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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEAVON PIERCE,  
Plaintiff,  
v.  
BARACK OBAMA, et al.,  
Defendants.

No. 2:16-cv-0502 JAM CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a petition for writ of mandamus along with an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). (ECF Nos. 1 & 2.)

Plaintiff alleges that state corrections officials denied him medical treatment for an ear injury and covered up the use of excessive force. He seeks an order enjoining defendants to investigate and address these claims. Though plaintiff has styled his complaint as a petition for writ of mandamus, it is better construed as a civil rights complaint under 42 U.S.C. § 1983 for injunctive relief.<sup>1</sup>

<sup>1</sup> The All Writs Act, 28 U.S.C. § 1651 provides that “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). The All Writs Act does not confer original jurisdiction on federal courts, but may be invoked only to aid already existing jurisdiction. 28 U.S.C. § 1651(a). In the event that jurisdiction is properly pled, “injunctive relief under the All Writs Act is to be used sparingly and only in the most

1           28 U.S.C. § 1915 permits any court of the United States to authorize the commencement  
2 and prosecution of any suit without prepayment of fees by a person who submits an affidavit  
3 indicating that the person is unable to pay such fees. However,

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

9 28 U.S.C. § 1915(g).

10           Court records indicate that plaintiff has been deemed a “Three Strikes” inmate under 28  
11 U.S.C. § 1915(g). Pierce v. Sacramento Bee, No. 2:16-cv-0260 JAM CKD P, Order dated Feb.  
12 29, 2016 (denying plaintiff’s request to proceed in forma pauperis, affirmed on reconsideration by  
13 district court on March 30, 2016). The court takes judicial notice of the three cases identified  
14 therein as § 1915(g) strikes against plaintiff, all of which were dismissed for failure to state a  
15 claim. Id. at 1-2.

16           The imminent danger applies only if it is clear that the danger existed when the complaint  
17 was filed. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Allegations of imminent  
18 danger that are overly speculative or fanciful may be rejected. Id. at 1057, n.11. Having  
19 reviewed the complaint, the undersigned finds that plaintiff has not credibly alleged “imminent  
20 danger of serious physical injury” under § 1915(g).

21           In light of the above, plaintiff will be granted fourteen days to pay the filing fee in this  
22 action; otherwise, the action will be dismissed.

23           Accordingly, IT IS HEREBY ORDERED that:

24           1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is denied; and

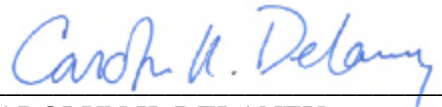
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26           critical and exigent circumstances.” Brown v. Gilmore, 533 U.S. 1301 (2001) (internal  
27 quotations and citations omitted). “Such an injunction is appropriate only if the legal rights at  
28 issue are indisputably clear.” Id. (internal quotations and citations omitted). Here, plaintiff’s  
allegations do not qualify for writ relief.

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2. Plaintiff shall pay the \$400 filing fee no later than fourteen days from the date of this order. Failure to comply with this order will result in dismissal of this action.

Dated: April 4, 2016

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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