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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOSE LEON GONZALEZ-LONGORIA,  
Petitioner,  
v.  
DENNIS WONG, et al.,  
Respondents.

Case No. 1:17-cv-01587-MJS

**ORDER DIRECTING CLERK OF COURT TO  
ASSIGN A DISTRICT JUDGE TO THIS  
MATTER**

**FINDINGS AND RECOMMENDATION TO  
DISMISS PETITION FOR WRIT OF  
MANDAMUS**

**(ECF NO. 1)**

**THIRTY (30) DAY OBJECTION DEADLINE**

Petitioner is in the custody of the Bureau of Prisons at United States Penitentiary Atwater in Atwater, California. He has filed the instant petition for writ of mandamus pursuant to 28 U.S.C. § 1361. He contends that Warden Andre Matevousian has unlawfully seized funds from his trust account and limited his incoming mail as an unauthorized form of punishment.

**I. Screening Requirement**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has

1 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which  
2 relief may be granted, or that seek monetary relief from a defendant who is immune from  
3 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion  
4 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
5 determines that . . . the action or appeal . . . fails to state a claim upon which relief may  
6 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

## 7 **II. Legal Standards Applicable to Petitions for Writ of Mandamus**

8 A writ of mandamus is a request that the court compel an officer or employee of  
9 the United States to perform a duty owed to the petitioner. 28 U.S.C. § 1361; Allied  
10 Chemical Corp. v. Deiflon, Inc., 449 U.S. 33, 34 (1980); see also Deutsch v. United  
11 States, 943 F. Supp. 276, 279 (W.D.N.Y. 1996) (finding jurisdiction over mandamus  
12 claim based on prisoner's request to expedite deportation proceedings). However,  
13 mandamus is an extraordinary remedy. Patel v. Reno, 134 F.3d 929, 931 (9th Cir. 1998);  
14 Barron v. Reich, 13 F.3d 1370, 1374 (9th Cir. 1994); Stang v. IRS, 788 F.2d 564, 565  
15 (9th Cir. 1986). Mandamus is only available when (1) the petitioner's claim is clear and  
16 certain; (2) the duty is ministerial and so plainly prescribed as to be free from doubt; and  
17 (3) no other adequate remedy is available. Kildare v. Saenz, 325 F.3d 1078, 1085 (9th  
18 Cir. 2003); Patel, 134 F.3d at 931; Barron, 788 F.2d at 1374.

## 19 **III. Discussion**

20 Petitioner has failed to meet the basic threshold for mandamus relief. Either he is  
21 challenging the execution of his sentence, in which case his claims may be cognizable in  
22 a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, or he is challenging  
23 the conditions of his confinement, in which case his claims may be cognizable in a civil  
24 rights action brought pursuant to Bivens v. Six Unknown Named Agents of the Federal  
25 Bureau of Narcotics, 403 U.S. 388 (1971), the “federal analogue” to an action brought  
26 pursuant to 42 U.S.C. § 1983. Hartman v. Moore, 547 U.S. 250, 254, 255 n.2 (2006).

1 Under either circumstance, he has not shown that no other adequate remedy is  
2 available.

3 Mandamus relief is therefore unavailable. This defect cannot be cured through  
4 amendment.

5 **IV. Construing Action as Habeas Corpus or Civil Rights Action**

6 The Court chooses not to construe the petition for writ of mandamus as a petition  
7 for writ of habeas corpus or as a civil rights action because Petitioner specifically chose  
8 to file a petition for writ of mandamus. (ECF No. 1 at 1.) Petitioner is the master of his  
9 pleading and the Court will respect his choice. See Bogovich v. Sandoval, 189 F.3d 999,  
10 1001 (9th Cir. 1999) (“[T]he party who brings a suit is master to decide what law he will  
11 rely upon.”) Furthermore, as stated, the petition’s passing reference to disciplinary  
12 sanctions makes it unclear whether Petitioner raises a challenge to the execution of his  
13 sentence that may be brought in a habeas petition, or a challenge to the conditions of his  
14 confinement which may only be brought in a civil rights action.

15 **V. Conclusion and Recommendation**

16 Petitioner is not entitled to mandamus relief. Accordingly, it is HEREBY  
17 RECOMMENDED that the petition be dismissed without prejudice to Petitioner bringing  
18 his claims in either a petition for writ of habeas corpus or a civil rights action.

19 The findings and recommendation are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
21 **thirty** (30) days after being served with the findings and recommendation, any party may  
22 file written objections with the Court and serve a copy on all parties. Such a document  
23 should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.”  
24 Any reply to the objections shall be served and filed within fourteen (14) days after  
25 service of the objections. The parties are advised that failure to file objections within the  
26 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772  
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1 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.  
2 1991)).

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4 IT IS SO ORDERED.

5 Dated: March 7, 2018

1st Michael J. Seng  
6 UNITED STATES MAGISTRATE JUDGE

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