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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Gary Louis Barocsi,	)	No. CV 11-1582-PHX-DGC (MEA)
Petitioner,	)	<b>ORDER</b>
vs.	)	
Joseph M. Arpaio, et al.,	)	
Respondents.	)	

On August 11, 2011, Petitioner Gary Louis Barocsi, who is confined in the Maricopa County Lower Buckeye Jail, filed a *pro se* Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. 1) and paid the filing fee. For multiple reasons, this case will be dismissed without prejudice.

**I. Relief Unavailable under 28 U.S.C. § 2254**

Petitioner is a pretrial detainee. His case, Maricopa County Superior Court case #CR2010-131274-001 DT, is still ongoing.<sup>1</sup> Relief is therefore unavailable pursuant to 28 U.S.C. § 2254, which requires that a person be in custody pursuant to a **judgment** of a State court.

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<sup>1</sup>Petitioner is scheduled to be sentenced on September 8, 2011. See <http://www.courtminutes.maricopa.gov/docs/Criminal/082011/m4829223.pdf>

1 **II. Relief Unavailable under 28 U.S.C. § 2241 – Failure to Exhaust State Remedies**

2 Section 2241, 28 U.S.C., provides an avenue for habeas corpus relief for a pretrial  
3 detainee in custody in violation of the Constitution or laws and treaties of the United States.  
4 “As an exercise of judicial restraint, however, federal courts elect not to entertain habeas  
5 corpus challenges to state court proceedings until habeas petitioners have exhausted state  
6 avenues for raising [a] federal claim.” Carden v. Montana, 626 F.2d 82, 83 (9th Cir. 1980).  
7 Petitioner has not exhausted his state remedies before bringing this habeas corpus action.

8 **III. Younger Abstention**

9 The abstention doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971), prevents  
10 a federal court in most circumstances from directly interfering with ongoing criminal  
11 proceedings in state court. Absent special circumstances, such as “proven harassment or  
12 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid  
13 conviction and perhaps in other extraordinary circumstances where irreparable injury can be  
14 shown,” a federal court will not entertain a pretrial habeas corpus petition. Carden, 626 F.2d  
15 at 84 (quoting Perez v. Ledesma, 401 U.S. 82, 85 (1971)). “[O]nly in the most unusual  
16 circumstances is a defendant entitled to have federal interposition by way of injunction or  
17 habeas corpus until after the jury comes in, judgment has been appealed from and the case  
18 concluded in the state courts.” Id. at 83-84 (quoting Drury v. Cox, 457 F.2d 764, 764-65 (9th  
19 Cir. 1972)).

20 Petitioner has failed to show special or extraordinary circumstances indicating that he  
21 will suffer irreparable harm if this Court abstains from hearing his claims until after he has  
22 a chance to present his claims to the state courts. See Younger, 401 U.S. at 45-46; Carden,  
23 626 F.2d at 83-84. This Court, therefore, will abstain from interfering in Petitioner’s ongoing  
24 state-court criminal proceedings.

25 **IV. Dismissal Without Prejudice**

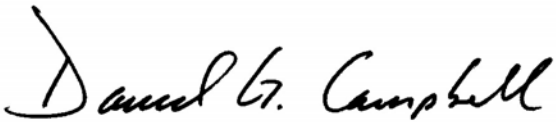
26 The § 2254 Petition and this action will be dismissed without prejudice. Petitioner  
27 may file another petition in a new habeas corpus action after all state criminal proceedings  
28 are completed and available state judicial remedies are exhausted. See Swoopes v. Sublett,

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196 F.3d 1008, 1010 (9th Cir. 1999) (“[E]xcept in habeas petitions in life-sentence or capital cases, claims of Arizona state prisoners are exhausted for purposes of federal habeas once the Arizona Court of Appeals has ruled on them.”).

**IT IS ORDERED** that Petitioner’s § 2254 Petition (Doc. 1) and this action are **dismissed without prejudice**, and the Clerk of Court **must enter** judgment accordingly.

DATED this 25<sup>th</sup> day of August, 2011.



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David G. Campbell  
United States District Judge