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89 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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13 JONATHAN F. BURKE,
14 Petitioner,
15 v.
16 UNKNOWN,
17 Respondent.
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Case No. ED CV 22-1478 SVW (MRW)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**19 The Court dismisses this habeas corpus action for lack of habeas
20 jurisdiction and Younger abstention reasons.
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22 1. In August 2022, Petitioner Burke filed a petition for a writ of
23 habeas corpus in this federal court under 28 U.S.C. § 2254. Petitioner used
24 the Court's standard habeas form petition (Form CV-69) to present his
25 claims. (Docket # 1.)26 2. The gist of the claims (grievances against his appointed defense
27 lawyer, the prosecutor, and the trial judge) and his location in local custody
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1 suggested that Petitioner was a pretrial detainee, not a convicted person
2 seeking review of his criminal conviction. Additionally, Petitioner provided
3 no information about the criminal charges, his sentence, or the status of
4 post-conviction appellate proceedings.

5 3. For these reasons, Magistrate Judge Wilner screened the
6 petition. Judge Wilner explained that habeas relief was not available
7 under AEDPA for those involved in ongoing criminal cases. The screening
8 order also identified other obvious procedural defects with the petition.
9 The magistrate judge directed Petitioner to submit a supplemental
10 statement addressing these issues, explaining why the action should not be
11 dismissed, and setting forth the status of Petitioner’s criminal case.
12 (Docket # 7.)

13 4. Petitioner filed a timely statement. (Docket # 8.) The
14 statement did not address the substance of Judge Wilner’s screening order.
15 However, the statement made clear that Petitioner is involved in an
16 ongoing criminal case. The closing paragraph of the statement also
17 clarified that Petitioner does not seek habeas corpus relief from a
18 conviction. Rather, Petitioner is “suing for civil rights violations [and] false
19 incarceration” from the named parties. (Id. at 4.)

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21 5. If it “appears from the application that the applicant or person
22 detained is not entitled” to habeas relief, a court may summarily dismiss a
23 habeas action. 28 U.S.C. § 2243; see also Rule 4 of Rules Governing
24 Section 2254 Cases in United States District Courts (petition may be
25 summarily dismissed if petitioner plainly not entitled to relief); Local Civil
26 Rule 72-3.2 (magistrate judge may submit proposed order for summary
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1 dismissal to district judge “if it plainly appears from the face of the petition
2 [] that the petitioner is not entitled to relief”).

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4 6. The petition must be dismissed. AEDPA allows federal review
5 on behalf of “a person in custody pursuant to a judgment of a State court
6 only on the ground that he is in custody in violation of the Constitution” or
7 other provision of federal law. 28 U.S.C. § 2254(a) (emphasis added).
8 Here, Petitioner is a pretrial detainee who has not been criminally
9 convicted. There is no judgment for this federal court to review.
10 Petitioner’s habeas petition is premature.

11 7. Further, because of the existence of an ongoing criminal case,
12 Younger abstention is appropriate. Federal courts generally abstain from
13 interfering with pending state criminal proceedings until the conviction
14 becomes final after the conclusion of appellate proceedings. Younger v.
15 Harris, 401 U.S. 37, 45 (1971); Braden v. 30th Judicial Circuit Court of
16 Kentucky, 410 U.S. 484, 489 (1973) (same). Younger abstention “is
17 appropriate if (1) there are ongoing state judicial proceedings, (2) the
18 proceedings implicate important state interests, and (3) there is adequate
19 opportunity in the state proceedings to raise federal questions.” Dubinka
20 v. Judges of Superior Court, 23 F.3d 218, 223 (9th Cir. 1994); Sheehee v.
21 Baca, 588 F. App’x 716 (9th Cir. 2014) (same). These factors militate
22 against allowing a habeas action to proceed.

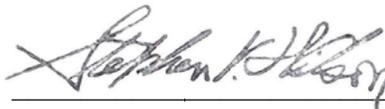
23 8. Finally, the Court recognizes that it has discretion to convert a
24 habeas petition into a civil rights complaint, but declines to do so here.
25 Wilwording v. Swenson, 404 U.S. 249, 251 (1971) (superseded by statute on
26 other grounds). The petition is too vague in identifying any culpable
27 tortfeasor, and does not adequately set forth all elements of a violation of
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1 federal law. Moreover, Petitioner would be liable for a considerably higher
2 filing fee should the Court automatically convert the petition to a civil
3 complaint. The prudent outcome is to dismiss the habeas action without
4 initiating a civil rights action.

5 Therefore, the present action is hereby DISMISSED without
6 prejudice.

7 IT IS SO ORDERED.

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10 Dated: September 15, 2022



11 HON. STEPHEN V. WILSON
12 UNITED STATES DISTRICT JUDGE

13 Presented by:



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16 HON. MICHAEL R. WILNER
17 UNITED STATES MAGISTRATE JUDGE
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