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5 **UNITED STATES DISTRICT COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**
7 **EASTERN DIVISION**
8

9 CHARLES ALEXANDER BOYD,)	Case No. EDCV 11-1998-JVS MLG)
)	
10 Petitioner,)	MEMORANDUM AND ORDER APPOINTING
)	COUNSEL AND DISMISSING PETITION
11 v.)	FOR WRIT OF HABEAS CORPUS WITH
)	LEAVE TO AMEND
12 RIVERSIDE COUNTY SUPERIOR)	
13 COURT, et al.,)	
)	
14 Respondent.)	

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16 Charles Alexander Boyd is a state pretrial detainee, currently
17 incarcerated in the Riverside County Jail. He filed this petition for
18 writ of habeas corpus, pursuant to 28 U.S.C. § 2254, on December 15,
19 2011. As best that the Court can determine from the pleadings,
20 Petitioner was awaiting trial on a variety of state criminal charges.
21 At some point during pretrial proceedings, the trial court revoked
22 Petitioner's bond. Later, the trial court instituted competency
23 proceedings under Cal. Penal Code § 1368. According to Petitioner,
24 he was found incompetent to stand trial and was ordered to be
25 hospitalized at Patton State Hospital. Petitioner claims that the
26 revocation of bond and the finding of incompetence to stand trial
27 violated his federal constitutional rights.
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1 Meanwhile, it appears that in early November 2011, while
2 incarcerated, Petitioner was diagnosed with cancer of the liver. It
3 may be that Petitioner is claiming a denial of adequate medical
4 treatment, but that is not clear from the pleadings nor apparent from
5 the partial medical record which is attached to the petition, which
6 shows that Petitioner was offered surgery to remove the malignancy,
7 but that he refused without a second opinion.

8 Petitioner claims that on December 7, 2011, he filed a petition
9 for writ of habeas corpus in the Riverside County Superior Court
10 challenging the competency determination, the revocation of bond, and
11 the denial of medical care. He also asserts a denial of his right to
12 a speedy trial based on the incompetency finding, and his placement
13 in the state hospital. The record shows that a hearing is set for
14 January 23, 2012, on the state court habeas corpus petition.

15 The current petition for writ of habeas corpus is defective in
16 that it names an improper Respondent. The proper Respondent is the
17 official having custody of the prisoner. Moreover, the claims in the
18 petition clearly are not exhausted, thereby precluding relief under
19 section 2254. *Rose v. Lundy*, 455 U.S. 509, 522 (1982). Finally, it
20 would appear that consideration of the petition is barred by the
21 decision in *Younger v. Harris*, 401 U.S. 37, 43-54 (1971).

22 Moreover, to the extent that Petitioner is challenging his
23 medical care, such a claim may not be brought by way of a petition
24 for writ of habeas corpus. A federal court can grant habeas corpus
25 relief to a petitioner "only on the ground that he or she is in
26 custody in violation of the Constitution or laws or treaties of the
27 United States." 28 U.S.C. § 2254(a). The writ is limited to attacks
28 upon the legality or duration of confinement. *Crawford v. Bell*, 599

1 F.2d 890, 891 (9th Cir. 1979) (citing *Preiser v. Rodriguez*, 411 U.S.
2 475, 484-86 (1973)). Habeas corpus is a proper vehicle to raise a
3 claim which, if successful, would entitle a prisoner to an immediate
4 or speedier release from custody. A claim that challenges the
5 conditions of a prisoner's confinement or other unconstitutional
6 conduct under color of state law must generally be addressed by
7 filing a civil rights action pursuant to 42 U.S.C. § 1983. See *Wolff*
8 *v. McDonnell*, 418 U.S. 539, 554, 94 S. Ct. 2963, 41 L. Ed. 2d 935
9 (1974); *Preiser*, 411 U.S. at 499-500; *Ramirez*, 334 F.3d at 856-59;
10 *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) ("A civil rights
11 action, in contrast [to a habeas petition], is the proper method of
12 challenging 'conditions of . . . confinement.'")

13 Notwithstanding the apparent futility of this cause of action,
14 outright dismissal is not warranted. Where it appears that a pro se
15 litigant in a civil lawsuit might be incompetent, it is improper for
16 a district court to dismiss an action without providing for the
17 protection of the incompetent person. Fed.R.Civ.P. 17(c); *Allen v.*
18 *Calderon*, 408 F.3d. 1150, 1153 (9th Cir. 2005). Accordingly, it is
19 ordered that the Federal Public Defender be appointed to represent
20 Petitioner in this action. If Petitioner is in fact incompetent, it
21 may be appropriate to appoint a guardian ad litem to represent
22 Petitioner's interests. If a guardian ad litem has been appointed by
23 the state courts, that person will be considered to act in the same
24 capacity in this Court.

25 The petition shall be dismissed without prejudice for the
26 reasons stated above. Counsel for Petitioner shall have until
27 February 10, 2012, in which to file a motion for appointment of a
28 guardian ad litem or a first amended petition for writ of habeas

1 corpus.

2 Counsel shall also advise the Court at that time as to whether
3 Petitioner requires additional counsel to prosecute a separate action
4 under 42 U.S.C. § 1983.

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6 Dated: December 20, 2011

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Marc L. Goldman
United States Magistrate Judge

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NOTICE PARTY SERVICE LIST

Case No. EDCV11-1998-JVS (MLG) **Case Title** Charles Alexander Boyd v. Riverside Co. Superior Court

Title of Document Memorandum and Order Appointing Counsel and Dismissing Petition, etc.

	ADR
	BAP (Bankruptcy Appellate Panel)
	BOP (Bureau of Prisons)
	CA St Pub Defender (Calif. State PD)
	CAAG (California Attorney General's Office - Keith H. Borjon, L.A. Death Penalty Coordinator)
	Case Asgmt Admin (Case Assignment Administrator)
	Chief Deputy Admin
	Chief Deputy Ops
	Clerk of Court
	Death Penalty H/C (Law Clerks)
	Dep In Chg E Div
	Dep In Chg So Div
✓	Federal Public Defender
	Fiscal Section
	Intake Section, Criminal LA
	Intake Section, Criminal SA
	Intake Supervisor, Civil
	MDL Panel
	Ninth Circuit Court of Appeal
	PIA Clerk - Los Angeles (PIALA)
	PIA Clerk - Riverside (PIAED)
	PIA Clerk - Santa Ana (PIASA)
	PSA - Los Angeles (PSALA)
	PSA - Riverside (PSAED)
	PSA - Santa Ana (PSASA)
	Schnack, Randall (CJA Supervising Attorney)
	Statistics Clerk

	US Attorneys Office - Civil Division -L.A.
	US Attorneys Office - Civil Division - S.A.
	US Attorneys Office - Criminal Division -L.A.
	US Attorneys Office - Criminal Division -S.A.
	US Bankruptcy Court
	US Marshal Service - Los Angeles (USMLA)
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	US Probation Office (USPO)
	US Trustee's Office
	Warden, San Quentin State Prison, CA

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	<i>JUDGE / MAGISTRATE JUDGE (list below):</i>

Initials of Deputy Clerk _____^{ts}