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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNY STEWARD,

Plaintiff,

v.

LYNCH et al,

Defendants.

No. 2:18-CV-01227 KJM KJN
ORDER

Plaintiff, a state prisoner proceeding pro se, brought this civil rights action under 42 U.S.C. § 1983. On September 10, 2018, plaintiff moved for a preliminary injunction, alleging that defendants were planning to transfer him on an unspecified date to Kern Valley State Prison (“KVSP”) in retaliation for filing this civil rights action. Pl.’s Mot. for Mandatory Inj. (“Motion”), ECF No. 10 at 1. Plaintiff sought to enjoin this reported transfer, arguing his medical conditions make him particularly vulnerable to serious illness if he is exposed to the cocci virus, and he will therefore suffer bodily injury or possible death if he is exposed to the virus at Kern Valley State Prison. *Id.* at 2.

This matter was referred to a magistrate judge under Local Rule 302(c)(17). That court has not yet screened plaintiff’s complaint. However, in light of plaintiff’s allegations of a threat of imminent harm, on September 13, the court ordered the Attorney General’s office to

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1 address plaintiff's allegations concerning his medical conditions and how his health may be
2 impacted by a transfer to Kern Valley State Prison. Order, ECF No. 12.

3 On September 25, Deputy Attorney General Lucas L. Hennes responded to the
4 court's order with a declaration stating that plaintiff had been transferred to KVSP on or before
5 September 13. Response, ECF No. 16. This renders plaintiff's request for a preliminary
6 injunction to prevent the transfer moot. *See McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1095
7 (9th Cir. 2004) ("A case becomes moot when the issues presented are no longer live or the parties
8 lack a legally cognizable interest in the outcome.") (internal quotation marks and citation
9 omitted).

10 The response also stated that plaintiff was classified as a "cocci-2" inmate, which
11 precludes him from transfer to certain California state prisons, not including KVSP. Response at
12 2. Exhibit A to the declaration is the California Department of Corrections and Rehabilitation's
13 Classification Committee Chrono, which states that the transfer to KVSP was initiated due to the
14 fact that plaintiff "has safety concerns in CSP Sacramento General Population and is seeking
15 Sensitive Needs Yard (SNY) Placement." *Id.*, Ex. A. The exhibit also shows that plaintiff's
16 medical history was considered when the committee made the decision to transfer plaintiff. *Id.*
17 (labeling plaintiff "High Risk/Cocci 2"). The committee apparently decided that, even though
18 KVSP "is not designated for High Risk inmates . . . High Risk is a preference, not absolute
19 criteria." *Id.* According to Exhibit A of plaintiff's own motion, inmates that are labeled
20 medically "High Risk," are barred from being transferred to Pleasant Valley and Avenal State
21 Prison, but not KSVP, due to the risk of Valley Fever. *See* Mot., Ex. A at 9 (Prison Law Office,
22 "Valley Fever Information for Prisoners"). Plaintiff's briefing acknowledges this fact. *See* Pl.'s
23 Mem. & Ex., Ex. B, ECF No. 17 at 8.

24 For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff's motion for
25 preliminary injunction is DENIED as moot, without prejudice to another properly filed motion, if
26 one can be filed at some point in the future.

27 DATED: November 27, 2018.

28 
UNITED STATES DISTRICT JUDGE