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## UNITED STATES DISTRICT COURT

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## FOR THE EASTERN DISTRICT OF CALIFORNIA

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JOHN McCLINTOCK,

No. 2: 18-cv-0560 JAM KJN P

12

Plaintiff,

13

v.

ORDER

14

T. COOPER, et al.,

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Defendants.

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Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On May 13, 2020, plaintiff filed a motion requesting that the court refer certain individuals and a state agency to the Justice Department for investigation and criminal prosecution. Plaintiff requests that this motion be filed under seal.

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“A private citizen does not have the power to instigate prosecutions of alleged crimes.”

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Johnson v. Westermeyer, 2014 WL 2807667, at \* 8 (D. Or. June 19, 2014). The decision to investigate or prosecute a person for an alleged violation of a federal criminal statute is left to the discretion of the Attorney General of the United States and United States Attorneys. United States v. Armstrong, 517 U.S. 456, 464 (1977). The courts lack the power to compel the prosecuting authorities to bring criminal charges. See Fields v. Soloff, 920 F.2d 1114, 1118 (2nd Cir. 1990); see also Parsons v. Arizona, 2013 WL 4804474, at \*4 (D. Ariz. Sept. 9, 2013) (cases cited therein). The court cannot compel federal prosecuting agencies to undertake a grand jury

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1 investigation or return an indictment. Gilbert v. United States Attorney General for California,  
2 2019 WL 1095131, at \*2 (C.D. Cal. Jan. 4, 2019).

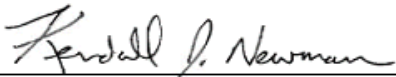
3 Because neither plaintiff nor the court have the authority to compel the Department of  
4 Justice to investigate or bring criminal charges, plaintiff's motion requesting that the court refer  
5 certain individuals and a state agency to the Department of Justice for investigation and criminal  
6 prosecution is denied.

7 Plaintiff has also requested that his motion for referral to the Department of Justice be  
8 filed under seal in order to protect the identity of witnesses whose declarations are attached to the  
9 motion. In an abundance of caution, the undersigned directs the Clerk of the Court to file  
10 plaintiff's motion under seal.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Clerk of the Court is directed to file under seal plaintiff's motion requesting that  
13 the court refer certain individuals and a state agency to the Justice Department for  
14 investigation and criminal prosecution;
- 15 2. Plaintiff's motion requesting that the court refer certain individuals and a state agency  
16 to the Justice Department for investigation and criminal prosecution is denied.

17 Dated: May 14, 2020

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20 KENDALL J. NEWMAN  
21 UNITED STATES MAGISTRATE JUDGE

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