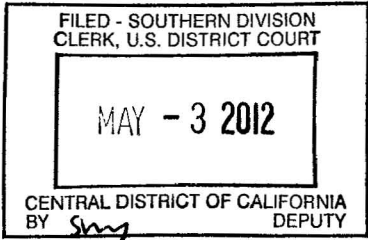


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

OCTAVIO ROMERO,
Petitioner,

v.

STATE OF CALIFORNIA, et al.,
Respondents.

Case No. EDCV 12-00567 DSF (AN)
ORDER DISMISSING HABEAS PETITION

I. Summary

On April 17, 2012, *pro se* petitioner Octavio Romero filed his pending habeas petition (“Petition”) pursuant to 28 U.S.C. § 2254 (“§ 2254”). For the reasons discussed below, the Court finds the Petition is subject to summary dismissal based upon the abstention doctrine announced in *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746 (1971), which is more commonly referred to as the *Younger* Abstention Doctrine.

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1 **II. Discussion**

2 **A. Standard of Review**

3 Rule 4 of the Rules Governing Section 2254 Cases in the United States District
4 Courts mandates the summary dismissal of a Section 2254 petition “[i]f it plainly appears
5 from the petition and any attached exhibits that the petitioner is not entitled to relief in the
6 district court.” Rule 4, 28 U.S.C. foll. § 2254. Local Rule 72-3.2 of this Court also
7 authorizes a magistrate judge to prepare a proposed order for summary dismissal and a
8 proposed judgment for district judge if it plainly appears from the face of petition that
9 petitioner is not entitled to relief.

10 **B. Romero’s Petition**

11 The Petition, which is not prepared on this Court’s approved petition form, principally
12 recites portions of the Constitution and federal habeas statutes, and is primarily filled with
13 allegations that are conclusory, unintelligible, and fanciful. However, a few of the
14 intelligible allegations in the Petition and Petitioner’s accompanying affidavits, along with
15 the official records of the California Superior Court for San Bernardino County,^{1/} establish
16 the following.

17 On March 8, 2012, Romero was arrested for murder and detained at the West Valley
18 Detention Center, which is a county jail operated by the Sheriff-Coroner’s Department for
19 San Bernardino County. His arrest and detention relate to a criminal case pending in the San
20 Bernardino Superior Court (case no. FVI1200578) where he is charged with murder by way
21 of an information. On March 12, 2012, Romero initially appeared before Judge Lorenzo R.
22 Balderrama. The official records of the San Bernardino Superior Court further establish
23 Romero’s arraignment is currently set for May 3, 2012. Romero’s Petition purports to raise
24 five claims for the purpose of attacking his arrest and detention in his pending state criminal
25

26 ^{1/} The Court takes judicial notice of the state court records for the County of San
27 Bernardino for Petitioner’s case available on the internet at <http://openaccess.sb-court.org>.
28 *See Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002) (federal courts may take judicial
notice of relevant state court records in federal habeas proceedings).

1 case. (Pet. at 1, 4-5.) His Petition also appears to incorporate a purported “counterclaim”
2 for damages against the arresting officers and jail personnel.

3 **C. Analysis**

4 To the extent Romero appears to challenge his recent arrest and detention relating to
5 his pending state criminal case for murder, this Court lacks § 2254 jurisdiction because
6 Romero is not “in custody pursuant to the judgment of a State court.” § 2254(a). Further, in
7 the event Romero is convicted and sentenced in his pending state case, any federal
8 constitutional claims he may have stemming from his judgment of conviction for murder
9 must first be exhausted on direct or collateral review in the state courts before he can seek
10 § 2254 relief from this Court. § 2254 (b)(1)(A).

