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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

J.L. GONZALEZ,

Petitioner,

v.

B.M. TRATE,

Respondent.

Case No. 1:23-cv-00904-SAB-HC

FINDINGS AND RECOMMENDATION TO  
GRANT RESPONDENT’S MOTION TO  
DISMISS

(ECF No. 9)

ORDER DIRECTING CLERK OF COURT  
TO RANDOMLY ASSIGN DISTRICT  
JUDGE

Petitioner is a federal prisoner proceeding pro se with a petition for writ of mandamus pursuant to 28 U.S.C. § 1361.

**I.**

**BACKGROUND**

Petitioner is a federal prisoner currently housed at the United States Penitentiary in Atwater, California (“USP Atwater”). (ECF No. 1 at 1.)<sup>1</sup> On June 15, 2023, Petitioner filed a petition for writ of mandamus pursuant to 28 U.S.C. § 1361. (ECF No. 1.) Therein, Petitioner alleges that he, and others housed at USP Atwater, is being denied adequate programming, healthy diet, hot meals, fresh air, leisure or recreational activities, and access to the courts due to constant institutional lockdowns allegedly for lack of security staff. (Id. at 2.) Petitioner “seeks

<sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

1 injunctive relief order compelling the warden (respondent) to staff its facilities and operate the  
2 industries as normal as possible and release inmates to normal programming and activities.  
3 Otherwise, classify these pleadings as a class action seeking monetary damages and redress.”  
4 (ECF No. 1 at 3.)

5 On October 31, 2023, Respondent filed a motion to dismiss, arguing that the petition  
6 should be dismissed for failure to exhaust administrative remedies and because Petitioner has not  
7 established that the drastic and extraordinary remedy under § 1361 is warranted. (ECF No. 9.) To  
8 date, no opposition or statement of opposition has been filed, and the time for doing so has  
9 passed.

## 10 II.

### 11 DISCUSSION

12 The federal mandamus statute provides: “The district courts shall have original  
13 jurisdiction of any action in the nature of mandamus to compel an officer or employee of the  
14 United States or any agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1361.  
15 The Supreme Court has “repeatedly has observed that the writ of mandamus is an extraordinary  
16 remedy, to be reserved for extraordinary situations.” Gulfstream Aerospace Corp. v. Mayacamas  
17 Corp., 485 U.S. 271, 289 (1988).

18 The Ninth Circuit has held:

19 Mandamus relief is only available to compel an officer of the United States to  
20 perform a duty if (1) the plaintiff’s claim is clear and certain; (2) the duty of the  
21 officer is ministerial and so plainly prescribed as to be free from doubt; and (3) no  
other adequate remedy is available.

22 Fallini v. Hodel, 783 F.2d 1343, 1345 (9th Cir. 1986) (internal quotation and citations omitted).  
23 “Accordingly, to establish his entitlement to mandamus-type relief, [Petitioner] ha[s] to plead  
24 that these three requirements [a]re met.” Plaskett v. Wormuth, 18 F.4th 1072, 1081 (9th Cir.  
25 2021). “Consistent with the limitations that traditionally governed the common-law writ of  
26 mandamus, an action under § 1361 is thus ‘intended to provide a remedy for a plaintiff only if he  
27 has *exhausted all other avenues of relief . . .*’” Id. (emphasis added) (quoting Heckler v. Ringer,  
28 466 U.S. 602, 616 (1984)). See Agua Caliente Tribe of Cupeno Indians of Pala Rsr. v.

1 Sweeney, 932 F.3d 1207, 1216 (9th Cir. 2019) (“Relatedly, the ‘well established’ doctrine of  
2 administrative remedies ‘provides that no one is entitled to judicial relief for a supposed or  
3 threatened injury until the prescribed administrative remedy has been exhausted.’” (footnote  
4 omitted) (quoting Woodford v. Ngo, 548 U.S. 81, 88–89 (2006))).

5 Here, “the matters that are the subject of this Petition have not been administratively  
6 grieved through any of the three levels” of the Federal Bureau of Prisons administrative remedy  
7 procedure. (ECF No. 9-1 at 3.) Accordingly, the Court finds that Petitioner has not satisfied the  
8 third requirement of mandamus relief that no other adequate remedy is available.<sup>2</sup> See Kildare v.  
9 Saenz, 325 F.3d 1078, 1084–85 (9th Cir. 2003) (“We hold that Appellants do not meet the third  
10 requirement [for mandamus relief under § 1361] because administrative review could correct the  
11 individual errors alleged by Appellants. Thus, there is an adequate alternative remedy.”); Agua  
12 Caliente, 932 F.3d at 1216 n.7, 1219 (“[W]e conclude there is an available, unexhausted  
13 administrative remedy” and “the Cupeño must exhaust administrative remedies, and until they do  
14 so, they are not entitled to [mandamus] relief” under § 1361).

15 **III.**

16 **RECOMMENDATION & ORDER**

17 Based on the foregoing, the Court HEREBY RECOMMENDS that:

- 18 1. Respondent’s motion to dismiss (ECF No. 9) be GRANTED; and  
19 2. The petition for writ of mandamus be DISMISSED.

20 Further, the Clerk of Court is DIRECTED to randomly assign this action to a District  
21 Judge.

22 This Findings and Recommendation is submitted to the assigned United States District  
23 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
24 Rules of Practice for the United States District Court, Eastern District of California. Within  
25 **THIRTY (30) days** after service of the Findings and Recommendation, any party may file

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26 <sup>2</sup> “[W]hile there are some doctrinal exceptions to administrative exhaustion,” Agua Caliente, 932 F.3d at 1219, the  
27 Court finds the petition’s perfunctory statement that “[a]dministrative remedies are all but dead upon arrival and no  
28 one to answer” does not establish that the futility exception to the exhaustion requirement applies. Moreover,  
Petitioner did not file any opposition to the motion to dismiss that could have expounded on the purported futility of  
exhausting administrative remedies.

1 written objections with the court and serve a copy on all parties. Such a document should be  
2 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the  
3 objections shall be served and filed within fourteen (14) days after service of the objections. The  
4 assigned United States District Court Judge will then review the Magistrate Judge's ruling  
5 pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within  
6 the specified time may waive the right to appeal the District Court's order. Wilkerson v.  
7 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th  
8 Cir. 1991)).

9  
10 IT IS SO ORDERED.

11 Dated: February 5, 2024

  
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UNITED STATES MAGISTRATE JUDGE