

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 28, 2012

Elisabeth A. Shumaker
Clerk of Court

In re:

JOSE MEDINA ESCOBAR,

Petitioner.

No. 12-1297
(D.C. No. 1:12-CV-00489-CMA-KLM)
(D. Colo.)

ORDER

Before **BRISCOE**, Chief Judge, **TYMKOVICH** and **GORSUCH**, Circuit Judges.

Jose Medina Escobar, a Colorado state prisoner, has filed a Petition for Writ of Mandamus seeking an order compelling the magistrate judge assigned to his civil rights action in Case No. 1:12-cv-00489-CMA-KLM to perform her judicial duties correctly, issue a final judgment, allow him to appeal, and/or allow his complaint to proceed.

Petitioner filed his complaint on February 24, 2012. Since then, he has filed, among others, motions to supplement his complaint; to amend his complaint; for a Court Order of Final Judgment; for the Court to Enter an Order for Any Relief it Deems Appropriate; and for Copies. He also filed an appeal from the denials of his motions to supplement and to amend. *See Escobar v. Foster*, No. 12-1160 (10th Cir. May 16, 2012) (unpublished order) (dismissing appeal for failure to prosecute).

The district court docket sheet demonstrates that a Scheduling Conference was held on August 16, 2012, that the magistrate judge and district court have been timely

ruling on all of Petitioner's motions, and that this civil action is proceeding apace. There is no meritorious basis for Petitioner's request to invoke the "drastic" and "extraordinary" remedy of mandamus. *See Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) ("Only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy.")

We DENY the petition. We also DENY Petitioner's motion to proceed in forma pauperis because his mandamus petition does not present "a reasoned, nonfrivolous argument on the law and facts." *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court



ELISABETH A. SHUMAKER, Clerk