**UNITED STATES COURT OF APPEALS**
**FIFTH CIRCUIT**

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No. 94-60777

(Summary Calendar)

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LIEUTENANT SIDNEY K. WILLIAMS,

Plaintiff-Appellant,

versus

JOHN H. DALTON, SECRETARY OF THE NAVY,

Defendant-Appellee.

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Appeal from the United States District Court
For the Southern District of Texas
CA C 94 431

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August 8, 1995

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Lt. Sidney Williams appeals the district court's denial of his request for a temporary restraining order or preliminary injunction to bar the Secretary of the Navy from separating Williams from the Navy for 210 days pending the Navy's administrative review of Williams' complaints against the Navy. The District Court held that it lacked subject matter jurisdiction over Williams' request,

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* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

ruled against Williams on the merits,[1] and dismissed the action.

Williams asserts that the district court had jurisdiction under 28 U.S.C. § 1361. That section reads as follows:

> 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. "The test for jurisdiction [under § 1361] is whether *mandamus* would be an appropriate means of relief." *Jones v. Alexander*, 609 F.2d 778, 781 (5th Cir.) (citations omitted) (emphasis added), *cert. denied*, 449 U.S. 832, 101 S. Ct 100, 66 L. Ed. 2d 37 (1980). "*[M]andamus* is an extraordinary remedy which should be utilized only in the clearest and most compelling of cases." *Carter v. Seamans*, 411 F.2d 767, 773 (5th Cir. 1969) (emphasis added), *cert. denied*, 397 U.S. 941, 90 S. Ct. 953, 25 L. Ed. 2d 121 (1970).

Williams did not request an order of mandamus in the district court, and the plain language of the statute does not provide jurisdiction to issue either a temporary restraining order or a preliminary injunction. Accordingly, we AFFIRM the district court's dismissal of Williams' application on the grounds that it lacked subject matter jurisdiction.[2]

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[1] "[T]here is an obvious inconsistency in deciding that the court has no jurisdiction and in entering judgment, as the district court did, `on the merits.'" *Woodard v. Marsh*, 658 F.2d 989, 991-92 (5th Cir. Unit A Sept. 1981), *cert. denied*, 455 U.S. 1022, 102 S. Ct. 1721, 72 L. Ed. 2d 141 (1982). Thus, in assessing Williams' arguments, we start at the beginning, with jurisdiction.

[2] Williams argues on appeal that his application was a request for an order of mandamus. After reviewing the record, however, we find that this argument was not raised in the district court and we will not consider it for the first time on appeal. *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991). Nor do we address Williams' argument, raised for the first time in his reply

brief, that we should construe his application as a request for mandamus even if he did not explicitly describe it as such a request. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993) (declining to address argument first raised in reply brief).