

1 or name change.¹ Petitioner asserts that,

2 The State of Arizona has been using a false entry on Petitioner’s criminal
3 history file to pass off as a conviction in another state. Since 2001, the
4 Petitioner has been wrongfully required to register based on a Santa Monica
5 Superior Court ruling in California. Santa Monica has no superior court
6 divisions. Therefore this entry is a fictional entry to a federal court.”He names
7 Pinal County Sheriff Paul R. Babeu, the Arizona Attorney General, Governor
8 Jan Brewer, and the Pinal County Superior Court as Respondents.

6 (Doc. 1 at 4.) In essence, Petitioner disputes that he is validly required to register as a sex
7 offender pursuant to A.R.S. § 13-3824.

8 Petitioner filed his habeas petition pursuant to 28 U.S.C. § 2254, but he seeks relief
9 as to his pending state criminal proceedings. Under § 2254, a court “shall entertain an
10 application for a writ of habeas corpus in behalf of a person in custody pursuant to *the*
11 *judgment* of a State court only on the ground that he is in custody in violation of the
12 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a) (emphasis added).
13 Petitioner does not allege, nor does it appear, that he is challenging a state court conviction
14 or sentence. Instead, he is seeking relief as to pending state criminal proceedings.
15 Accordingly, to the extent that Petitioner seeks relief pursuant to § 2254, his Petition will be
16 denied as premature.

17 A petitioner may seek federal habeas relief as to pending state criminal proceedings
18 under 28 U.S.C. § 2241. Section 2241(c)(3) provides that “the writ of habeas corpus
19 [extends to persons who are] ... in custody in violation of the Constitution or laws or treaties
20 of the United States” See McNeeley v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir. 2003);
21 Carden v. State of Montana, 626 F.2d 82, 83 (9th Cir. 1980) (“district court had jurisdiction,
22 under 28 U.S.C. § 2241, to issue [a] pretrial writ of habeas corpus”). However, the
23 abstention doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971), prevents a federal
24 court in most circumstances from directly interceding in ongoing state criminal proceedings.

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27 ¹ See <http://apps.supremecourt.az.gov/publicaccess/caselookup.aspx> (last visited Nov.
28 21, 2012). On December 19, 2011, Maricopa County Superior Court issued a bench warrant
for Plaintiff’s arrest after he failed to appear. See <http://www.courtminutes.maricopa.gov/docs/Criminal/122011/m5030335.pdf> (last visited Nov. 21, 2012).

1 The Younger abstention doctrine also applies while a case works its way through the state
2 appellate process, if a prisoner is convicted. New Orleans Pub. Serv., Inc. v. Council of City
3 of New Orleans, 491 U.S. 350, 369 (1989). Only in limited, extraordinary circumstances will
4 the Younger doctrine not bar federal interference with ongoing (non-final) state criminal
5 proceedings. Such circumstances include when a prisoner alleges that he is being subjected
6 to double jeopardy. See Mannes v. Gillespie, 967 F.2d 1310, 1312 (9th Cir. 1992). Speedy
7 trial claims may also be reviewed *if* a detainee is seeking to compel the state to bring him to
8 trial, rather than seeking dismissal of the charges, and the detainee has exhausted all of his
9 state court remedies. Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489-
10 90 (1973); see In re Justices of Superior Court Dep't of Mass. Trial Court, 218 F.3d 11, 18
11 & n.5 (1st Cir. 2000).

12 Petitioner is attempting to challenge his arrest and detention. Petitioner has not
13 alleged any ground that falls within the very limited circumstances in which a federal court
14 may intercede in ongoing state criminal proceedings under the Younger doctrine. He does
15 not assert a violation of the Fifth Amendment's Double Jeopardy Clause, or facts to support
16 such violation, nor does he allege that his speedy trial rights have been violated. Thus,
17 Petitioner has not asserted a basis for a federal court to interfere in state criminal
18 proceedings. Because Petitioner's grounds for relief do not fall within the very limited
19 circumstances in which a federal court may intercede in ongoing state criminal proceedings
20 under the Younger doctrine, the Petition and this action will be dismissed to the extent that
21 he seeks relief under § 2241 pursuant to the Younger abstention doctrine.

22 **IT IS ORDERED:**

- 23 (1) Petitioner's Application to Proceed *In Forma Pauperis* is **granted**. (Doc. 2.)
24 (2) The Petition and this action are dismissed without prejudice. (Doc. 1.)

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(3) The Clerk must enter judgment accordingly.

DATED this 26th day of November, 2012.



David G. Campbell
United States District Judge