

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 STEVEN WAYNE BONILLA,

5 Plaintiff,

6 v.

7  
8 JEFFREY BEARD, Director of  
9 California Department of  
10 Corrections and Rehabilitation,

11 Defendant.

Case No.: 14-2395 CW (PR)

ORDER DENYING LEAVE TO PROCEED  
IN FORMA PAUPERIS; DISMISSING  
ACTION; TERMINATING ALL PENDING  
MOTIONS

12 Plaintiff Steven Wade Bonilla, a state prisoner incarcerated  
13 at San Quentin State Prison (SQSP) and a frequent litigator in  
14 this Court, has filed this pro se action for a writ of mandamus.  
15 He also seeks leave to proceed in forma pauperis (IFP).

16 Before the Court reviews the complaints, it addresses a  
17 preliminary matter. Plaintiff has also filed a document  
18 entitled, "Peremptory Challenges," in which he seeks to recuse  
19 the undersigned judge on the ground of prejudice against him.  
20 Because this document does not satisfy the requirements for  
21 recusal of a judge listed in 28 U.S.C. § 144 or 28 U.S.C. § 455,  
22 the request for recusal is denied.

23 In this petition for a writ of mandate, Plaintiff challenges  
24 SQSP's practice of placing in solitary confinement Grade A  
25 inmates sentenced to death who are still litigating their  
26 appeals. For the following reasons, this action must be  
27 dismissed.

28 On October 25, 2011, the Court informed Plaintiff that, in

1 accordance with 28 U.S.C. § 1915(g), he no longer qualifies to  
2 proceed IFP in any civil action he files in this Court. See In  
3 re Steven Bonilla, No. C 11-3180 CW (PR), Order of Dismissal at  
4 6:23-7:19. The sole exception to this restriction is that  
5 Plaintiff may proceed IFP if he "is under imminent danger of  
6 serious physical injury." 28 U.S.C. § 1915(g). The plain  
7 language of the imminent danger clause in § 1915(g) indicates  
8 that "imminent danger" is to be assessed at the time of filing of  
9 the complaint. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th  
10 Cir. 2007).

11 In this action, Plaintiff has not alleged facts that show he  
12 was in imminent danger of serious physical injury at the time he  
13 filed it. The fact that Plaintiff, a death row inmate, is in  
14 solitary confinement while his appeal is pending does not place  
15 him in imminent danger of serious physical injury. Therefore,  
16 this action must be dismissed under 28 U.S.C. § 1915(g).

17 This action also must be dismissed because this Court lacks  
18 authority to issue mandamus to direct state officials in the  
19 performance of their duties; a petition for a writ of mandamus  
20 compelling a state official to take or refrain from taking some  
21 action is frivolous as a matter of law. Demos v. United States  
22 Dist. Court, 925 F.2d 1160, 1161-62 (9th Cir. 1991).

23  
24 CONCLUSION

25 Based on the foregoing, the Court orders as follows:

- 26 1. Plaintiff's request for recusal is denied.  
27 2. Plaintiff's request to proceed IFP is DENIED and this  
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action is DISMISSED. The Court will not provide Plaintiff with the option of paying, in full, the \$400.00 filing fee for this action because it is without legal merit.

3. The Clerk of the Court shall terminate all pending motions, enter judgment and close the file.

4. The Clerk shall file a copy of this Order in C 08-0471 CW.

IT IS SO ORDERED.

Dated: 6/23/2014



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

STEVEN BONILLA,  
Plaintiff,

Case Number: CV14-02395 CW

**CERTIFICATE OF SERVICE**

v.

JEFFREY BEARD et al,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 23, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Steven Wayne Bonilla J-48500  
San Quentin State Prison  
San Quentin, CA 94964

Dated: June 23, 2014

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk