



1 In Williams, issued November 9, 2017, the Ninth Circuit Court of Appeals held that a  
2 magistrate judge lacked jurisdiction to dismiss a prisoner's case for failure to state a claim at the  
3 screening stage where the plaintiff had consented to magistrate judge jurisdiction and defendants  
4 had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017). Specifically, the Ninth  
5 Circuit held that “28 U.S.C. § 636(c)(1) requires the consent of all plaintiffs and defendants  
6 named in the complaint—irrespective of service of process—before jurisdiction may vest in a  
7 magistrate judge to hear and decide a civil case that a district court would otherwise hear.” Id. at  
8 501.

9 Here, defendants were not served at the time the court issued its orders finding plaintiff  
10 had suffered three strikes, finding plaintiff had not demonstrated imminent danger, and  
11 dismissing this case. Accordingly, the undersigned magistrate judge lacked jurisdiction to make  
12 these determinations and to dismiss this action based solely on plaintiff's consent.

13 In light of the holding in Williams, this court will recommend to the assigned district  
14 judge that he or she find plaintiff has suffered three strikes, for the reasons set forth in the June  
15 16, 2017 order, and find that plaintiff has failed to show that, at the time he filed his complaint, he  
16 was in imminent danger of serious physical injury, for the reasons set forth in the July 6, 2017  
17 order.

18 Accordingly, the Clerk of the Court IS HEREBY ORDERED to assign a district judge to  
19 this case.

20 Further, IT IS HEREBY RECOMMENDED that:

- 21 1. The court find plaintiff has accrued three strikes under 28 U.S.C. § 1915(g) for the  
22 reasons set forth in the court's June 16, 2017 order (ECF No. 4);
- 23 2. The court find plaintiff failed to demonstrate that, at the time he filed his complaint, he  
24 was in imminent danger of serious physical injury, for the reasons set forth in the July  
25 6, 2017 order (ECF No. 7); and
- 26 3. The court deny plaintiff's motion to proceed IFP (ECF No. 6).

27 These findings and recommendations will be submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, plaintiff may file written objections  
2 with the court. The document should be captioned “Objections to Magistrate Judge's Findings  
3 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
4 time may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951  
5 F.2d 1153 (9th Cir. 1991).

6 DATED: May 31, 2018

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/s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:9  
DLB1/prisoner-civil rights/bont0993.3 strikes fr