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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

NESTOR QUEVEDO-ROQUE,

1:12-CV-0072-AWI-DLB (HC)

Petitioner,

ORDER DENYING PETITION FOR WRIT OF  
MANDAMUS

v.

[Doc. 1]

UNITED STATES FEDERAL BUREAU OF  
PRISONS,

Respondent.

\_\_\_\_\_ /

**BACKGROUND**

Petitioner is a federal prisoner proceeding pro se with a petition for writ of mandamus pursuant to 28 U.S.C. § 1361. Petitioner is currently incarcerated at the Federal Correctional Institution in Taft, California.

Petitioner states that he is a citizen of Cuba and holds permanent residence status in the United States. Petitioner is currently serving two federal sentences of 180 months imprisonment. Petitioner’s proposed release date is in April or May of 2013. Petitioner’s criminal conviction has subjected him to the possibility of deportation or removal.

In the instant petition for writ of mandamus, Petitioner seeks an order to compel the Bureau of Prisons to initiate and complete deportation or removal proceedings prior to his release date.

**DISCUSSION**

A writ of mandamus is a request to the court that the court compel an officer or employee

1 of the United States to perform a duty owed to the petitioner. 28 U.S.C. § 1361; Allied  
2 Chemical Corp. v. Deiflon, Inc., 449 U.S. 33, 34, 101 S.Ct. 188, 190 (1980) see also Deutsch v.  
3 United States, 943 F.Supp. 276, 279 (W.D.N.Y. 1996) (finding jurisdiction over mandamus  
4 claim based on prisoner’s request to expedite deportation proceedings). However, mandamus is  
5 an extraordinary remedy. Patel v. Reno, 134 F.3d 929, 931 (9<sup>th</sup> Cir. 1998) Barron v. Reich, 13  
6 F.3d 1370, 1374 (9<sup>th</sup> Cir. 1994); Stang v. IRS, 788 F.2d 564, 565 (9<sup>th</sup> Cir. 1986). Mandamus is  
7 only available when (1) the petitioner’s claim is clear and certain; (2) the duty is ministerial and  
8 so plainly prescribed as to be free from doubt; and (3) no other adequate remedy is available.  
9 Kildare v. Saenz, 325 F.3d 1078, 1085 (9<sup>th</sup> Cir. 2003); Patel, 134 F.3d at 931; Barron, 788 F.2d  
10 at 1374. As a general rule, “mandamus may not be used to impinge upon an official’s legitimate  
11 use of discretion.” Barron, 788 F.2d at 1376. The only exception exists when “statutory or  
12 regulatory standards delimiting the scope or manner in which such discretion can be exercised . .  
13 . have been ignored or violated.” Id. (internal quotations and citations omitted).

14 As an initial matter, Petitioner requests the court direct an officer and/or employee of the  
15 United States to take action concerning his removal; Yet Petitioner fails to state the name of the  
16 individual who should be the subject of the mandamus order.

17 Moreover, Petitioner has no clear right to the remedies he seeks. Title 8 U.S.C. §  
18 1228(a)(3) provides:

19 **(3) Expedited proceedings**

20 **(A)** Notwithstanding any other provision of law, the Attorney General shall  
21 provide for the initiation and, to the extent possible, the completion of removal  
22 proceedings, and any administrative appeals thereof, in the case of any alien  
convicted of an aggravated felony before the alien's release from incarceration for  
the underlying aggravated felony.

23 **(B)** Nothing in this section shall be construed as requiring the Attorney General to  
24 effect the removal of any alien sentenced to actual incarceration, before release  
from the penitentiary or correctional institution where such alien is confined.

25 8 U.S.C. § 1228(a)(3). The statute governing deportation procedures does not require the  
26 government to institute and conclude removal proceedings prior to the expiration of an alien’s  
27 sentence in a correctional facility. 8 U.S.C. § 1228(a)(3)(B); see also Kim Thul Ouk v. U.S.  
28 Dept. of Justice Executive for Immigration and Naturalization, 2010 WL 98944, at \*3 (W.D.Okla

