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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JEHAN ZEB MIR,

12 Plaintiff,

13 v.

14 KIMBERLY KIRCHMEYER et al.,

15 Defendants.  
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Case No.: 3:12-cv-02340-GPC-AGS

**ORDER**

**(1) DENYING PLAINTIFF'S EX  
PARTE APPLICATION FOR AN  
ORDER STAYING PROCEEDINGS  
AND AMEND ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**(2) DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR CHANGE OF VENUE**

**[ECF Nos. 292, 294.]**

22 On October 17, 2017, Plaintiff Dr. Jehan Zeb Mir filed a Notice and Ex-Parte  
23 Application for an Order to Stay Proceedings and Amend Order Granting Defendants'  
24 Motion for Summary Judgment Or In Alternative Summary Adjudication and Denying  
25 Plaintiff's Motion for Summary Judgment to Certify for Discretionary Appeal. Dkt. No.  
26 292. On October 17, 2017 Plaintiff also filed a Motion for Change of Venue. Dkt. No.  
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1 294. On September 26, 2017, the Court granted Defendants’ Motion for Summary  
2 Judgment<sup>1</sup> and denied Plaintiff’s Motion for Summary Judgment. Dkt. No. 288.

3 **I. EX PARTE APPLICATION TO STAY PROCEEDINGS AND AMEND**  
4 **ORDER GRANTING SUMMARY JUDGMENT**

5 Plaintiff contends that the Court’s Dkt. No. 288 order granting Defendant’s Motion  
6 for Summary Judgment does not dispose of all issues raised in the Fourth Amended  
7 Complaint. In its June 8, 2016 Order dismissing Plaintiff’s Fourth Amended Complaint  
8 the Court held that:

9 The Court previously determined that Plaintiff has sufficiently stated a claim  
10 for violation of the Fourteenth Amendment under Section 1983 against  
11 Defendants Kirchmeyer and Levine to survive a motion to dismiss. (See ECF  
12 No. 59 at 11–16.) Thus, what remains is Plaintiff’s Section 1983 claim for  
13 prospective relief (as defined above) against Defendants Kirchmeyer and  
14 Levine in their official capacities only.

15 Dkt. No. 169 at 39. Accordingly, the sole remaining issue for the Court to address  
16 in its Order Granting Defendants’ Motion for Summary Judgment was Plaintiff’s  
17 Section 1983 due process claim. Because the Court granted summary judgment as  
18 to Defendants on this claim, there is no remaining issue in this case. The Clerk  
19 correctly issued a judgment on September 26, 2017. Dkt. No. 289.

20 Plaintiff appears to request that the Court certify an interlocutory appeal  
21 pursuant to 28 U.S.C. § 1292(b) by asking the Court to “include a statement that  
22 the order involves a controlling question of law as to which there is substantial  
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25 <sup>1</sup> While Defendants’ motion was titled “Motion for Summary Judgment or, in the Alternative, Summary  
26 Adjudication of the Issues,” the Court’s order was not a partial grant of summary judgment (summary  
27 adjudication), but rather a grant of summary judgment in its entirety as to all remaining issues in the  
28 case.

1 ground for a difference of opinion and that an immediate appeal may materially  
2 advance ultimate termination of litigation.” Dkt. No. 292. Because the Court has  
3 issued a *final* judgment in this case, Plaintiff’s request for the court to certify an  
4 interlocutory appeal is moot because he may seek an appeal to the Ninth Circuit  
5 Court of Appeals under 28 U.S.C. § 1291 (“The courts of appeals . . . shall have  
6 jurisdiction of appeals from all final decisions of the district courts of the United  
7 States”).<sup>2</sup> Accordingly, the Court denies Plaintiff’s request to certify an  
8 interlocutory appeal.

9 Further, the Court will deny Plaintiff’s request to stay the proceedings  
10 because a final judgment has issued, the case has been closed, and there is no basis  
11 to stay further proceedings in this matter.

12 Accordingly, the Court will **DENY** Plaintiff’s Ex Parte Application for an Order  
13 Staying Proceeding and to Amend Order Granting Defendants’ Motion for Summary  
14 Judgment.

## 15 **II. MOTION FOR CHANGE OF VENUE**

16 Plaintiff seeks to transfer his case under 28 U.S.C. 1404(a) from the Southern  
17 District of California to the Central District of California on the basis of inconvenience to  
18 the parties, expenditure of time, delay in filing documents, and convenience to witnesses.  
19 Dkt. No. 294. As stated above, a judgment has been issued in this case and the case is  
20 currently closed. Plaintiff has filed a Notice of Appeal and consequently his appeal is  
21 currently pending before the Ninth Circuit. Dkt. No. 290. Accordingly, the Court will  
22 **DENY WITHOUT PREJUDICE** Plaintiff’s Motion for Change of Venue. If Dr. Mir’s  
23 appeal to the Ninth Circuit is successful, he may re-file the Motion for Change of Venue  
24 after the conclusion of his appeal.

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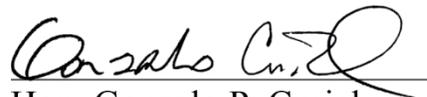
25  
26 <sup>2</sup> Plaintiff filed a Notice of Appeal on October 16, 2017. Dkt No. 290.  
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1 **CONCLUSION**

2 Accordingly, the Court will (1) **DENY** Plaintiff's Ex Parte Application for an Order  
3 Staying Proceeding and to Amend Order Granting Defendants' Motion for Summary  
4 Judgment and (2) **DENY WITHOUT PREJUDICE** Plaintiff's Motion for Change of  
5 Venue.

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7 **IT IS SO ORDERED.**

8 Dated: October 18, 2017

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10 Hon. Gonzalo P. Curiel  
United States District Judge

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