

FILED

APR 29 2009

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CARMON ELLIOTT,)
)
 Petitioner,)
)
 v.)
)
 ERIC HOLDER, U.S. ATTORNEY GENERAL,)
)
 Respondent.)

Civil Action No. **09 0772**

MEMORANDUM OPINION

This matter comes before the Court on review of petitioner’s application to proceed *in forma pauperis* and his *pro se* petition for a writ of mandamus. The Court will grant the application and deny the petition.

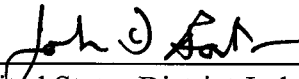
Mandamus relief is proper only if “(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff.” *Council of and for the Blind of Delaware County Valley v. Regan*, 709 F.2d 1521, 1533 (D.C. Cir. 1983) (en banc). The party seeking mandamus has the “burden of showing that [his] right to issuance of the writ is ‘clear and indisputable.’” *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988) (citing *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 384 (1953)). Where the action petitioner seeks to compel is discretionary, he has no clear right to relief and mandamus therefore is not an appropriate remedy. *See, e.g., Heckler v. Ringer*, 466 U.S. 602, 616 (1984). Petitioner does not establish any of these elements.

Petitioner seeks an Order compelling the Attorney General “to investigate and prosecute members of the Bush administration who have instigated or participated in any way in war

12/

crimes” committed in violation of the United Nations’ Charter Against Torture. Pet. at 5. He fails to demonstrate his clear right to relief, the Attorney General’s clear duty to acknowledge receipt of correspondence, and the lack of any other remedy. Because the petition does not state a claim upon which mandamus relief may be granted, the petition will be denied.

An Order consistent with this Memorandum Opinion will be issued separately on this same date.



United States District Judge

Date: *August 20, 2009*