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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN ALAN KELLEY,
Petitioner,
v.
JOE A. LIZARRAGA, Warden,
Respondent.

No. 2:16-cv-01088 MCE GGH

ORDER

Petitioner filed a Motion to Compel the Clerk of the Superior Court to transmit an exhibit to this court, i.e., to produce a CD that was placed in evidence during his trial. See ECF # 23. This request is equivalent to a mandamus action to compel an officer or employee of the United States to perform a non-discretionary duty. 28 U.S.C. § 1361. However, federal courts are without power to issue mandamus to direct state courts, state judicial officers, or other state officials in the performance of their duties. A petition for a writ of mandamus to compel a state court or official to take or refrain from some actions is therefore frivolous as a matter of law. See Demos v. U.S. District Court, 925 F.2d 1160, 1161 (9th Cir. 1966) noting “that this court lacks jurisdiction to issue a writ of mandamus to a state court”); Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1955)(“The federal courts are without power to issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties[...])”

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IT IS THEREFORE ORDERED that, in light of the fact that a Motion to Compel would have the same potential effect as a writ of mandamus, this court must DENY petitioner’s motion.

IT IS SO ORDERED.

Dated: March 23, 2017

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE