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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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REGINALD HOWARD,
Plaintiff,
v.
BRIAN CONNETT, ET AL.,
Defendants.

Case No. 2:11-cv-01402-APG-GWF

**ORDER DISMISSING OFFICIAL CAPACITY
CLAIMS**

11 **I. BACKGROUND**

12 On February 14, 2014, the Court issued an order resolving Howard's and Defendants'
13 motions for summary judgment.¹ In that order, the Court requested clarification about Howard's
14 official-capacity claims against the individual defendants.² In response, Howard filed a brief
15 explaining that his official-capacity claims are for injunctive relief only.³ Defendants also filed a
16 brief explaining that Howard is no longer in the custody of the Nevada Department of Corrections
17 ("NDOC").⁴

18 Defendants also argue that the Eleventh Amendment bars Howard's official-capacity
19 claims for monetary relief against the individual defendants. This is correct as a matter of law,
20 but Howard is not suing any of the individual defendants in their official capacity for money
21 damages; his claims for money damages are against the individual defendants in their personal
22 capacity. Defendants also argue that Howard's official-capacity claims for injunctive relief are
23 moot because Howard is no longer in NDOC custody. Finally, Defendants argue that the

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25 ¹ (Dkt. No. 62.)

26 ² (*Id.* at 12.)

27 ³ (Dkt. No. 63 at 2.)

28 ⁴ (Dkt. No. 64 at 2; *see also* Dkt. No. 59 (Howard's "change of address" filing, indicating his
release from prison).)

1 injunction Howard seeks—“enjoining the Defendants from harassing and retaliating against
2 Plaintiff for filing the instant complaint”⁵—is precluded by the Prison Litigation Reform Act’s
3 requirement for narrowly drawn injunctive relief. Defendants are correct that the claims for
4 injunctive relief are moot.

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6 **II. ANALYSIS**

7 Standing is a threshold requirement under Article III of the U.S. Constitution.⁶ To have
8 standing, a plaintiff must show (1) a concrete injury; (2) fairly traceable to the challenged action
9 of the defendant; (3) that is likely to be redressed by a favorable decision.”⁷ To obtain injunctive
10 relief, a plaintiff must also “demonstrate that he has suffered or is threatened with a ‘concrete and
11 particularized’ legal harm . . . , coupled with a ‘sufficient likelihood that he will again be wronged
12 in a similar way.’”⁸ To establish a sufficient likelihood of similar future harm, a plaintiff “must
13 establish a ‘real and immediate threat of repeated injury.’”⁹ Generally, once a former prisoner is
14 released from prison, she no longer has standing to sue the prison officials for injunctive relief
15 because she is unlikely to face the same harm at the hands of those officials.¹⁰ Standing to sue,
16 however, is measured at the time the complaint is filed.¹¹ Howard was in NDOC custody when
17 he filed suit, and thus he had standing to sue for injunctive relief.

18 However, Howard’s request for injunctive relief fails due to mootness. “[F]ederal courts
19 have no jurisdiction to hear a case that is moot, that is, where no actual or live controversy exists.
20 . . . If there is no longer a possibility that a [plaintiff] can obtain relief for his claim, that claim is
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22 ⁵ (Compl., Dkt. No. 4 at 23.)

23 ⁶ *Horne v. Flores*, 557 U.S. 433, 446 (2009).

24 ⁷ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

25 ⁸ *Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 985 (2007) (quoting *Lujan*, 504 U.S. at 560;
City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983)).

26 ⁹ *Id.* (quoting *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974)).

27 ¹⁰ See *Demery v. Arpaio*, 378 F.3d 1020, 1033 (9th Cir. 2004); *Mitchell v. Dupnik*, 75 F.3d 517,
527–28 (9th Cir. 1996).

28 ¹¹ *Lujan*, 504 U.S. at 569 n.4.

1 moot and must be dismissed for lack of jurisdiction.”¹² The mootness doctrine essentially
2 requires a plaintiff to fulfill the third element of standing—redressability—for the duration of the
3 lawsuit. The injunction Howard seeks cannot reasonably be expected to affect his present life in
4 any way. He has not explained, and the Court doubts that he could, how the prison officials could
5 retaliate against him for filing the Complaint now that he lives outside of prison. Therefore,
6 Howard’s claims for an injunction are moot.¹³

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8 **III. CONCLUSION**

9 In accord with the above, the Court hereby DISMISSES as moot Howard’s official-
10 capacity claims for injunctive relief.

11 DATED this 3rd day of April, 2014.



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14 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

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¹² *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (internal quotation marks and citations
omitted).

28 ¹³ *See Mitchell*, 75 F.3d at 528.