

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
9

10 FELIPE GARCIA,

Case No. 1:13-cv-00599-LJO-SKO (PC)

11 Plaintiff,

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PETITION FOR WRIT  
OF MANDAMUS BE DENIED

12 v.

13 M. BITER, et al.,

(Doc. 34)

14 Defendants.  
15 \_\_\_\_\_/

16 Plaintiff Felipe Garcia, a state prisoner proceeding pro se and in forma pauperis, filed this  
17 civil rights action pursuant to 42 U.S.C. § 1983 on April 25, 2013. This action for damages is  
18 proceeding on Plaintiff's third amended complaint against Defendants Hernandez, Mosqueda, and  
19 Baker for retaliation in violation of the First Amendment and for endangering Plaintiff safety in  
20 violation of the Eighth Amendment.

21 On April 8, 2015, Plaintiff filed a petition for writ of mandamus seeking an order directing  
22 prison officials to stop retaliating against him, transfer him to a non-STG yard,<sup>1</sup> and reclassify  
23 him. Plaintiff's petition lacks any merit under the law and it must be denied.

24 Rule 81(b) abolished writs of mandamus, Fed. R. Civ. P. 81(b), but the All Writs Act  
25 provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all  
26 writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the  
27

28 <sup>1</sup> "Security Threat Groups (STG) jeopardize public safety, as they promote violence, drug trafficking, extortion, and  
create substantial risk in prisons, jails and local communities." Cal. Code Regs., tit. 15, § 3023(a) (West 2015).

1 usages and principles of law,” 28 U.S.C. § 1651(a). While a writ in the nature of mandamus may  
2 be issued under the All Writs Act, *Finley v. Chandler*, 377 F.2d 548, 548 (9th Cir. 1967) (per  
3 curiam), “[m]andamus is a ‘drastic and extraordinary remedy reserved for really extraordinary  
4 causes,’” *Hernandez v. Tanninen*, 604 F.3d 1095, 1099 (9th Cir. 2010) (quoting *Cheney v. U.S.*  
5 *Dist. Court for Dist. of Columbia*, 542 U.S. 367, 380, 124 S.Ct. 2576, 2586 (2004)).

6 Plaintiff’s attempt to seek relief via a petition for writ of mandamus is misplaced. In addition to  
7 jurisdictional issues arising from Plaintiff’s desire for a federal writ directed at state prison  
8 officials, *see Cheney*, 542 U.S. at 380, 124 S.Ct. at 2586 (section 1651(a) codified the common-  
9 law writ of mandamus against a lower court); *Demos v. U.S. Dist. Court for Eastern Dist. of*  
10 *Washington*, 925 F.2d 1160, 1161-62 (9th Cir. 1991) (no jurisdiction to issue writ to a state court),  
11 Plaintiff cannot demonstrate (1) the absence of any other adequate means to attain relief and (2) a  
12 clear and indisputable right to the issuance of the writ, *Cheney*, 542 U.S. at 380-81, 124 S.Ct. at  
13 2587. In this action, Plaintiff is challenging his past conditions of confinement at Kern Valley  
14 State Prison in Delano, California, and he is limited to seeking monetary damages. No grounds  
15 entitling Plaintiff to the issuance of a writ in the nature of mandamus exist.<sup>2</sup>

16 Accordingly, the Court HEREBY RECOMMENDS that Plaintiff’s petition be DENIED,  
17 with prejudice.

18 These Findings and Recommendations will be submitted to the United States District  
19 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
20 **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may file  
21 written objections with the Court. The document should be captioned “Objections to Magistrate  
22 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within  
23 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d  
24 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
25 IT IS SO ORDERED.

26 Dated: **April 28, 2015**

**/s/ Sheila K. Oberto**  
UNITED STATES MAGISTRATE JUDGE

28 <sup>2</sup> Plaintiff’s pending motion for injunctive relief is addressed separately.

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