

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

KENNETH SMITH,

Plaintiff,

v.

**HON. CLARENCE THOMAS, in his
official capacity as an Associate Justice of
the United States Supreme Court,
et al.,**

Defendants.

Civil Action No. 09-1926 (JDB)

ORDER

Before the Court is [6] defendants' motion to dismiss Mr. Smith's complaint. Mr. Smith seeks "a mandate from this Court requiring the Justices of the United States Supreme Court to hear all petitions brought to that body under a writ of error or in the alternative, a formal declaration that the Bill of Rights is null and void for want of meaningful enforcement." Compl. at p. 3. He also has filed an "Emergency Motion for Declaratory and Injunctive Relief", which seeks the same relief. See Pl.'s Emergency Mot. for Declaratory and Injunctive Relief [Docket Entry 2].

The Court cannot grant the requested relief, however, because it lacks jurisdiction to compel official action by the Justices of the United States Supreme Court. "[I]t seems axiomatic that a lower court may not order the judges or officers of a higher court to take an action." Panko v. Rodak, 606 F.2d 168, 171 n.6 (7th Cir. 1979); accord In re Marin, 956 F.2d 339, 340 (D.C. Cir. 1992) (citing Panko). That the Court lacks jurisdiction to issue a writ of mandamus also disposes of Mr. Smith's request for declaratory relief. A declaratory judgment is available only

"[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). The absence of jurisdiction here renders declaratory relief unavailable. Therefore, it is hereby

ORDERED that defendants' motion to dismiss is **GRANTED** and Mr. Smith's complaint is **DISMISSED**; and it is further

ORDERED that [2] Mr. Smith's emergency motion for declaratory and injunctive relief is **DENIED as moot**.

SO ORDERED.

/s/
JOHN D. BATES
United States District Judge

Dated: January 21, 2010