11 Additionally, under the *Younger* Abstention Doctrine, this Court is barred from
12 directly interfering with Romero’s ongoing state criminal proceedings. Federal courts may
13 raise the issue of *Younger* abstention sua sponte. *Martinez v. Newport Beach City*, 125 F.3d
14 777, 781, n. 3 (9th Cir. 1997), *overruled on other grounds by Green v. City of Tucson*, 255
15 F.3d 1086 (9th Cir. 2001) (*citing Bellotti v. Baird*, 428 U.S. 132, 143-144, n. 10, 96 S. Ct.
16 2857 (1976)); *see also San Remo Hotel v. City and Cnty. of S.F.*, 145 F.3d 1095, 1103, n.
17 5 (9th Cir. 1998). The doctrine is based upon principles of comity and federalism, which
18 provide a federal court should not interfere with ongoing state proceedings except under
19 special or extraordinary circumstances. *Younger*, 401 U.S. at 43-54; *Lebbos v. Judges of*
20 *Super. Ct. Santa Clara Cnty.*, 883 F.2d 810, 813 (9th Cir. 1989) (“Abstention is appropriate
21 based on ‘interests of comity and federalism [that] counsel federal courts to abstain from
22 jurisdiction whenever federal claims have been or could be presented in ongoing state
23 judicial proceedings that concern important state interests.”). Abstention is proper
24 regardless of whether the applicant seeks declaratory relief, injunctive relief, or damages.
25 *See Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state criminal prosecution
26 has begun, the *Younger* rule directly bars a declaratory judgment action” as well as a section
27 1983 action for damages “where such an action would have a substantially disruptive effect
28 upon ongoing state criminal proceedings.”); *Gilbertson v. Albright*, 381 F.3d 965, 984 (9th

1 Cir. 2004) (*Younger* abstention applies to actions for damages). *Younger* abstention is
2 required when: (1) state judicial proceedings are pending; (2) the state proceedings involve
3 important state interests; and (3) the state proceedings afford adequate opportunity to raise
4 the constitutional issue. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S.
5 423, 432, 102 S. Ct. 2515 (1982); *Dubinka v. Judges of the Super. Ct.*, 23 F.3d 218, 223 (9th
6 Cir. 1994). Where there is an “opportunity” to present the claims in ongoing state
7 proceedings, “[n]o more is required to invoke *Younger* abstention.” *Juidice v. Vail*, 430 U.S.
8 327, 337, 97 S. Ct. 1211 (1977). The pertinent inquiry is whether the state proceedings
9 afford an adequate opportunity to raise the constitutional claims. *Moore v. Sims*, 442 U.S.
10 415, 430, 99 S. Ct. 2371 (1979). The rationale of *Younger* applies throughout the appellate
11 proceedings, requiring that state appellate review of a state court judgment be exhausted
12 before federal court intervention is permitted. *Dubinka*, 23 F.3d at 223 (even if criminal
13 trials were completed at time of abstention decision, state court proceedings still considered
14 pending).

15 Here, all of the *Younger* requirements for abstention are satisfied. Romero’s state
16 criminal prosecution for murder is ongoing. The State of California’s interest in prosecuting
17 those charged with having violated its criminal laws is indisputable. Equally without
18 question is that Romero has the opportunity to raise any constitutional claims relating to his
19 arrest, detention, and the pending state murder charges in the state trial and appellate courts.
20 *See Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 477-78, 101 S. Ct. 2870 (1981)
21 (holding there is a presumption state courts enjoy concurrent jurisdiction, and “[t]he general
22 principle of state-court jurisdiction over cases arising under federal laws is straightforward:
23 state courts may assume subject-matter jurisdiction over a federal cause of action absent
24 provision by Congress to the contrary or disabling incompatibility between the federal claim
25 and state-court adjudication.”); *Dubinka*, 23 F.3d at 224 (the existence of an opportunity to
26 raise federal claims in state proceedings requires abstention). Indeed, § 2254 relief from this
27 Court is unavailable unless Romero exhausts any federal constitutional claims he may have
28 by fairly presenting them to the state high court on direct or collateral review. Finally,

1 Romero's Petition and attachments also fail to allege or show the existence of any special
2 or extraordinary circumstances within the meaning of *Younger*. *Younger*, 401 U.S. at 48-50.

3 **III. Conclusion**

4 For the reasons set forth above, the reference to the magistrate judge is vacated, and
5 the Petition is summarily dismissed without prejudice. A judgment of dismissal of the entire
6 action shall be entered accordingly. Any and all pending motions are terminated.

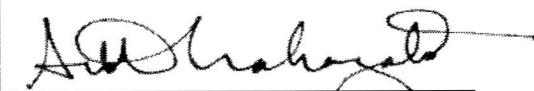
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8 **IT IS SO ORDERED.**

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11 DATED: May 3, 2012

12 _____
13 DALE S. FISCHER
14 UNITED STATES DISTRICT JUDGE

15 Presented by:

16 
17 _____
18 Arthur Nakazato
19 United States Magistrate Judge