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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 ANDRE RHODES,

11 Petitioner,

No. CIV S-10-1444 GGH P

12 vs.

13 MIKE McDONALD, Warden,

14 Respondent.

ORDER

15 \_\_\_\_\_/  
16 Petitioner is a state prisoner proceeding on petition for a writ of habeas corpus  
17 pursuant to 28 U.S.C. § 2254. Both parties have consented to the undersigned's jurisdiction.  
18 Pending before this court is petitioner's September 20, 2010 "Motion for Federal Protective  
19 Custody." For the reasons explained below, petitioner's motion is denied.

20 Petitioner is a prisoner at High Desert State Prison in Susanville. He states that he  
21 has received death threats and been attacked three times, twice by inmates and once by  
22 correctional officers, and that he fears for his safety and security. Petitioner suggests that these  
23 attacks are retaliatory in nature, the result of petitioner's conflict with a particular group ("known  
24 as the Nicolaitans") comprised of both inmates and prison staff. He also asserts that he has been  
25 "denied the right to appeal being battered by a corrections officer[.]" Petitioner requests an order

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1 placing him in federal protective custody until the instant action is resolved.<sup>1</sup> Pursuant to this  
2 court's standard practice, the motion is construed as one seeking preliminary injunctive relief.

### 3 DISCUSSION

4 The purpose of a preliminary injunction is to preserve the status quo if the balance  
5 of equities so heavily favors the moving party that justice requires the court to intervene to secure  
6 the positions until the merits of the action are ultimately determined. University of Texas v.  
7 Camenisch, 451 U.S. 390, 395, 101 S.Ct. 1830 (1981).

8 This action is proceeding pursuant to the court's habeas jurisdiction under 28  
9 U.S.C. § 2254. In it, petitioner challenges his conviction based on various alleged evidentiary  
10 and discovery errors. Because an order temporarily placing petitioner in federal custody would  
11 not remedy the claims upon which this action proceeds, the court may not issue the order sought  
12 by petitioner. See De Beers Consolidated Mines v. United States, 325 U.S. 212, 65 S.Ct. 1130  
13 (1945). Also, the undersigned is unwilling to backdoor the requirements of the PLRA which  
14 mandate administrative exhaustion of difficulties encountered in prison before those difficulties  
15 may be resolved in a court action.

16 Moreover, even if the undersigned were to consider the matter under the  
17 jurisdiction preservation aspect of the All Writs Act, 28 U.S.C. § 1651, petitioner has offered no  
18 evidence demonstrating a fair chance of success on the merits of his complaint. Conclusions in a  
19 letter are not enough. While the court does not discount petitioner's concerns for his safety, it  
20 cannot issue a preliminary injunction or writ under these circumstances.

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25 <sup>1</sup>Actually, petitioner referenced civil action 08-834 RHW, and action which was dismissed  
26 and judgment entered on September 27, 2010. The undersigned will interpret petitioner's request  
in this action to refer to this action.

CONCLUSION

Accordingly, it is HEREBY ORDERED that petitioner's Motion for Federal Protective Custody filed on September 20, 2010 (Doc. No. 13) is DENIED.

DATED: September 30, 2010

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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