

FILED

APR 20 2010

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

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

RUSSELL DAN SMITH,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES DEPARTMENT)
 OF HOMELAND SECURITY,)
)
 Respondent.)

Civil Action No. **10 0609**

MEMORANDUM OPINION

This matter comes before the Court on review of the petitioner’s application to proceed *in forma pauperis* and *pro se* complaint, which the Court construes as a petition for a writ of mandamus.

The petitioner alleges that the Wikimedia Foundation, Inc. is an Internet corporation that produces a multilingual dictionary and thesaurus “being written collaboratively . . . by people from around the world.” Compl. at 4. According to the petitioner, the Foundation’s products are “used and edited by persons throughout the world, most of whom are persons on foreign soil, including but not limited to al-Qaeda and the Taliban as foreign terrorists and white supremacists as domestic terrorists.” *Id.* at 5. The petitioner deems the Foundation “a threat to homeland security of the United States of America and its citizens, including but not limited to [the] petitioner,” *id.*, because through its computer sites persons “who have sworn to destroy the United States of America and kill its citizens, including but not limited to petitioner,” may plan and discuss their clandestine activities. *Id.* The petitioner demands an Order directing the defendant to fully investigate the Foundation’s financial and other records,

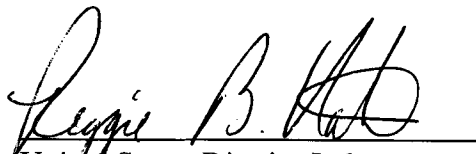
(W)

and, if an investigation “finds terrorist roots therein,” to “shut down all activities of the Foundation due to its threat as a tool used by terrorists.” *Id.* at 6.

Mandamus relief is proper only if “(1) the petitioner 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 petitioner.” *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.

The petitioner fails to establish his clear right to relief, and it does not appear that any of the statutory provisions on which he relies clearly establishes the Department of Homeland Security’s duty to investigate the Wikimedia Foundation. Accordingly, the Court will deny the petition and will dismiss this civil action.

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


United States District Judge

Date: April 8, 2010