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8	UNITED STATES DISTRICT COURT		
9	FOR THE EASTERN DISTRICT OF CALIFORNIA		
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11	KIRELL TAYLOR on behalf of the	No. 2:16-cv-0140 GGH P	
12	UNITED STATES OF AMERICA,		
13	Petitioner,	ORDER AND FINDINGS AND	
14	V.	<u>RECOMMENDATIONS</u>	
15	INTERNAL REVENUE SERVICE, et al.,		
16	Respondents.		
17	Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of		
18	mandamus, but has not submitted a request to proceed in forma pauperis or paid the filing fee.		
19	Section 1915A of Title 28 U.S.C. requires a court to screen complaints brought by a		
20	prisoners against governmental entities or personnel to determine whether the complaints are		
21	frivolous, malicious or fail to state a claim. The undersigned reads the word "complaint" broadly		
22	enough to apply to petitioner's requested writ of mandate. See Red v. Dickinson, 2010 WL		
23	4506309 (N.D. Cal. 2010).		
24	Kirell Taylor does not name himself as a party to this action; rather he lists the "United		
25	States of America, Internal Revenue Service" as plaintiff (with Kirell Taylor as attorney for the		
26	United States), and R. Wade as defendant. His claim is that R. Wade, a social worker in Kern		
27	County, "has failed to provide defendant's taxpayer ID number to plaintiff for the purpose of		
28	being entitled to the entire amount of federal and state income tax withheld on form 1099 [] that		
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1	must be included in defendant's gross income after she has had 'complete dominion over' the said	
2	original issue price of Bettis Kirell Francis's banker's acceptance in the amount of \$1,820,000.00	
3	i.e., 09% of \$2 million." (ECF No. 1 at 3.)	
4	There are several reasons why this action may not proceed. First and foremost, Taylor has	
5	not named himself as a party and therefore has no standing to bring a suit on behalf of the IRS.	
6	Halet v. Wend Inv. Co., 672 F.2d 1305, 1308 (9th Cir. 1982) (party must assert [his] own rights	
7	not those of third parties), citing Duke Power Co. v. Carolina Environmental Study Group, 438	
8	U.S. 59, 80, 98 S.Ct. 2620, 2634 (1978); Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205	
9	(1974). Taylor may file an action only on his own behalf.	
10	Second, Taylor brings this action under 28 U.S.C. § 1361, seeking a writ of mandamus.	
11	28 U.S.C. § 1361 provides for original jurisdiction to compel an employee or agent of the United	
12	States to perform a duty owed to plaintiff. Section 1361 does not provide an independent ground	
13	for jurisdiction or override other grounds for dismissal based upon jurisdictional defects. Drake	
14	v. Obama, 664 F.3d 774, 785 n.5 (9th Cir. 2011). Taylor has named the IRS, an agency of the	
15	United States as plaintiff. Defendant is an employee of a county in California. Therefore, this	
16	statute is not applicable.	
17	Nor can this action be described as an application for writ of habeas corpus.	
18	Federal law opens two main avenues to relief on complaints related	
19	to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat.	
20	1979, as amended, 42 U.S.C. § 1983. Challenges to the validity of any confinement or to particulars affecting its duration are the	
21	province of habeas corpus, <u>Preiser v. Rodriguez</u> , 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); requests for relief turning on	
22	circumstances of confinement may be presented in a 1983 action.	
23	Muhammad v. Close, 540 U.S.749, 750, 124 S.Ct. 1303, 1304 (2004) (per curiam).	
24	One reason why Taylor may be trying to proceed with a writ of mandamus rather than a	
25	civil rights action is because he has a history of filing frivolous actions, having filed three or more	
26	actions which were dismissed as frivolous, malicious or for failing to state a claim upon which	
27	relief has been granted. See Taylor v. California Department of Corrections and Rehabilitation,	
28	Civ.S. 1:13-cv-1558 AWI DLB PC (taking judicial notice of three prior cases dismissed as	
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frivolous or for failure to state a claim). Because Taylor had not shown that he was in imminent
danger of serious physical injury in that case, he was found ineligible to obtain in forma pauperis
status and was required to pay the \$400 filing fee. Here, Taylor may be attempting to avoid
paying the \$400 filing fee required in civil actions by filing a petition for writ of mandamus.¹
Finally, Taylor's claims are virtually nonsensical and frivolous. It is plain from the

petition that Taylor is not entitled to federal habeas relief. The court can discern no manner in
which Taylor could cure the defects of his allegations. This appears to be one of those relatively
rare cases when to grant petitioner further leave to amend would be patently futile. Therefore, the
petition for writ of mandate should be summarily dismissed pursuant to 28 U.S.C. § 1915A.

Accordingly, IT IS ORDERED that the Clerk of the Court is directed to: (1) serve a copy
of the petition filed in this case together with a copy of these findings and recommendations on
the Attorney General of the State of California, and (2) assign a district judge to this case.

13 IT IS HEREBY RECOMMENDED that Petitioner's application for a writ of mandate be
summarily dismissed.

15 These findings and recommendations are submitted to the United States District Judge 16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 17 after being served with these findings and recommendations, petitioner may file written 18 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's 19 Findings and Recommendations." Petitioner is advised that failure to file objections within the 20 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 21 1153 (9th Cir.1991). 22 Dated: February 10, 2016 23 /s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

26 GGH:076/Tayl0140.R4

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 &</sup>lt;sup>1</sup> In this case, Taylor has failed to either pay the filing fee or file a request to proceed in forma pauperis.