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Travis Middleton et al v. Richard Pan et al Order on Motion for Order Content-Type: text/html

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Name: Travis Middleton et al v. Richard Pan et al

Case Number: 2:16-cv-05224-SVW-AGR

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Document Number: 116

Docket Text:

ORDER DENYING PETITION FOR WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. § 1361 by Judge Stephen V. Wilson: denying [111] PETITION for Order. On November 16, 2016, Plaintiff Middleton filed a document entitled "Verified Petition for Writ of Mandamus Pursuant to 28 U.S.C. Section 1361." Mandamus relief is not available. The district court does not have authority to convene a grand jury to investigate criminal offenses by defendants. The Petition for Writ of Mandamus is DENIED. (mp)

2:16-cv-05224-SVW-AGR Notice has been electronically mailed to:

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAVIS MIDDLETON, et al.,
Plaintiff,
v.
RICHARD PAN, et al.,
Defendants.

NO. CV 16-5224-SVW (AGR)

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS
PURSUANT TO 28 U.S.C. § 1361

On November 16, 2016, Plaintiff Middleton filed a document entitled "Verified Petition for Writ of Mandamus Pursuant to 28 U.S.C. Section 1361." The Petition requests that the court convene a grand jury investigation and direct the U.S. Attorney's Office to initiate a criminal investigation. The Petition attaches a criminal affidavit by Plaintiff Middleton.

Section 1361 provides that the "district courts shall have original jurisdiction of any action in the nature of mandamus 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. Mandamus relief is an extraordinary remedy and permits a court to compel a federal official to perform a duty only when the duty is clear and

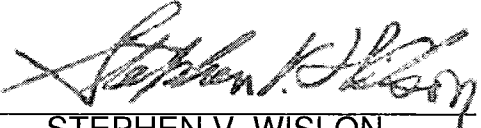
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certain, and the duty is ministerial and so plainly prescribed as to be free from doubt. *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986).

Mandamus relief is not available. The district court does not have authority to convene a grand jury to investigate criminal offenses by defendants. *United States v. General Dynamics*, 828 F.2d 1356, 1366 (9th Cir. 1987). Plaintiff's request that the court direct the United States Attorney's Office to initiate a criminal investigation is not an available remedy in this action. Private citizens lack a judicially cognizable interest in the prosecution or non-prosecution of another. *Leeke v. Timmerman*, 454 U.S. 83, 86 (1981) (per curiam).

The Petition for Writ of Mandamus is DENIED.

Date: November 22, 2016


STEPHEN V. WISLON
United States District Judge