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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,
Petitioner,
v.
CDCR,
Respondent.

No. 2:15-cv-0093-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner without counsel seeking a writ of mandamus pursuant to 28 U.S.C. §§ 1361, 1651.¹ He asks that CDCR officials cease medicating him with Risperdal and that they provide him with access to his medical and prison records. ECF No. 1.

Federal courts offer two main avenues to relief on complaints related to one’s imprisonment – a petition for habeas corpus pursuant to 28 U.S.C. § 2254, and a civil rights complaint pursuant to 42 U.S.C. § 1983. Challenges to the validity of one’s confinement or the duration of one’s confinement are properly brought in a habeas action, whereas requests for relief turning on the circumstances of one’s confinement are properly brought in a § 1983 action. *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)).

¹ Petitioner seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915. Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit.

1 Petitioner has not filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254 or a civil
2 rights complaint pursuant to 42 U.S.C. § 1983. Rather, he seeks a writ of mandamus. Federal
3 district courts are not authorized to issue writs of mandamus to direct state courts, state judicial
4 officers, or other state officials in the performance of their duties. *See Demos v. U.S. District*
5 *Court*, 925 F.2d 1160, 1161 (9th Cir. 1991) (“We further note that this court lacks jurisdiction to
6 issue a writ of mandamus to a state court.”); *Clark v. Washington*, 366 F.2d 678, 681 (9th Cir.
7 1966) (“The federal courts are without power to issue writs of mandamus to direct state courts or
8 their judicial officers in the performance of their duties[.]”); *see also Newton v. Poindexter*, 578
9 F. Supp. 277, 279 (C.D. Cal. 1984) (§ 1361 has no application to state officers or employees).
10 Therefore, the court cannot afford petitioner the relief he requests and his application for a writ of
11 mandamus must be denied.

12 Accordingly, it is ORDERED that:

- 13 1. Petitioner’s request for leave to proceed in forma pauperis is granted.
- 14 2. The Clerk of the Court is directed to randomly assign a United States District Judge to
15 this action.

16 Further, it is hereby RECOMMENDED that the petition for a writ of mandamus be
17 dismissed for lack of jurisdiction, without prejudice to filing a complaint in a new civil action.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
23 shall be served and filed within fourteen days after service of the objections. Failure to file
24 objections within the specified time may waive the right to appeal the District Court’s order.
25 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
26 1991).

27 DATED: March 11, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE