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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAVID SAMPSON HUNTER,

 Petitioner,

 v.

SCOTT JONES,

 Respondent.

No. 2:20-CV-1097-WBS-DMC-P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2254. Before the Court are Petitioner’s motions for injunctive relief. ECF Nos. 8, 25. The undersigned United States Magistrate Judge recommends denying the motions.

I. PETITIONER’S ALLEGATIONS

Petitioner’s motions are near-indecipherable. See ECF Nos. 8, 25. The second motion in particular lacks any clear argument. ECF No. 25. The Court understands Petitioner’s allegations as follows:

In the first motion, Petitioner largely restates the core allegation from his habeas petition—that he has been unconstitutionally incarcerated. See ECF No. 1, 8. He asserts that he has been falsely imprisoned ever since police arrested him at a Motel 6 because the police “got jealous.” ECF No. 8. At 2. Petitioner seems to assert that his arrest was illegally connected to the filming of a pornographic video with sex workers at the Motel 6. Id. It is unclear, however, whether Petitioner

1 contends that it was he who was filming pornography (he mentions that the sex workers had some
2 connection to him). Id. He requests money damages, permission to proceed in forma pauperis,¹ and
3 to be released from prison. Id. at 3.

4 In Petitioner’s second motion, ECF No. 25, he cites the United States Constitution,
5 Federal Rule of Appellate Procedure 8, and 28 U.S.C. § 743(f). Petitioner asserts that he is entitled
6 to an “emergency motions [to] force clean up.” Id. at 1. It is difficult to further describe the motion’s
7 contents. Petitioner variously seems to allege that Respondents are homosexual cross-dressers and
8 sex offenders, that a pornographic film in which sex workers appear is somehow involved in his
9 case, and that there is some issue with the film that requires the Court to act. Id. at 2–3. Petitioner
10 references sex offenses, “show girls,” exposure of sex workers’ bodies’ in the film,² “flaws” in the
11 film, and some correction that prosecution was required to make. See id. Petitioner again seems to
12 contend that he was somehow involved with a pornographic film in which sex workers appeared,
13 and he takes issue with that video, its contents, and its connection to his arrest. See id. He may take
14 issue with the introduction of evidence of prior sex offenses at his criminal trial. See id. at 4.
15 Petitioner asks that the individuals described as sex workers be admitted to the hospital for
16 treatment of sexual problems and AIDS, that the sex workers be subpoenaed, and that the sex
17 workers be deposed. See id. at 3–4.

18 II. STANDARD OF REVIEW

19 The primary purpose of a preliminary injunction is preservation of the status quo.
20 E.g., Ramos v. Wolf, 975 F.3d 872, 887 (9th Cir. 2020). More specifically, the purpose of a
21 preliminary injunction is preservation the Court's power to render a meaningful decision after a trial
22 on the merits. E.g., University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). It is meant to
23 maintain the relative positions of the parties and prevent irreparable loss of rights before final
24 judgment. See, e.g., id.; Doe #1 v. Trump, 957 F.3d 1050, 1068 (9th Cir. 2020); Ramos, 975 F.3d
25 at 887. A preliminary injunction is an extraordinary remedy that is not awarded as of right. Winter

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27 ¹ The Court has already granted permission for Petitioner to proceed in forma pauperis. See ECF No. 9.

28 ² It appears Petitioner *might* allege that the sex workers allegedly involved in his case were responsible for recording and editing the alleged pornographic film. See ECF No 25 at 2–4. That responsibility may allegedly have included blurring of their exposed bodies. See id.

1 v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); All. for the Wild Rockies v. Cottrell, 632
2 F.3d 1127, 1131 (9th Cir. 2011).

3 The legal principles applicable to requests for injunctive relief, such as a temporary
4 restraining order or preliminary injunction, are well established. To prevail, the moving party must
5 show that irreparable injury is likely in the absence of an injunction. See Stormans, Inc. v. Selecky,
6 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter, 555 U.S. at 20). To the extent prior Ninth
7 Circuit cases suggest a lesser standard by focusing solely on the possibility of irreparable harm,
8 such cases are “no longer controlling, or even viable.” Am. Trucking Ass’ns, Inc. v. City of Los
9 Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). Under Winter, the proper test requires a party to
10 demonstrate: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in
11 the absence of an injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is
12 in the public interest. See Stormans, 586 F.3d at 1127 (citing Winter, 555 U.S. at 20. If an inmate
13 is seeking injunctive relief with respect to conditions of confinement, the prisoner’s transfer to
14 another prison renders the request for injunctive relief moot, unless there is some evidence of an
15 expectation of being transferred back. See Preiser v. Newkirk, 422 U.S. 395, 402-03 (1975);
16 Johnson v. Moore, 948 F.3d 517, 519 (9th Cir. 1991) (per curiam).

