

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TREMAYNE DEON CARROLL,  
CDCR #H-73384,  
  
Plaintiff,  
  
vs.  
  
BITA AHBOOT, et al.,  
  
Defendants.

Case No.: 3:16-cv-01853-LAB-MDD

**ORDER:**

**1) DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
AS BARRED BY 28 U.S.C. § 1915(g)  
[ECF No. 2]**

**AND**

**(2) DISMISSING CIVIL ACTION  
WITHOUT PREJUDICE FOR  
FAILURE TO PAY FILING FEE  
REQUIRED BY 28 U.S.C. § 1914(a)  
AND FOR LACK OF PROPER  
VENUE PURSUANT TO  
28 U.S.C. § 1391(b) AND  
28 U.S.C. § 1406(a)**

TREMAYNE DEON CARROLL (“Plaintiff”), also known as Tremaine Carroll, currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1993 (ECF No. 1).

1 Plaintiff claims two Los Angeles County District Attorneys, a Deputy Attorney  
2 General, and a Los Angeles County Superior Court Judge initiated a vindictive and  
3 selective prosecution against him, defamed his character, and caused him to be falsely  
4 imprisoned based on his race. (ECF No. 1 at 2-3.) He seeks injunctive relief preventing  
5 any “further selective/vindictive prosecution,” and \$3 million in general and punitive  
6 damages because he has “falsely be[en] labeled a sex offender.” (Id. at 5.)

7 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);  
8 instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28  
9 U.S.C. § 1915(a) (ECF No. 2).

#### 10 **I. Motion to Proceed IFP**

11 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*  
12 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Plaintiff, however,  
13 “face an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full amount  
14 of a filing fee,” in “monthly installments” or “increments” as provided by 28 U.S.C.  
15 § 1915(a)(3)(b), *Bruce v. Samuels*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 627, 629 (2016); *Williams v.*  
16 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), the Prison Litigation Reform Act  
17 (“PLRA”) amended section 1915 to altogether preclude the privilege to proceed IFP:

18 . . . if [a] prisoner has, on 3 or more prior occasions, while  
19 incarcerated or detained in any facility, brought an action or  
20 appeal in a court of the United States that was dismissed on the  
21 grounds that it is frivolous, malicious, or fails to state a claim  
22 upon which relief can be granted, unless the prisoner is under  
imminent danger of serious physical injury.

23 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’  
24 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter  
25 “Andrews”).

26 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”  
27 *Id.*; see also *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter  
28 “Cervantes”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful

1 suits may entirely be barred from IFP status under the three strikes rule[.]”). The  
2 objective of the PLRA is to further “the congressional goal of reducing frivolous prisoner  
3 litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).  
4 “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed both  
5 before and after the statute’s effective date.” *Id.* at 1311.

6 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,  
7 which were dismissed on the ground that they were frivolous, malicious, or failed to state  
8 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the  
9 district court styles such dismissal as a denial of the prisoner’s application to file the  
10 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153  
11 (9th Cir. 2008); see also *El-Shaddai v. Zamora*, \_\_\_ F.3d \_\_\_, 2016 WL 4254980 at \*3 (9th  
12 Cir. Aug. 12, 2016) (No. 13-56104) (noting that when court “review[s] a dismissal to  
13 determine whether it counts as a strike, the style of the dismissal or the procedural  
14 posture is immaterial. Instead, the central question is whether the dismissal ‘rang the  
15 PLRA bells of frivolous, malicious, or failure to state a claim.’”) (quoting *Blakely v.*  
16 *Wards*, 738 F.3d 607, 615 (4th Cir. 2013)).

17 Once a prisoner has accumulated three strikes, he is simply prohibited by section  
18 1915(g) from pursuing any other IFP civil action or appeal in federal court unless he  
19 alleges he is facing “imminent danger of serious physical injury.” See 28 U.S.C.  
20 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP  
21 complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger  
22 of serious physical injury’ at the time of filing.”).

## 23 **II. Application to Plaintiff**

24 As an initial matter, the Court has carefully reviewed Plaintiff’s Complaint and has  
25 ascertained that it does not contain any “plausible allegations” to suggest he “faced  
26 ‘imminent danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at  
27 1055 (quoting 28 U.S.C. § 1915(g)). Instead, Plaintiff claims he has been falsely  
28 imprisoned and labeled a sex offender as the result of a vindictive and/or selective

1 criminal prosecution commenced in Los Angeles County Superior Court at an  
2 unspecified time. (ECF No. 1 at 2-3.)

3 A court may take judicial notice of its own records, see *Molus v. Swan*, Civil Case  
4 No. 3:05-cv-00452–MMA-WMc, 2009 WL 160937, \*2 (S.D. Cal. Jan. 22, 2009) (citing  
5 *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v.*  
6 *Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and ““may take  
7 notice of proceedings in other courts, both within and without the federal judicial system,  
8 if those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508  
9 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803  
10 n.2 (9th Cir. 2002)); see also *United States ex rel. Robinson Rancheria Citizens Council*  
11 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

12 Thus, this Court takes judicial notice that Plaintiff, Tremayne Deon Carroll, also  
13 known as Tremaine Carroll, and identified as CDCR Inmate #H-73384, has had three  
14 prior prisoner civil actions dismissed on the grounds that they were frivolous, malicious,  
15 or failed to state a claim upon which relief may be granted.

