

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 24 2021

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

MICHAEL HUNTER,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 21-246 (UNA)
)	
)	
UNITED STATES SENATORS <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM OPINION

Petitioner, appearing *pro se*, has filed a Petition for a writ of mandamus, ECF No. 1, and an application to proceed *in forma pauperis*, ECF No. 2. Also pending is Petitioner's motion to use a P.O. Box address, ECF No. 4. The Court will grant the application and motion and then dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B) (requiring dismissal of a case upon a determination that the complaint is frivolous).

A writ of mandamus is available to compel 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. The governing statute "is only a source of jurisdiction for district courts to exercise writs of mandamus to employees of the *Executive* branch," *United States v. Choi*, 818 F. Supp. 2d 79, 84 (D.D.C. 2011) (emphasis in original), and relief is reserved for "extraordinary situations," *In re Cheney*, 406 F.3d 723, 729 (D.C. Cir. 2005) (internal quotation marks omitted); see *Power v. Barnhart*, 292 F.3d 781, 784 (D.C. Cir. 2002) (mandamus relief is warranted where "(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") (citations and internal quotation marks omitted)).

Petitioner seeks to compel “United States Senators Cruz, Hyde-Smith, Marshal, Kennedy, [and] Hawley [to] immediately resign from their office as United States Senators, for attacking the Constitution of the United States and attempting to thwart, interfere, obstruct a Lawful election[.]” Pet. at 1. Apart from the fact that the U.S. Senators are not Executive branch employees, the separation of powers doctrine precludes the judiciary from compelling the resignation of a duly elected member of Congress based on his official acts. The instant Petition lacks “an arguable basis either in law or in fact,” thus qualifying as a frivolous action. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A separate order of dismissal accompanies this Memorandum Opinion.

Date: August 24, 2021

/s/

EMMET G. SULLIVAN
United States District Judge