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AUG 09 2018

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

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

PHILONG HUYNH,

Petitioner,

v.

POSTMASTER GENERAL,

Respondent.

Civil Action No. 18-1691 (UNA)

MEMORANDUM OPINION

This matter is before the Court on the petitioner's application to proceed *in forma pauperis* and his *pro se* "Complaint" which is construed as a petition for a writ of mandamus ("Pet."). The petitioner, a California state prisoner, alleges that he did not receive mail sent to him by the United States District Court for the Southern District of California, and that the United States Postal Service returned mail he sent to that court. *See* Pet. at 1. He requests an order compelling the respondent "to perform his duties under Title 39 U.S.C. 404 and 403 to investigate" these incidents. *Id.* at 2.

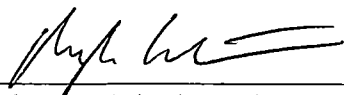
A writ of mandamus "compel[s] an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. "[M]andamus is 'drastic'; it is available only in 'extraordinary situations.'" *In re Cheney*, 406 F.3d 723, 729 (D.C. Cir. 2005) (citations omitted). 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 the

plaintiff,” *Thomas v. Holder*, 750 F.3d 899, 903 (D.C. Cir. 2014), is mandamus relief granted.

This petitioner addresses none of these elements, and thus fails to meet his burden. Furthermore, “[i]t is well-settled that a writ of mandamus is not available to compel discretionary acts,” *Cox v. Sec’y of Labor*, 739 F. Supp. 28, 30 (D.D.C. 1990) (citing cases), and the petitioner does not demonstrate that the respondent’s duty to investigate is mandatory rather than discretionary, *see Sewald v. Pyatt & Silvestri, Chtd*, 161 F. Supp. 2d 1074, 1077 (N.D. Cal. 2001) (noting plaintiff’s failure to “cite[] any authority . . . that the Postal Service has a mandatory obligation to investigate his concerns” about a return receipt requested card suggesting he mailed something to defendant when he had not); *see also Roots v. Callahan*, 475 F.2d 751, 752 (5th Cir. 1973) (per curiam).

The Court will grant the petitioner leave to proceed *in forma pauperis* and deny the The petition for a writ of mandamus. An Order accompanies this Memorandum Opinion.

DATE: August 8, 2018



United States District Judge