16 They are:

17 1) *Carroll v. Virga, et al.*, Civil Case No. 2:12-cv-01327-KJN (E.D. Cal.  
18 March 29, 2013) (Order dismissing complaint pursuant to 28 U.S.C. § 1915A and  
19 FED. R. CIV. P. 8(a)(2) (ECF No. 20); (E.D. Cal. Nov. 21, 2013) (Order denying  
20 motion for reconsideration, finding Plaintiff’s allegations “failed to state a claim to  
21 relief that is plausible on its face,” and granting extension of time to amend) (ECF  
22 No. 24); and (E.D. Cal. Jan. 6, 2014) (Order dismissing action without prejudice  
23 based on Plaintiff’s failure to amend) (ECF No. 25) (strike one);

24 2) *Carroll v. Brown, et al.*, Civil Case No. 2:12-cv-2584-TLN-DAD  
25 (E.D. Cal. Aug. 27, 2013) (Order and Findings and Recommendations (“F&R”) to

26 ///

27 ///

28 ///

1 dismiss civil action as duplicative of 2:12-cv-1327 KJN)<sup>1</sup> (ECF No. 14); (E.D. Cal.  
2 Sept. 26, 2013) (Order adopting F&R and dismissing action as duplicative) (ECF  
3 No. 15) (strike two); and

4 3) Carroll v. State of California, et al., Civil Case No. 3:15-cv-01722-  
5 LAB-WVG (S.D. Cal. Oct. 9, 2015) (Order granting IFP and dismissing complaint  
6 for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(2) and  
7 § 1915A(b)) (ECF No. 4) (strike three).

8 Accordingly, because Plaintiff has, while incarcerated, accumulated three “strikes”  
9 pursuant to § 1915(g), and he fails to make a “plausible allegation” that he faced  
10 imminent danger of serious physical injury at the time he filed his Complaint, he is not  
11 entitled to the privilege of proceeding IFP in this action. See Cervantes, 493 F.3d at  
12 1055; Rodriguez v. Cook, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.  
13 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes  
14 prisoners with a history of abusing the legal system from continuing to abuse it while  
15 enjoying IFP status”); see also Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)  
16 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

### 17 **III. Improper Venue**

18 Finally, even if Plaintiff paid the full civil filing fee required by 28 U.S.C.  
19 § 1914(a), or was entitled to proceed IFP pursuant to 28 U.S.C. § 1915(a), an initial  
20 review of his Complaint reveals that he initiated this action in the wrong district. Venue  
21 may be raised by a court sua sponte where the defendant has not yet filed a responsive  
22 pleading and the time for doing so has not run. Costlow v. Weeks, 790 F.2d 1486, 1488  
23 (9th Cir. 1986).

---

24  
25  
26 <sup>1</sup> The Ninth Circuit considers duplicative IFP actions “frivolous” pursuant to 28 U.S.C.  
27 § 1915. See Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (noting that a  
28 complaint may be dismissed as frivolous if it “merely repeats pending or previously  
litigated claims.” (citations and internal citations omitted).

1 Section 1391(b) of Title 28 of the U.S. Code provides that a “civil action may be  
2 brought in – (1) a judicial district in which any defendant resides, if all defendants are  
3 residents of the State in which the district is located; [or] (2) a judicial district in which a  
4 substantial part of the events or omissions giving rise to the claim occurred, or a  
5 substantial part of property that is the subject of the action is situated[.]” 28 U.S.C.  
6 § 1391(b); Costlow, 790 F.2d at 1488; Decker Coal Co. v. Commonwealth Edison Co.,  
7 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a district in which is filed a case  
8 laying venue in the wrong division or district shall dismiss, or if it be in the interests of  
9 justice, transfer such case to any district or division in which it could have been brought.”  
10 28 U.S.C. § 1406(a).

11 While Plaintiff is currently incarcerated at RJD, which is within the Southern  
12 District of California, his Complaint seeks both injunctive relief and monetary damages  
13 based on allegedly unlawful Los Angeles County Superior Court criminal proceedings,  
14 and he has sued only LA County officials. See ECF No. 1 at 2-3. Thus, to the extent the  
15 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in Los  
16 Angeles County, and no Defendant is alleged to reside in either San Diego or Imperial  
17 County, venue would be proper in the Central District of California, Western Division  
18 pursuant to 28 U.S.C. § 84(c)(2), but not in the Southern District of California, pursuant  
19 to 28 U.S.C. § 84(d) (“The Southern District [of California] comprises the counties of  
20 Imperial and San Diego.”). See 28 U.S.C. § 1391(b); Costlow, 790 F.2d at 1488.

#### 21 **IV. Conclusion and Order**

22 For the reasons set forth above, the Court:

- 23 1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 2) as barred by 28  
24 U.S.C. § 1915(g);
- 25 2) **DISMISSES** this action without prejudice for failure to pay the full statutory  
26 and administrative \$400 civil filing fee required by 28 U.S.C. § 1914(a), and for lack of  
27 proper venue pursuant to 28 U.S.C. § 1391(b) and § 1406(a);

28 ///