17 III. DISCUSSION

18 A. Petitioner Has Not Demonstrated Entitlement to Injunctive Relief:

19 Petitioner has not established grounds for any relief, let alone a preliminary
20 injunction. Petitioner does not establish that he is likely to succeed on the merits of his habeas
21 claims, that he faces irreparable harm if this Court does not issue an injunction, that the hardships
22 tip in his favor, or that an injunction is in the public interest. See, e.g., All. for the Wild Rockies v.
23 Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Although the United States Court of Appeals for
24 Ninth Circuit has employed a sliding scale under which a stronger showing as to one of the
25 foregoing elements can make up for a weaker showing on another element, Petitioner has not made
26 any showing on any element. See id.; ECF Nos. 8, 25. There are simply no grounds on which to
27 grant injunctive relief.

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1 Even construing Petitioner’s submissions liberally, Petitioner makes no real
2 argument on any of the elements justifying the extraordinary remedy of an injunction. Petitioner’s
3 submissions make no showing satisfying what the Ninth Circuit has determined is the most
4 important factor—likelihood of success on the merits. See Garcia v. Google, Inc., 786 F.3d 733,
5 740 (9th Cir. 2015). He offers nothing other than his allegations about false arrest, pornography,
6 and sex workers to support his motion.³ ECF Nos. 1, 8, 25. If a movant fails to show likelihood of
7 success on the merits, the Court need not consider the remaining elements. Garcia, 786 F.3d at 740.
8 Petitioner’s burden here is all the more demanding because he seeks a mandatory injunction.⁴ Id.
9 He must establish the law and facts *clearly* in his favor. Id. He has not done so.

10 Furthermore, although the Court need not consider the remaining elements, it is
11 worth noting that Petitioner has not remotely established irreparable harm. In his first motion,
12 Petitioner essentially restates his central allegation. See ECF No. 8. That is, Petitioner effectively
13 rehashes his complaint that he is unconstitutionally incarcerated. See id. But, again, he offers
14 nothing other than his rambling assertions about pornographic films and prostitution to support his
15 motion. Id. Similarly, in his second motion, Petitioner does not sufficiently argue that he is likely
16 to suffer irreparable harm. ECF No. 25. His discussion of sex workers, sex offenses, and recording
17 of pornography does not support the motion.

18 Petitioner’s allegations fail to show that, absent a mandatory injunction ordering his
19 release from prison, he will suffer irreparable damage. See, e.g., Maddox v. Thomas, Civ. No. 18-
20 00133 DKW-RLP, 2018 WL 2187976, at *5–7 (D. Haw. May 11, 2018) (declining, in a habeas
21 corpus case, to issue a preliminary injunction ordering the petitioner’s release from prison).
22 Irreparable harm is damage that cannot be redressed by a legal or equitable remedy following trial.
23 See, e.g., Arizona Dream Act Coal. v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014); Cutera, Inc. v.
24 Lutronic Aesthetics, Inc., 444 F. Supp. 3d 1198, 1208 (E.D. Cal. 2020). To Petitioner’s credit,

25 _____
26 ³ Moreover, Respondent has not yet filed an answer in this case as the Court directed Respondent to do within 60 days
27 on March 23, 2021. ECF No. 20. There is nothing before the Court coherently contextualizing Petitioner’s claims and
28 the probability of their success on the merits.

⁴ A mandatory injunction orders a responsible party to act. Garcia, 786 F.3d at 740. A mandatory injunction goes
beyond typical maintenance of the status quo. Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d
873, 879 (9th Cir. 2009). Mandatory injunctions are disfavored. Id.

1 deprivation of constitutional rights constitutes irreparable harm. E.g., Melendres v. Arpaio, 695
2 F.3d 990, 1002 (9th Cir. 2012). But even if Petitioner does allege some possible harm (e.g., related
3 to the alleged pornographic film or his continued incarceration), he must establish that irreparable
4 harm is *likely*, not just possible. Cottrell, 632 F.3d at 1131. Petitioner fails entirely to show that any
5 irreparable harm is likely (let alone that it cannot, for instance, be rectified by resolution of his
6 petition for a writ of habeas corpus). See, e.g., id.; cf. Maddox, 2018 WL 2187976, at *6–7.

7 **B. The Court Cannot Issue an Injunction Against the Nonparties in this Case:**

8 To the extent that Petitioner seeks an order granting injunctive relief against
9 individuals who are not party to this case (e.g., an order directing someone to admit the above-
10 discussed sex workers to the hospital), the Court here lacks authority to grant it. See, e.g., Fed. R.
11 Civ. P. 65(d)(2)(A)–(C); Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969);
12 James v. Scribner, No. CV 07–880–TUC–RCC, 2010 WL 3942844, at *2 (E.D. Cal. Oct. 4, 2010).
13 Under Federal Rule of Civil Procedure 65, an injunction binds only the parties; the parties’ officers,
14 agents, servants, employees, and attorneys; and those persons in active concert or participation with
15 any of the foregoing. Fed. R. Civ. P. 65(d)(2)(A)–(C). None of those categories apply here.

