

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5274

September Term, 2018

1:18-cv-01691-UNA

Filed On: August 12, 2019

Philong Huynh,

Appellant

v.

Postmaster General,

Appellee

BEFORE: Garland, Chief Judge; Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, Katsas, and Rao, Circuit Judges; and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.



Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5274

September Term, 2018

1:18-cv-01691-UNA

Filed On: June 27, 2019

Philong Huynh,
Appellant

v.

Postmaster General,
Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Millett and Rao, Circuit Judges, and Sentelle, Senior Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by the appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order, filed August 9, 2018, be affirmed. The district court properly construed appellant's "complaint" as a petition for writ of mandamus because the relief sought – to compel action by the Postmaster General – was in the nature of a writ of mandamus. The district court properly dismissed that petition because appellant failed to show a "clear and indisputable" right to the relief requested. Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988); see American Hosp. Ass'n v. Burwell, 812 F.3d 183, 189 (D.C. Cir. 2016) (A threshold requirement of mandamus jurisdiction is that the government agency or official have "a clear duty to act.").

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

FILED

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.) Civil Action No. 18-1691 (UNA)
POSTMASTER GENERAL,)
Respondent.)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby
ORDERED that the petitioner's [2] application to proceed *in forma pauperis* is
GRANTED; and it is further

ORDERED that the petition and this civil action are DISMISSED.

This is a final appealable Order.

SO ORDERED.



United States District Judge

DATE: August 8, 2018

FILED

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.) Civil Action No. 18-1691 (UNA)
POSTMASTER GENERAL,)
Respondent.)

MEMORANDUM OPINION

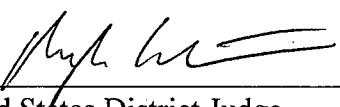
This matter is before the Court on the petitioner's application to proceed *in forma pauperis* and his *pro se* "Complaint" which is construed as a petition for a writ of mandamus ("Pet."). The petitioner, a California state prisoner, alleges that he did not receive mail sent to him by the United States 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