



1 **I. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915(g)**

2 Pertinent here is the so called “three strikes provision” of 28 U.S.C. § 1915.

3 In no event shall a prisoner bring a civil action . . . under this section if the prisoner  
4 has, on 3 or more prior occasions, while incarcerated or detained in any facility,  
5 brought an action or appeal in a court of the United States that was dismissed on  
6 the grounds that it is frivolous, malicious, or fails to state a claim upon which relief  
7 may be granted, unless the prisoner is under imminent danger of serious physical  
8 injury.

9 28 U.S.C. § 1915(g). In determining whether a dismissal counts as a “strike” under § 1915(g),  
10 “the reviewing court looks to the dismissing court’s action and the reasons underlying it. . . . This  
11 means that the procedural mechanism or Rule by which the dismissal is accomplished, while  
12 informative, is not dispositive.” *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (internal  
13 citation omitted). The Ninth Circuit has “interpreted the final form of dismissal under the statute,  
14 ‘fail[ure] to state a claim upon which relief may be granted,’ to be essentially synonymous with a  
15 Federal Rule of Civil Procedure 12(b)(6) dismissal.” *Id.* (alteration in original).

16 **II. ANALYSIS**

17 **A. Strikes**

18 Plaintiff filed this action on November 4, 2024, with the complaint being dated October  
19 30, 2024. (ECF No. 1). The Court takes judicial notice<sup>2</sup> of the following four cases, each of which  
20 counts as a “strike”: (1) *Azevedo v. Thompson, et al.*, No. 2:17-cv-01262-MCE-EFB (E.D. Cal.  
21 April 10, 2018) (dismissed for failure to state a claim at screening); (2) *Azevedo v. Colusa County*  
22 *Jail, et al.*, No. 2:17-cv-00472-JAM-AC (E.D. Cal. Feb. 21, 2018) (dismissed for failure to state a  
23 claim at screening); (3) *Azevedo v. Smith, et al.*, No. 2:16-cv-01214-TLN-AC (E.D. Cal. Aug. 9,  
24 2016) (dismissed for failure to state a claim at screening); (4) *Azevedo v. Smith, et al.*, No. 2:16-  
25 cv-2809-JAM-EFB (E.D. Cal. Feb. 21, 2018) (dismissed for failure to state a claim). Moreover,  
26 Plaintiff has previously been denied IFP status by at least one other court because of his three-  
27 striker status. *See Azevedo v. Smith, et al.*, No. 2:18-cv-02818-TLN-AC (E.D. Cal.).

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1:24-cv-01345-KES-HBK. (ECF No. 8). However, because that other case has since been voluntarily  
dismissed and closed, the Court discharges the show cause order.

<sup>2</sup> “In particular, a court may take judicial notice of its own records in other cases . . . .” *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1                                   **B.      Imminent Danger**

2                   Because Plaintiff had at least three “strikes” prior to filing this action, Plaintiff is  
3 precluded from proceeding *in forma pauperis* unless Plaintiff was, at the time the complaint was  
4 filed, in imminent danger of serious physical injury. The availability of the imminent danger  
5 exception “turns on the conditions a prisoner faced at the time the complaint was filed, not at  
6 some earlier or later time.” *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007).  
7 “Imminent danger of serious physical injury must be a real, present threat, not merely speculative  
8 or hypothetical.” *Blackman v. Mjening*, No. 1:16-CV-01421-LJO-GSA (PC), 2016 WL 5815905,  
9 at \*1 (E.D. Cal. Oct. 4, 2016). To meet his burden under § 1915(g), Plaintiff must provide  
10 “specific fact allegations of ongoing serious physical injury, or a pattern of misconduct  
11 evidencing the likelihood of imminent serious physical injury.” *Martin v. Shelton*, 319 F.3d 1048,  
12 1050 (8th Cir. 2003). “[V]ague and utterly conclusory assertions” of imminent danger are  
13 insufficient. *White v. Colorado*, 157 F.3d 1226, 1231-32 (10th Cir. 1998). The “imminent danger”  
14 exception is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is  
15 real and proximate.” *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002).

16                   Additionally, there is a nexus requirement between the danger alleged and the claims  
17 asserted: “Thus, in order to qualify for the § 1915(g) imminent danger exception, a three-strikes  
18 prisoner must allege imminent danger of serious physical injury that is both fairly traceable to  
19 unlawful conduct alleged in his complaint and redressable by the court.” *Ray v. Lara*, 31 F.4th  
20 692, 701 (9th Cir. 2022). Because Plaintiff is *pro se*, in making the imminent danger  
21 determination, the Court must liberally construe Plaintiff’s allegations. *Andrews*, 493 F.3d at  
22 1055.

23                   Plaintiff’s complaint alleges that a mental health patient attacked him while he was  
24 located at Coalinga State Hospital. (ECF No. 1, p. 3). However, by the time that Plaintiff filed this  
25 complaint, he was located in San Quentin State Prison, indicating that the events complained of  
26 happened before this transfer. And Plaintiff acknowledges that he was treated for his injuries at an  
27 outside hospital.

28                   Such allegations are insufficient to show that there is a real and imminent threat to  
Plaintiff’s personal safety under the standards described above. None of these allegations fairly

1 implicate an ongoing serious physical injury or a pattern of misconduct evidencing the likelihood  
2 of imminent serious physical injury to Plaintiff.

3 Accordingly, because Plaintiff is a “three-striker” and does not appear to have been in  
4 imminent danger when he filed this action, the Court will recommend that Plaintiff be required to  
5 pay the \$405 filing fee in full if he wants to proceed with the action.

6 **III. CONCLUSION, ORDER, AND RECOMMENDATIONS**

7 Accordingly, IT IS ORDERED that the show cause order is discharged. (ECF No. 8).

8 And IT IS RECOMMENDED that:

- 9 1. Plaintiff’s application to proceed *in forma pauperis* be denied. (ECF No. 2).
- 10 2. Pursuant to 28 U.S.C. § 1915(g), Plaintiff be directed to pay the \$405.00 filing fee in  
11 full if he wants to proceed with this action.
- 12 3. Plaintiff be advised that failure to pay the filing fee in full will result in the dismissal  
13 of this case.

14 These findings and recommendations will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
16 days after being served with these findings and recommendations, Plaintiff may file written  
17 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
18 Findings and Recommendations.” Any objections shall be limited to no more than 15 pages,  
19 including exhibits. Plaintiff is advised that failure to file objections within the specified time may  
20 result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.  
21 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: November 25, 2024

24 /s/ Eric P. Gray  
25 UNITED STATES MAGISTRATE JUDGE  
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