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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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10 J.L. GONZALEZ,

11 Petitioner,

12 v.

13 B.M. TRATE,

14 Respondent.

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

ORDER DIRECTING CLERK OF COURT  
TO MAIL MOTION TO DISMISS (ECF No.  
9) TO PETITIONER

ORDER SETTING BRIEFING SCHEDULE

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16 Petitioner is a federal prisoner currently housed at the United States Penitentiary in  
17 Atwater, California (“USP Atwater”). (ECF No. 1 at 1.<sup>1</sup>) On June 15, 2023, Petitioner filed a  
18 petition for writ of mandamus pursuant to 28 U.S.C. § 1361. (ECF No. 1.) Therein, Petitioner  
19 alleges that he, and others housed at USP Atwater, is being denied adequate programming,  
20 healthy diet, hot meals, fresh air, leisure or recreational activities, and access to the courts due to  
21 constant institutional lockdowns allegedly for lack of security staff. (Id. at 2.) Petitioner “seeks  
22 injunctive relief order compelling the warden (respondent) to staff its facilities and operate the  
23 industries as normal as possible and release inmates to normal programming and activities.  
24 Otherwise, classify these pleadings as a class action seeking monetary damages and redress.” (Id.  
25 at 3.)

26 On October 31, 2023, Respondent filed a motion to dismiss, arguing that the petition  
27 should be dismissed for failure to exhaust administrative remedies and because Petitioner has not

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

1 established that the drastic and extraordinary remedy under § 1361 is warranted. (ECF No. 9.)  
2 Petitioner did not file an opposition to the motion to dismiss, and on February 5, 2024, the Court  
3 issued findings and recommendation to grant the motion to dismiss and dismiss the petition.  
4 (ECF No. 11.) On March 7, 2024, Petitioner filed objections to the findings and  
5 recommendation. Therein, Petitioner states that he never received Respondent's motion to  
6 dismiss. (ECF No. 12.)

7 Accordingly, the Court HEREBY ORDERS that:

- 8 1. The Clerk of Court is DIRECTED to mail Petitioner a copy of Respondent's motion to  
9 dismiss (ECF No. 9);
- 10 2. Within twenty-one (21) days of the date of service of this order, Petitioner SHALL FILE  
11 an opposition or statement of non-opposition to the motion to dismiss; and
- 12 3. Any reply to an opposition to the motion to dismiss SHALL be filed within fourteen (14)  
13 days after the opposition has been filed in CM/ECF.

14 IT IS SO ORDERED.

15 Dated: March 26, 2024

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18 UNITED STATES MAGISTRATE JUDGE  
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