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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ENRIQUE DIAZ,	)	No. C 12-05898 EJD (PR)
Plaintiff,	)	ORDER OF DISMISSAL
vs.	)	
R. BINKELE, et al.,	)	
Defendants.	)	

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Plaintiff, a state prisoner at Salinas Valley State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and Plaintiff has filed an amended complaint.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be  
2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

#### 8 **B. Plaintiff's Claims**

9 This case involves Plaintiff's desire for a single cell. Plaintiff states that one  
10 cannot obtain a single cell until one assaults a cellmate or is the victim of an assault.  
11 Plaintiff does not allege any threat from his cellmate. When Plaintiff was not provided a  
12 single cell he wrote a letter the warden stating he was thinking about killing his cellmate.  
13 As a result of the threat, Plaintiff was placed in the Administrative Housing Unit (AHU).  
14 Plaintiff argues that being punished and placed in the AHU for threatening to kill his  
15 cellmate violates his right to freedom of expression. Later Plaintiff began a hunger strike  
16 and was again placed in the AHU. Plaintiff feels he is being improperly targeted by  
17 prison officials because he threatened to kill his cellmate.

18 The Supreme Court has long recognized that "(l)awful incarceration brings about  
19 the necessary withdrawal or limitation of many privileges and rights, a retraction justified  
20 by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 285  
21 (1948); see also Pell v. Procunier, 417 U.S. 817, 822 (1974); Wolff v. McDonnell, 418  
22 U.S. 539, 555 (1974). "The fact of confinement and the needs of the penal institution  
23 impose limitations on constitutional rights, including those derived from the First  
24 Amendment, which are implicit in incarceration." Jones v. North Carolina Prisoners'  
25 Labor Union Inc., 433 U.S. 119, 125 (1977). As stated in Pell, 417 U.S. at 822:

26 (A) prison inmate retains those First Amendment rights that are not  
27 inconsistent with his status as a prisoner or with the legitimate penological  
28 objectives of the corrections system. Thus, challenges to prison restrictions  
that are asserted to inhibit First Amendment interests must be analyzed in  
terms of the legitimate policies and goals of the corrections system, to

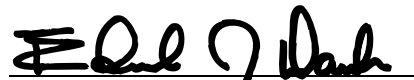
1 whose custody and care the prisoner has been committed in accordance  
2 with due process of law.

3 Removing Plaintiff from his cell and placing him in the AHU after he threatened to  
4 kill his cellmate was a reasonable and wise decision on behalf of prison officials and  
5 preventing an inmate from killing his cellmate is a legitimate penological objective.  
6 Thus, Plaintiff has failed to demonstrate a First Amendment violation. Moreover,  
7 Plaintiff has no right to a certain classification status that will entitle him to a single cell.  
8 See Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir.1987) (quoting Moody v.  
9 Daggett, 429 U.S. 78, 88 n. 9 (1976), wherein the Supreme Court, in a footnote, explicitly  
10 rejected a claim that “prisoner classification and eligibility for rehabilitative programs in  
11 the federal system” invoked due process protections). While Plaintiff may prefer a single  
12 cell, the denial of his requests do not rise to the level of a Constitutional violation. The  
13 amended complaint will be dismissed for failure to state a claim and as Plaintiff has  
14 already been provided an opportunity to amend, and as it is clear that further amendment  
15 would be futile, this case is dismissed without leave to amend. See Lopez v. Smith, 203  
16 F.3d 1122, 1129 (9th Cir. 2000).

17  
18 **CONCLUSION**

19 For the foregoing reasons, the complaint is DISMISSED without leave to amend  
20 for failure to state a claim.

21 DATED: 2/22/2013

22   
23 EDWARD J. DAVILA  
24 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ENRIQUE DIAZ,  
Plaintiff,

Case Number CV 12-05898 EJD (PR)

v.

**CERTIFICATE OF SERVICE**

R. BENKELE, et al.,  
Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 2/25/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

**Enrique Diaz**  
K-70268  
P. O. Box 1050  
Soledad, CA 93960

DATED: 2/25/2013

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk