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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON D. McCOY,

 Petitioner,

 v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

 Respondent.

No. 2:14-cv-2179-TLN-EFB P

ORDER AND FINDING AND
RECOMMENDATIONS

Petitioner is a state prisoner proceeding without counsel. In a filing directed toward United States District Judge Lawrence K. Karlton, petitioner seeks a “writ of mandate” and “motion for sentence reduction.”¹ ECF No. 1. He asks for a “compassionate release” from the custody of the California Department of Corrections and Rehabilitation (CDCR) or in the alternative, that he be transferred to Atascadero State Hospital or another state hospital. He states that his release will save taxpayers money, and that his request is made in response to Judge Karlton’s order directing CDCR to reduce the size of California’s prison population.

In a mandamus action, the court can only issue orders against employees, officers or agencies of the United States. *See* 28 U.S.C. § 1361. Thus, the court cannot issue a writ of

¹ He also seeks leave to proceed in forma pauperis. That request is granted.

1 mandamus commanding state officials to release petitioner or transfer him to a state hospital. *See*
2 *Demos v. United States Dist. Court for the E. Dist. of Wash.*, 925 F.2d 1160, 1161 (9th Cir.
3 1991); *Clark v. Washington*, 366 F.2d 678, 681-82 (9th Cir. 1966). Therefore, the court cannot
4 afford petitioner the relief he requests. If petitioner contends that he is in custody in violation of
5 the Constitution or laws or treaties of the United States, he may commence a new action by filing
6 an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

7 Accordingly, it is hereby ordered that petitioner's application for leave to proceed in
8 forma pauperis (ECF Nos. 9, 10) is granted.

9 Further, it is hereby RECOMMENDED that:

- 10 1. The petition for a writ of mandamus be dismissed for lack of jurisdiction, without
11 prejudice to filing an application for a writ of habeas corpus in a new action; and
12 2. The Clerk be directed to close the case.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
18 objections shall be served and filed within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
21 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: May 7, 2015.

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24 EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
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