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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

PAUL BELL,	)	No. CV-F-05-1357 REC/LJO
	)	
	)	ORDER GRANTING APPLICATION
	)	TO PROCEED <u>IN FORMA PAUPERIS</u>
Plaintiff,	)	AND DISMISSING COMPLAINT
	)	WITHOUT PREJUDICE
vs.	)	
	)	
TERRY McNALLY, et al.,	)	
	)	
Defendant.	)	
	)	
	)	

On October 27, 2005, Paul Bell, proceeding in pro per, filed a "Complaint for Denial of a Jury Trial and Due Process of Law, and Motion for a Court Order Writ of Mandate". Named as defendants are Terry McNally, Kern County Superior Court Executive Officer, and Ed Jagels, Kern County District Attorney. The Complaint is accompanied by an application to proceed in forma pauperis.

It appearing from the application to proceed in forma pauperis that plaintiff is unable to afford the costs of suit, the application to proceed in forma pauperis is granted.

1 A trial court may dismiss a complaint sua sponte where the  
2 plaintiff cannot possibly win relief. Omar v. Sea-Land Service,  
3 Inc., 813 F.2d 986, 991 (9<sup>th</sup> Cir. 1987); Wong v. Bell, 642 F.2d  
4 359, 361-362 (9<sup>th</sup> Cir. 1981).

5 In his Complaint, plaintiff alleges that he is being denied  
6 his right to a jury trial for two infractions issued to him for  
7 conduct in violation of the California Vehicle Code, to wit for  
8 jaywalking in violation of California Vehicle Code § 21955, and  
9 for failing to wear a seatbelt in violation of California Vehicle  
10 Code § 27315(d). Plaintiff also alleges that a criminal  
11 complaint has not been issued by the District Attorney's Office  
12 in connection with one of the infractions. Plaintiff alleges  
13 that he appeared before Kern County Superior Court Judge Gary  
14 Witt on October 21, 2005 and "was denied a Criminal Complaint,  
15 the right to Demur to the charges, nor would a trial by jury be  
16 allowed." Finally, plaintiff alleges that California Vehicle  
17 Code § 27315(d) does not apply to him because he is not subject  
18 to the federal Motor Vehicle Safety Act or licensed to  
19 participate in vehicular commerce. Plaintiff prays for:

20 [A] Court Order, in the form of a Writ of  
21 Mandamus, to stop all unlawful proceedings in  
22 the Kern County Superior Court system against  
23 Paul Bell; and that the Superior Court  
24 provide him a Criminal Complaint and a trial  
by jury. Plaintiff also prays that this  
court grant to him expenses incurred by this  
litigation and what ever compensation and  
relief it deems proper.

25 Pursuant to Younger v. Harris, 401 U.S. 37 (1971), a  
26 district court must abstain from exercising jurisdiction where:

1 (1) state judicial proceedings are pending; (2) the state  
2 proceedings involve important state interests; and (3) the state  
3 proceedings afford the federal plaintiff an adequate opportunity  
4 to litigate federal constitutional claims. See Weiner v. County  
5 of San Diego, 23 F.3d 263, 266 (9<sup>th</sup> Cir. 1994).

6 Here, according to the allegations of the Complaint, the  
7 criminal proceedings against plaintiff are proceeding. In  
8 addition, the criminal proceedings against plaintiff involve  
9 important state interests. Finally, the state proceedings afford  
10 plaintiff an adequate opportunity to litigate federal  
11 constitutional claims because plaintiff can raise those claims  
12 on appeal and pursuant to California's writ procedures. Because  
13 the court concludes that all three factors support abstention  
14 pursuant to Younger v. Harris, the court dismisses this action  
15 without prejudice.

16 IT IS SO ORDERED.

17 **Dated: November 1, 2005**  
668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE