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7	UNITED STATE	ES DISTRICT COURT
8	CENTRAL DISTRICT OF CALIFORNIA	
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10	DESMOND McGILL,) C	Case No. CV 09-5572-VBF(RC)
11	Petitioner,)	
12) c	PINION AND ORDER ON A PETITION FOR HABEAS CORPUS
13		ETTTON FOR HADEAD CORFOD
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16	On July 30, 2009, petitioner	Desmond McGill, a person in state
17	custody proceeding pro se, filed	a petition for a writ of habeas
18	corpus under 28 U.S.C. § 2254, ch	allenging his 2007 conviction and
19	sentence for carjacking and robbe	ery in Los Angeles Superior Court case
20	no. SA065045, ¹ following a plea o	f nolo contendere. Petition at 2.
21	The petition shows on its face th	nat petitioner has a petition for writ
22	of certiorari pending in the Unit	ed States Supreme Court. Petition at
23	3.	
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25		d P Finid 201 takag indigial
26	ine court, pursuant to re	d. R. Evid. 201, takes judicial two previous habeas corpus cases

brought by petitioner: (1) <u>McGill v. State of California</u>, case no. CV 09-1073-VBF(RC) ("McGill I"); and (2) <u>McGill v. State of</u> <u>California</u>, case no. CV 09-1361-VBF(RC) ("McGill II"), which establish the Superior Court case number.

1	DISCUSSION
2	The seminal case of <u>Younger v. Harris</u> , 401 U.S. 37, 91 S. Ct. 746,
3	27 L. Ed. 2d 669 (1971) establishes that under principles of comity and
4	federalism, a federal court should not interfere with ongoing state
5	criminal proceedings by granting injunctions or declaratory relief
6	absent extraordinary circumstances. <u>Id.</u> at 44, 91 S. Ct. at 750;
7	Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423,
8	431, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982); <u>Samuels v.</u>
9	<u>Mackell</u> , 401 U.S. 66, 69, 91 S. Ct. 764, 766, 27 L. Ed. 2d 688 (1971).
10	This principle of "Younger abstention" is also applicable to claims
11	raised in federal habeas corpus proceedings. <u>Edelbacher v. Calderon</u> ,
12	160 F.3d 582, 587 (9th Cir. 1998); <u>Carden v. State of Montana</u> ,
13	626 F.2d 82, 83-85 (9th Cir.), <u>cert. denied</u> , 449 U.S. 1014 (1980).
14	Abstention in favor of state judicial proceedings is required if the
15	proceedings are ongoing, implicate important state interests and afford
16	an adequate opportunity to raise federal questions, and if the federal
17	relief sought would interfere in some manner with the state court
18	litigation. Middlesex County Ethics Comm'n, 457 U.S. at 432,
19	102 S. Ct. at 2521; <u>Green v. City of Tucson</u> , 255 F.3d 1086, 1094 (9th
20	Cir. 2001)(en banc).
21	

Here, all the prerequisites to the application of abstention under Younger have been met. First, petitioner is currently the subject of a criminal proceeding in state court, which is not yet final.² <u>H.C. v. Koppel</u>, 203 F.3d 610, 613 (9th Cir. 2000); <u>Dubinka v.</u>

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^{27 &}lt;sup>2</sup> A state court criminal judgment becomes final when the Supreme Court "affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when

Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994). 1 2 Second, the state undeniably has an important interest in protecting 3 the public by the filing and prosecuting of criminal proceedings. Seling v. Young, 531 U.S. 250, 262, 121 S. Ct. 727, 734, 148 L. Ed. 2d 4 5 734 (2001). Third, the state court criminal proceedings afford an opportunity for petitioner, who is the defendant, to raise constitu-6 7 tional claims, such as he raises herein. Finally, the remedy the petitioner seeks, a writ of habeas corpus, would clearly interfere 8 9 with the ongoing state criminal proceeding, see Preiser v. Rodriguez, 411 U.S. 475, 484, 93 S. Ct. 1827, 1833, 36 L. Ed. 2d 439 (1973) 10 11 ("[T]he essence of habeas corpus is an attack by a person in custody 12 upon the legality of that custody, and . . . the traditional function 13 of the writ is to secure release from custody."), and petitioner has 14 not identified any "extraordinary circumstances" warranting an exception to the Younger doctrine. 15

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17 Rule 4 of the Rules Governing Section 2254 Cases in the United 18 States Courts provides that "[i]f it plainly appears from the petition 19 and any attached exhibits that the petitioner is not entitled to 20 relief in the district court, the judge must dismiss the petition and 21 direct the clerk to notify petitioner." The instant petition shows

the time for filing a certiorari petition expires." Clay v. 23 <u>United States</u>, 537 U.S. 522, 527, 123 S. Ct. 1072, 1076, 24 155 L. Ed. 2d 88 (2003); see also Wixom v. Washington, 264 F.3d 894, 897 (9th Cir. 2001) ("[U]nder [§ 2244(d)], a 25 judgment becomes 'final' in one of two ways - either by the conclusion of direct review by the highest court, including the 26 United States Supreme Court, to review the judgment, or by the 27 expiration of the time to seek such review, again from the highest court from which such direct review could be sought."), 28 <u>cert.</u> <u>denied</u>, 534 U.S. 1143 (2002).

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1	that petitioner's state court criminal judgment is not yet final;
2	thus, the petition must be dismissed without prejudice.
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4	ORDER
5	IT IS ORDERED that Judgment be entered DISMISSING without
6	prejudice the petition for writ of habeas corpus and action.
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8	IT IS FURTHER ORDERED that the Clerk of Court shall notify
9	petitioner of the dismissal without prejudice.
10	110 - RI TileB
11	DATE: August 4, 2009 Valerie Baker Fairback
12	VALERIE BAKER FAIRBANK UNITED STATES DISTRICT JUDGE
13	PRESENTED BY:
14	DATE: July 30, 2009
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16	<u>/S/</u> ROSALYN M. CHAPMAN <u></u> ROSALYN M. CHAPMAN
17	UNITED STATES MAGISTRATE JUDGE
18	R&Rs-MDOs\09-5572.mdo 7/30/09
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