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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

IVAN VON STAICH,

No. CIV S-07-0171-MCE-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

CALIFORNIA BOARD OF
PRISON HEARINGS, et al.,

Respondents.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of mandamus pursuant to 28 U.S.C. § 1651(a). Petitioner names only state agencies and/or employees. It appears that petitioner seeks a writ commanding respondents to hold a parole suitability hearing sooner rather than later. It also appears that petitioner is asserting a violation of his equal protection rights with respect to parole suitability.

Under 28 U.S.C. § 1651(a), all federal courts may issue writs “in aid of their respective jurisdictions. . .” Here, the relief petitioner seeks would not be in aid of this court’s jurisdiction. Rather, he seeks some kind of action by the Parole Board. Therefore, this petition cannot proceed under § 1651(a).

1 The district court does have original jurisdiction under 28 U.S.C. § 1361 to issue
2 writs of mandamus. That jurisdiction is limited, however, to writs of mandamus to “compel an
3 officer or employee of the United States or any agency thereof to perform a duty. . .” 28 U.S.C.
4 § 1361 (emphasis added). In this case, petitioner has not named any officers or employees of the
5 United States as respondents. Therefore, the petition cannot proceed under § 1361.

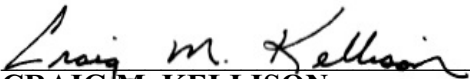
6 Finally, it is well-established that the federal court cannot issue a writ of
7 mandamus commanding action by a state or its agencies. See e.g. Demos v. U.S. Dist. Court for
8 Eastern Dist. of Wash., 925 F.2d 1160 (9th Cir. 1991).

9 For these reasons, the court finds that dismissal of the instant mandamus petition
10 is appropriate. Because petitioner may be seeking relief available under 28 U.S.C. § 2254 and/or
11 42 U.S.C. § 1983, the court will recommend dismissal without prejudice to any relief petitioner
12 may be entitled to under those statutes.

13 Based on the foregoing, the undersigned recommends that this mandamus petition
14 be dismissed without prejudice.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
19 Findings and Recommendations.” Failure to file objections within the specified time may waive
20 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 DATED: February 1, 2007.

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25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE