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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW GOMEZ,	)	Case No. EDCV 17-2191 JFW(JC)
	)	
Petitioner,	)	
	)	ORDER SUMMARILY
v.	)	DISMISSING FIRST AMENDED
	)	PETITION FOR WRIT OF HABEAS
FBI,	)	CORPUS
	)	
Respondent.	)	
_____	)	

**I. SUMMARY**

On November 13, 2017, petitioner Matthew Gomez, a state inmate proceeding *pro se*, formally filed what the Court construes to be the operative First Amended Petition for Writ of Habeas Corpus (“Petition”) challenging a November 2017 state judgment in San Bernardino County Superior Court Case No. FWV17002750.<sup>1</sup> (Petition at 1, 2).

It plainly appears from the face of the Petition and matters as to which this Court has taken judicial notice that petitioner’s direct appeal of the judgment in the foregoing state case is currently pending in the California Court of Appeal, and

<sup>1</sup>Although it is clear that petitioner is a state inmate challenging a state conviction pursuant to 28 U.S.C. § 2254, he has utilized a form designed for federal inmates to challenge federal convictions under 28 U.S.C. § 2255.

1 accordingly, that petitioner is not entitled to federal habeas relief on his claims at  
2 this time because abstention is appropriate.

3 As explained below, the Court must dismiss this action without prejudice  
4 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States  
5 District Courts, which requires a judge promptly to examine a federal habeas  
6 petition, and to dismiss it if “it plainly appears from the petition and any attached  
7 exhibits that the petitioner is not entitled to relief in the district court. . . .”

## 8 **II. DISCUSSION**

9 Except under narrow circumstances, federal courts abstain from interfering  
10 with pending state criminal proceedings. See *Younger v. Harris*, 401 U.S. 37  
11 (1971); see also 28 U.S.C. § 2283. Federal courts may raise Younger abstention  
12 sua sponte. See *Hoye v. City of Oakland*, 653 F.3d 835, 843 n.5 (9th Cir. 2011).  
13 Younger abstention is appropriate if: (1) there are ongoing state judicial  
14 proceedings; (2) the proceedings implicate important state interests; and (3) there is  
15 an adequate opportunity in the state proceedings to resolve federal questions.  
16 Dubinka v. Judges of Superior Ct., 23 F.3d 218, 223 (9th Cir. 1994) (quotations  
17 and citations omitted). In this case, all three of the Younger criteria are satisfied.

18 First, this Court takes judicial notice of the dockets of San Bernardino  
19 County Superior Court/Rancho Cucamonga Criminal Case No. FWV17002750  
20 (available via <https://portal.sb-court.org>) and the California Court of Appeal, 4th  
21 Appellate District, Case No. E069490 (available via <http://appellatecases.court>  
22 [info.ca.gov](http://appellatecases.court.info.ca.gov)) which reflect that (1) on November 3, 2017, petitioner was sentenced  
23 to three years in prison for a violation of California Penal Code section 30305(a)(1)  
24 (possession of ammunition by a person prohibited from owning/possessing a  
25 firearm), including an enhancement under California Penal Code section 667.5(b)  
26 (prior prison term); and (2) petitioner’s direct appeal of such judgment is currently  
27 pending in the California Court of Appeal. See Fed. R. Evid. 201; *Harris v.*  
28 *County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (court may take judicial

1 notice of undisputed matters of public record including documents on file in  
2 federal or state courts). The Petition likewise reflects that petitioner challenges a  
3 November 3, 2017 conviction/judgment in San Bernardino County Superior  
4 Court/Rancho Cucamonga Case No. FWV17002750 for unlawful possession of  
5 ammunition and that his appeal therefrom is pending. (Petition at 1 [caption], 2  
6 [responses to questions 1-4, 8], 3 [response to questions 9-10]). Accordingly, it is  
7 apparent that there are ongoing state judicial proceedings – a factor which weighs  
8 in favor of abstention. See Drury v. Cox, 457 F.2d 764, 764-65 (9th Cir. 1972)  
9 (only in most unusual circumstances is defendant entitled to have federal  
10 interposition by way of injunction or habeas corpus until after jury comes in,  
11 judgment has been appealed from and case concluded in state courts); Roberts v.  
12 Dicarlo, 296 F. Supp. 2d 1182, 1185 (C.D. Cal. 2003) (Younger abstention  
13 appropriate where petitioner’s direct appeal pending in state court of appeal).

14 Second, states have an important interest in passing upon and correcting  
15 violations of a defendant’s rights. See Roberts, 296 F. Supp. 2d at 1185 (citation  
16 omitted). Accordingly, this factor likewise weighs in favor of abstention.

17 Third, petitioner has an adequate opportunity in the state proceedings,  
18 including state appellate proceedings, to resolve any federal questions that may  
19 have arisen during the proceedings. See Middlesex County Ethics Committee v.  
20 Garden State Bar Ass’n, 457 U.S. 423, 432 (1982) (where vital state interests  
21 involved, federal court should abstain unless state law clearly bars interposition of  
22 constitutional claims) (citations and quotations omitted); United States ex rel.  
23 Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 253 (9th Cir.  
24 1992) (doctrine of abstention precludes party from obtaining relief in federal court  
25 simply because party disagrees with result reached by state courts); Pennzoil Co. v.  
26 Texaco, Inc., 481 U.S. 1, 15 (1987) (federal court should assume state procedures  
27 will afford adequate opportunity for consideration of constitutional claims in  
28 absence of unambiguous authority to contrary). Thus, this factor also weighs in

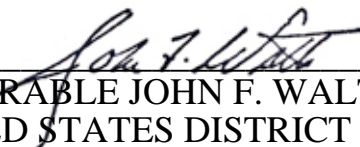
1 favor of abstention.

2 Because all of the Younger requirements are satisfied, this Court must  
3 abstain and dismiss this action unless extraordinary circumstances exist. See  
4 Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 n.22  
5 (1976) (Younger abstention not discretionary once conditions met); World Famous  
6 Drinking Emporium, Inc. v. City of Tempe, 820 F.2d 1079, 1081 (9th Cir. 1987)  
7 (“When a case falls within the proscription of Younger, a district court must  
8 dismiss the federal action.”) (citation omitted). Here, neither the claims asserted by  
9 petitioner, nor anything else in the record suggest the existence of extraordinary  
10 circumstances. See Younger, 401 U.S. at 45-46. Consequently, this Court must  
11 abstain from considering petitioner’s challenge to the state judgment in issue and  
12 dismiss this action without prejudice.

13 **III. ORDER**

14 IT IS THEREFORE ORDERED that the Petition is dismissed without  
15 prejudice and that Judgment be entered accordingly.

16 DATED: November 27, 2017

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19 \_\_\_\_\_  
HONORABLE JOHN F. WALTER  
UNITED STATES DISTRICT JUDGE

20 Presented by:<sup>2</sup>

21 \_\_\_\_\_/s/  
22 Honorable Jacqueline Chooljian  
23 UNITED STATES MAGISTRATE JUDGE  
24

25 \_\_\_\_\_  
26 <sup>2</sup>Pursuant to Local Rule 72-3.2, the Magistrate Judge promptly shall examine a petition  
27 for writ of habeas corpus, and if it plainly appears from the face of the petition and any exhibits  
28 annexed to it that the petitioner is not entitled to relief, the Magistrate Judge may prepare a  
proposed order for summary dismissal and submit it and a proposed judgment to the District  
Judge.