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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RUBEN DARIO GARCIA, JR.,  
CDCR #J-73373,

Plaintiff,

vs.

SMITH, et al.;

Defendants.

Civil No. 10cv1187 BEN (RBB)

**ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

[Doc. No. 4]

Ruben Dario Garcia and Lenin Garcia ("Plaintiffs"), state prisoners currently incarcerated at Richard J. Donovan Correctional Facility located in San Diego, California, and proceeding pro se, have submitted a civil action pursuant to 42 U.S.C. § 1983. Plaintiffs have also filed a "Motion for Restraining Order and Motion for Preliminary Injunction in Order to Stop Defendants from Subjecting Both Plaintiffs to a Retaliatory Transfer." [Doc. No. 4]

**I.**

**Motion for TRO and Preliminary Injunction**

**A. Legal Standard**

In order to demonstrate the need for preliminary injunctive relief a party must show: "1) a strong likelihood of success on the merits, 2) the possibility of irreparable injury to plaintiff

1 if preliminary relief is not granted, 3) a balance of hardships favoring the plaintiff, and 4)  
2 advancement of the public interest (in certain cases).” *Save Our Sonoran, Inc. v. Flowers*, 408  
3 F.3d 1113, 1120 (9th Cir. 2005). Where a party demonstrates that a public interest is involved,  
4 a “district court must also examine whether the public interest favors the plaintiff.” *Fund for*  
5 *Animals, Inc. v. Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992).

## 6 B. Scope

7 In determining the scope of injunctive relief that interferes with the affairs of a state  
8 agency, the court must ensure, out of federalism concerns, that the injunction “heel[s] close to  
9 the identified violation,” *Gilmore v. California*, 220 F.3d 987, 1005 (9th Cir. 2000) (citation  
10 omitted), is not overly “intrusive and unworkable ... [and] would [not] require for its  
11 enforcement the continuous supervision by the federal court over the conduct of [state officers].”  
12 *O’Shea*, 414 U.S. at 500, 501; *see also Armstrong v. Davis*, 275 F.3d 849, 872 (9th Cir. 2001).

13 As the Ninth Circuit has noted, these concerns have been codified in the Prison Litigation  
14 Reform Act, 18 U.S.C. § 3626 (PLRA). *See Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir.  
15 2001) (PLRA “has not substantially changed the threshold findings and standards required to  
16 justify an injunction.”). The PLRA requires that prospective injunctive relief against a state  
17 prison system be “narrowly drawn, extend[ ] no further than necessary to correct the violation  
18 of the Federal right, and [be] the least intrusive means necessary to correct the violation of the  
19 Federal right.” *Id.* at § 3626(a)(1); *Armstrong*, 275 F.3d at 872.

20 Under the first test for a preliminary injunction, the moving party must demonstrate “high  
21 probability of success on the merits” of the case. *See Associated Gen. Contractors of California,*  
22 *Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991). Here, the Court  
23 has already found that Plaintiffs have failed to state a claim upon which relief can be granted.  
24 *See* Aug. 9, 2010 Order at 8-9. Moreover, Plaintiffs are seeking an Order from this Court  
25 preventing the transfer to another prison. Plaintiffs do not have a constitutional right to be  
26 housed at a particular institution or to receive a particular security classification. *See Olim v.*  
27 *Wakinekona*, 461 U.S. 238, 244-50 (1983); *Meachum*, 427 U.S. at 224; *Moody v. Daggett*, 429  
28 U.S. 78, 87 n.9 (1976). Thus, Plaintiffs cannot meet the threshold burden of a likelihood of

1 success on the merits.

2 Accordingly, for all the above stated reasons, Plaintiffs' Motion for Temporary  
3 Restraining Order and Injunctive Relief is **DENIED**.

4 **II.**

5 **CONCLUSION AND ORDER**

6 Good cause appearing, **IT IS HEREBY ORDERED** that:

7 Plaintiffs' Motion for Restraining Order and Motion for Preliminary Injunction [Doc. No.  
8 4] is **DENIED**.

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10 **IT IS SO ORDERED.**

11  
12 DATED: 10/14/2010

  
13 **Hon. Roger T. Benitez**  
14 **United States District Judge**

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