13 Finally, the pendency of an action does not give the Court jurisdiction over prison officials
14 in general. Summers v. Earth Island Inst., 555 U.S. 488, 491-93 (2009); Mayfield v. United
15 States, 599 F.3d 964, 969 (9th Cir. 2010). The Court’s jurisdiction is limited to the parties in this
16 action and to the viable legal claims upon which this action is proceeding. Summers, 555 U.S. at
17 491-93; Mayfield, 599 F.3d at 969.

18 Plaintiff has not demonstrated that he is or will be subject to immediate and irreparable
19 harm if an injunction does not issue. Plaintiff claims generally that he is afraid of officers, at a
20 different institution, based on the November 2021 alleged assault. But Plaintiff articulates no facts
21 demonstrating a threat of imminent or likely harm. See Alliance for the Wild Rockies v. Cottrell,
22 632 F.3d 1127, 1131 (9th Cir. 2011) (“Under Winter, plaintiff[] must establish that irreparable
23 harm is likely, not just possible.”); Goldie's Bookstore, Inc. v. Superior Court of State of Cal., 739
24 F.2d 466, 472 (9th Cir. 1984) (“Speculative injury does not constitute irreparable injury.”);
25 Rigsby v. State, 2013 WL 1283778, at *5 (D. Ariz. Mar. 28, 2013) (denying prisoner's TRO
26 based on fear of potential future injury based on past assaults). Indeed, Plaintiff is no longer
27 housed at North Kern State Prison, and does not allege that any of the Defendants have been
28 transferred to employment at Salinas Valley State Prison where Plaintiff is presently housed. A

1 presently existing actual threat must be shown, even though injury need not be certain to occur.
2 See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130-31 (1969); FDIC v.
3 Garner, 125 F.3d 1272, 1279-80 (9th Cir. 1997).

4 Moreover, to meet Rule 65's "irreparable injury" requirement, Plaintiff must do more
5 than simply allege imminent harm; he must demonstrate it. Caribbean Marine Servs. Co., Inc. v.
6 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988). This requires he allege "specific facts in an
7 affidavit or a verified complaint [which] clearly show" a credible threat of "immediate and
8 irreparable injury, loss or damage." Fed R. Civ. P. 65(b)(A). "Speculative injury does not
9 constitute irreparable injury sufficient to warrant granting a preliminary injunction." Caribbean
10 Marine, 844 F.2d at 674-75. Plaintiff's claim that the same behavior is continuing at his current
11 place of incarceration based on "intricately connected racists CO gang chapters" is not sufficient
12 to demonstrate a threat of irreparable injury in 2023. While the Court is sympathetic to Plaintiff's
13 fear of correctional officers based on the 2021 assault, Plaintiff may not obtain injunctive relief in
14 this action based upon such generalized fear. Accordingly, Plaintiff's motion for a preliminary
15 injunction and/or temporary restraining order should be denied.

16 This Findings and Recommendation will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
18 days after being served with this Findings and Recommendation, the parties may file written
19 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendation." The parties are advised that failure to file objections within the
21 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
22 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: August 21, 2023


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28 UNITED STATES MAGISTRATE JUDGE