16 **C. The Court Cannot Award Damages:**

17 Alongside moving for injunctive relief, Petitioner moves for money damages. ECF
18 No. 8 at 3. He moves for damages of \$1,000 per day of his false imprisonment. Id.

19 Typically, a state prisoner’s pursuit of damages related to incarceration—as opposed
20 to release from incarceration—would fall under the auspices of 42 U.S.C. § 1983. See, e.g., Skinner
21 v. Switzer, 562 U.S. 521, 533–34 (2011); Preiser v. Rodriguez, 411 U.S. 475, 494 (1973); Nettles
22 v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016). Section 1983 provides a remedy for the violation of
23 constitutional rights by any person acting under color of state law. 42 U.S.C. § 1983; see, e.g., Hall
24 v. City of Los Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Long v. County of Los Angeles, 442
25 F.3d 1178, 1185 (9th Cir. 2006). But where suit under § 1983 would necessarily imply the invalidity
26 of a conviction or sentence, § 1983 is an inappropriate vehicle for relief. E.g., Skinner, 562 U.S. at
27 533–34; Nettles, 830 F.3d at 927–28. Instead, habeas corpus is appropriate remedy for a prisoner
28 seeking immediate or speedier release from confinement. See Skinner, 562 U.S. at 533–34; Preiser,

1 411 U.S. at 500; Nettles, 830 F.3d at 927. A petition for a writ of habeas corpus is the *exclusive*
2 remedy for claims fall within the core of habeas. Nettles, 830 F.3d at 927.

3 Awarding Petitioner damages based upon a determination that Petitioner has been
4 falsely imprisoned would necessitate finding that his conviction and sentence are invalid. See, e.g.,
5 Nettles, 830 F.3d at 927–28. Section 1983 would thus be an inappropriate mechanism to achieve
6 the monetary relief Petitioner seeks. E.g., Skinner, 562 U.S. at 533–34; Nettles, 830 F.3d at 927.

7 Habeas corpus, however, is also not the correct vehicle for seeking damages, as the
8 writ is meant to procure release from incarceration rather than damages due to the illegality of
9 imprisonment. See, e.g., Nettles, 830 F.3d at 927–28; see also Muhammad v. Close, 540 U.S. 749,
10 750–751 (2004). Section 1983, however, may become an available remedy to Petitioner *if and after*
11 he successfully proves the invalidity of his conviction and sentences. See, e.g., Muhammad, 540
12 U.S. at 750–751; Nettles, 830 F.3d at 927–28. Under this “favorable termination rule,” to bring an
13 action seeking relief for the unlawfulness of his incarceration (rather than release *from* unlawful
14 incarceration), Petitioner must first establish that his conviction or sentence was eliminated,
15 including by way of a federal court’s issuance of a writ of habeas corpus. See Muhammad, 540
16 U.S. at 750–751; Heck v. Humphrey, 512 U.S. 477, 486–87 (1994); Nettles, 830 F.3d at 928; Del
17 Rio v. Superior Court of California, Case No. 1:20-cv-01186-NONE-EPG, 2021 WL 795669, at *2
18 (E.D. Cal. Mar. 2, 2021).

19 In this action for a writ of habeas corpus, damages are not an available remedy. See,
20 e.g., Muhammad, 540 U.S. at 750–751; Preiser, 411 U.S. at 494; Sisk v. CSO Branch, 974 F.2d
21 116, 117 (9th Cir. 1992). To procure damages for the unconstitutionality of his imprisonment,
22 Petitioner must first procure—and then prove in an action under § 1983—invalidation of his
23 conviction. See Muhammad, 540 U.S. at 750–751; Heck, 512 U.S. at 486–87; Nettles, 830 F.3d at
24 927–28. This case concerns the first step—Petitioner’s attempt to invalidate his conviction. To the
25 extent that Petitioner’s motion seeks damages, the undersigned thus recommends that it be denied.⁵

26 ⁵ Moreover, a mandatory injunction is all the more disfavored assuming that Petitioner, in requesting damages, believes
27 that the harm he has incurred because of illegal imprisonment is capable of compensation in damages. Marlyn
28 Nutraceuticals, Inc., 571 F.3d at 878–79. Generally, the Court will not grant a mandatory injunction unless extreme
harm will result, and they are not issued in doubtful cases or in cases where the injury complained of can be redressed
with damages. See id. at 879.

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IV. RECOMMENDATION

The undersigned United States Magistrate Judge recommends that Petitioner’s motion for a temporary restraining order and injunctive relief (ECF Nos. 8, 25) be **DENIED**.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 26, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE