

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
1011 STEPHEN B. TURNER,
12 Plaintiff,

No. C 11-05176 CRB

ORDER DENYING INJUNCTION

13 v.

14 MELODY SMITH, ET AL.,
15 Defendants.
16

17 Plaintiff Stephen B. Turner filed an amended complaint along with a (fourth) request
18 for pretrial injunctive relief. Dkt. 64, 65; see also dkt. 18, 31, 38. Though the filing was
19 styled as an “*Ex Parte*” application for a temporary restraining order, the papers themselves
20 indicate that Turner mailed a copy of the papers to defense counsel, dkt. 65 (“TRO App.”) at
21 1, and Defendants responded following this Court’s order setting a response deadline.

22 Turner’s 159-page complaint includes dozens of causes of action, which are referred
23 to generally in the TRO application,¹ but the legal argument in support of the latest request
24 for injunctive relief invokes only one theory. Turner argues that a change in California law
25 permitted prisoners released after October 1, 2011, to apply for early parole discharge, but
26 that he is not eligible to apply for such a discharge because he was released before the new
27

28 ¹The Court already denied a TRO premised on Turner’s initial complaint, which largely mirrored the amended complaint except Turner has added claims stemming from events postdating the filing of the lawsuit. To the extent this TRO application rehashes those arguments, it is denied for the same reasons set out in the Court’s previous order. See dkt. 7.

1 law, which applies only prospectively, went into effect. TRO App. at 3; see also People v.
2 Lynch, --- Cal. Rptr. 3d ---, No. C068476, 2012 WL 4017993, at *1 & n.2 (Ct. App. 2012)
3 (describing the change in law).

4 Turner says that failing to apply the new law to him retroactively was a violation of
5 the Equal Protection Clause of the United States and California constitutions. California's
6 intermediate appellate court, citing federal law, has already rejected a similar challenge to
7 this very law, Lynch, 2012 WL 4017993, at *1, *5; cf. Foster v. Wash. State Bd. of Prison
8 Terms & Parole, 878 F.2d 1233, 1235 (9th Cir. 1989); Doe v. Mich. Dep't of State Police,
9 490 F.3d 491, 504-05 (6th Cir. 2007) (collecting cases regarding prospective application of
10 lowered punishments).


11 Legislation must take effect on some specific date, and "the Fourteenth Amendment
12 does not forbid statutes and statutory changes to have a beginning and thus to discriminate
13 between the rights of an earlier and later time." Sperry & Hutchinson Co v. Rhodes, 220
14 U.S. 502, 505 (1911). Accordingly, Turner has not demonstrated a clear likelihood of
15 success on the merits sufficient to support the extraordinary remedy of a temporary
16 restraining order at this time. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20
17 (2008).

18 In addition, Turner's unexplained failure to seek relief since the law was passed on
19 April 4, 2011 (and became effective on October 1, 2011), see Lynch, 2012 WL 4017993, at
20 *3, precludes him from making the necessary showing of urgency and irreparable harm.
21 Miller ex rel. NLRB v. Cal. Pac. Med. Ctr., 991 F.2d 536, 544 (9th Cir. 1993); Lydo Enters.
22 v. City of Las Vegas, 745 F.2d 1211, 1213 (9th Cir. 1984).

23 Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition
24 without oral argument, and DENIES Turner's motion.

25 **IT IS SO ORDERED.**

26
27
28 Dated: October 9, 2012


CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE