

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

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

PATRICK A. MARTINEZ,
Petitioner,

No. CIV S-09-0719-GEB-CMK

vs.

FINDINGS AND RECOMMENDATIONS

MICHAEL D. McDONALD,
Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of mandamus and/or mandate.

Under 28 U.S.C. § 1651(a), all federal courts may issue writs “in aid of their respective jurisdictions. . .” In addition, the district court has original jurisdiction under 28 U.S.C. § 1361 to issue writs of mandamus. That jurisdiction is limited, however, to writs of mandamus to “compel an officer or employee of the United States or any agency thereof to perform a duty. . .” 28 U.S.C. § 1361 (emphasis added). It is also well-established that, with very few exceptions specifically outlined by Congress, the federal court cannot issue a writ of mandamus commanding action by a state or its agencies. See e.g. Demos v. U.S. Dist. Court for Eastern Dist. of Wash., 925 F.2d 1160 (9th Cir. 1991). Where the federal court does have

1 jurisdiction to consider a petition for a writ of mandamus, such a writ may not issue unless it is to
2 enforce an established right by compelling the performance of a corresponding non-discretionary
3 ministerial act. See Finley v. Chandler, 377 F.2d 548 (9th Cir. 1967).

4 In this case, petitioner seeks a writ from this court commanding state officials
5 with the California Department of Corrections and Rehabilitation to perform duties prescribed by
6 state law. As indicated above, this court lacks jurisdiction to command action by state agencies
7 by way of mandamus. This action should be dismissed without prejudice to seeking whatever
8 relief may be available in state court.

9 Based on the foregoing, the undersigned recommends that this action be dismissed
10 without prejudice.

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

17
18 DATED: April 1, 2009

19 
20 **CRAIG M. KELLISON**
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26