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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DONALD M. BIRD, et al.,

No. 2:18-cv-0974-MCE-CMK

Plaintiffs,

vs.

FINDINGS AND RECOMMENDATION

BROWN, et al.,

Defendants.

_____ /

Plaintiffs/petitioners, proceeding pro se, brings this civil action. Pending before the court is defendants'/respondents' motion to dismiss (Doc. 10). Plaintiffs/petitioners filed an opposition to the motion (which they termed a motion to negate) (Doc. 13), and defendants/respondents filed a reply. A hearing on the motion to dismiss was held on August 15, 2018, before the undersigned in Redding, California. Deputy Attorney General Nelson R. Richards appeared on behalf of defendants/respondents. There was no appearance by plaintiffs/petitioners or anyone on their behalf.

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1 **I. BACKGROUND**

2 Plaintiffs/petitioners¹ filed this action against California Governor Jerry Brown
3 and California Attorney Xavier Becerra. Docketed as a Civil Rights action, the complaint filed is
4 a petition for writ of mandamus. Petitioners seek to force the respondents to abide by their oath
5 and “be ordered to support, defend and adhere to the United States Constitution”

6 There are limited facts alleged in the petition. It appears the petitioners are
7 attempting to force the respondents to enforce immigration laws. However, it is unclear what
8 immigration laws the petitioners are referring to, or how the respondents are not abiding by their
9 oath. From the responding papers, it also appears petitioners are referring to an old case Mr. Bird
10 filed against Home Depot regarding the treatment of veterans in the store. It appears Mr. Bird
11 may have filed grievances and requests for the Attorney General to investigate his allegations
12 against Home Depot, and Mr. Bird was not satisfied with the Attorney General’s response to his
13 requests.

14 **II. MOTIONS TO DISMISS**

15 Respondents brings this motion to dismiss pursuant to Federal Rule of Civil
16 Procedure 12(b)(1) on the grounds that the court lacks jurisdiction over this matter because
17 petitioners lack standing and because the petition raises a non-justiciable political question.

18 In the response to the motion, petitioners seem to argue that they are not required
19 to have standing because that term was not commonly used until the middle of the 19th century.
20 In addition, they demand their issues be heard, including whether the oath taken by the Attorney
21 General was the entire oath, the Attorney General has a duty to investigate all complaints, and the
22 veracity of the Attorney General. They do not, however, actually address either the lack of
23 jurisdiction or the justiciability of a political question case.

24 _____
25 ¹ The undersigned will herein refer to the defendants/respondents as respondents
26 and plaintiffs/petitioners as petitioners as the original pleading in this matter is a petition for writ
of mandamus.

1 Federal courts are courts of limited jurisdiction. That limited jurisdiction includes
2 cases involving diversity of citizenship, a federal question, or to which the United States is a
3 party. It is presumed that federal courts are without jurisdiction over civil actions “and the
4 burden of establishing the contrary rests upon the party asserting jurisdiction.” Kokkonen v.
5 Guardian Life Ins. Co, 511 U.S. 375, 376 (1994) (citing McNutt v. Gen. Motors Acceptance
6 Corp., 298 U.S. 178, 182-83 (1936)). Jurisdiction must generally be determined prior to a federal
7 court considering a case on its merits. See United States v. Larson, 302 F.3d 1016, 1019 (9th
8 Cir. 2002) (citing Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 94 (1998)).

9 The federal courts’ authority to issue extraordinary writs, including writs of
10 mandamus, derives from the All Writs Act, 28 U.S.C. § 1651(a). Under 28 U.S.C. § 1651(a), all
11 federal courts may issue writs “in aid of their respective jurisdictions” In addition, the
12 district court has original jurisdiction under 28 U.S.C. § 1361 to issue writs of mandamus. That
13 jurisdiction is limited, however, to writs of mandamus to “compel an officer or employee of the
14 United States or any agency thereof to perform a duty. . . .” 28 U.S.C. § 1361 (emphasis added).
15 It is also well-established that, with very few exceptions specifically outlined by Congress, the
16 federal court cannot issue a writ of mandamus commanding action by a state or its agencies. See
17 e.g. Demos v. U.S. Dist. Court for Eastern Dist. of Wash., 925 F.2d 1160 (9th Cir. 1991).

18 Here, it is clear that petitioners are requesting this court issue an order to compel a
19 state officer to perform a duty. However, this court lacks the jurisdiction to issue such an order.
20 This court is limited in its jurisdiction to grant writs of mandamus to compel officers of the
21 United States to perform a duty. Petitioners offer no basis for this court to issue similar orders
22 compelling state officers.

23 In addition, as the respondents argue, cases which raise political issues similar to
24 petitioners’ issues as to whether the defendants are violating their oaths of office and failing to
25 enforce laws, have been dismissed for lack of jurisdiction. See Baker v. Carr, 369 U.S. 186, 217
26 (1962); Sadowski v. Bush, 293 F.Supp.2d 15, 19-20 (D.D.C. 2003). The issues raised in this

1 case are similar, and this court lack jurisdiction over these type of political question cases.

2 **IV. CONCLUSION**

3 Based on the facts alleged, and the discussion above, this court lacks jurisdiction
4 to adjudicate petitioners' claims.

5 Based on the foregoing, the undersigned recommends that:

- 6 1. Defendants/respondents' motion to dismiss (Doc. 10) be granted;
- 7 2. This action be dismissed for lack of jurisdiction; and
- 8 3. The Clerk of the Court be directed to enter judgment and close this case.

9
10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court. Responses to objections shall be filed within 14 days after service of
14 objections. Failure to file objections within the specified time may waive the right to appeal.

15 See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16
17 DATED: August 16, 2018

18 
19 **CRAIG M. KELLISON**
20 UNITED STATES MAGISTRATE JUDGE