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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

BARRY FRANK WILSON,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA  
TUOLUMNE COUNTY,

Respondent.

Case No. 1:13-cv-01587-LJO-SAB-HC

FINDINGS AND RECOMMENDATION  
REGARDING PETITION FOR WRIT OF  
HABEAS CORPUS

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

Petitioner is proceeding pro se with a petition for writ of habeas corpus. Petitioner filed the instant petition on September 26, 2013. At the time he filed his petition, he was apparently awaiting court trial concerning a traffic infraction and facing a fine of \$229.00. (See Petition at 1.) He raises several claims regarding the trial court process. For instance, he claims his motions were summarily and capriciously dismissed. He claims he is being wrongfully required to pay the fine before he proceeds to trial. Additionally, he claims the trial court is without jurisdiction because a “gold-fringed” flag is displayed in the courtroom, and such flags are reserved courts of the military.<sup>1</sup>

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<sup>1</sup> As to this additional point, the plaintiff’s argument is entirely without any legal foundation or historical accuracy. The jurisdiction of a particular court is not based upon the “fringe” located on a flag, but instead the jurisdiction conferred on it by the appropriate legislative body.

1 I.

2 DISCUSSION

3 A. Procedural Grounds for Summary Dismissal

4 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

5 If it plainly appears from the petition and any attached exhibits that the petitioner  
6 is not entitled to relief in the district court, the judge must dismiss the petition and  
direct the clerk to notify the petitioner.

7 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ  
8 of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to  
9 dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th  
10 Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it  
11 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson,  
12 440 F.2d 13, 14 (9th Cir. 1971).

13 B. Younger Abstention

14 Title 28 U.S.C. § 2254 empowers the Court to “entertain an application for a writ of  
15 habeas corpus in behalf of a person in custody pursuant to the judgment of a State court ... on the  
16 ground that he is in custody in violation of the Constitution or laws or treaties of the United  
17 States.” See 28 U.S.C. § 2254(a). Because there is no State court judgment here, the Court  
18 deems the Petition to have been brought pursuant to 28 U.S.C. § 2241(c)(3), which empowers a  
19 district court to issue a writ of habeas corpus before a judgment is entered in a criminal  
20 proceeding. See McNeely v. Blanas, 336 F.3d 822, 824 n. 1 (9th Cir.2003).

21 In the instant petition, Petitioner complains he is being denied his constitutional due  
22 process rights in proceedings prior to his court trial. In Younger v. Harris, 401 U.S. 37 (1971),  
23 the Supreme Court established that a federal court generally must abstain from hearing a case  
24 that would enjoin or otherwise interfere with ongoing state criminal proceedings. Absent limited  
25 exceptions, Younger abstention is required if four elements are met: (1) state proceedings are  
26 ongoing; (2) the state proceedings implicate important state interests; (3) the state proceedings  
27 provide the federal litigant an adequate opportunity to raise the federal claims; and (4) the federal  
28 proceedings would interfere with the state proceedings in a way that Younger disapproves. San

1 Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose, 546 F.3d  
2 1087, 1092 (9th Cir.2008); AmerisourceBergen Corp. v. Roden, 495 F.3d 1143, 1148–49 (9th  
3 Cir.2007). Exceptions to Younger abstention exist where there is a “showing of bad faith,  
4 harassment, or some other extraordinary circumstance that would make abstention  
5 inappropriate.” Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 435  
6 (1982); see Baffert v. Cal. Horse Racing Bd., 332 F.3d 613, 621 (9th Cir.2003).

7 In this case, the state proceedings are ongoing. Further, Petitioner cannot dispute that the  
8 state proceedings pending against him implicate important state interests. Additionally, there is  
9 no reason to believe that Petitioner is being denied an adequate and full opportunity to raise his  
10 claims in the state courts. Further, Petitioner's habeas petition threatens to interfere with the state  
11 proceedings in a manner that Younger disapproves by inserting federal courts into the ordinary  
12 course of state proceedings. Finally, no exception to Younger abstention applies. There is no  
13 suggestion of bad faith, harassment, or some other extraordinary circumstance that would make  
14 abstention inappropriate. The Court therefore concludes that Younger abstention requires the  
15 dismissal of the petition herein.

16 **C. Jurisdiction**

17 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2241(c)(3)  
18 provides that “[t]he writ of habeas corpus shall not extend to a prisoner unless,” inter alia, “[h]e  
19 is in custody in violation of the Constitution or law or treaties of the United States.” The  
20 Supreme Court has held that “the essence of habeas corpus is an attack by a person in custody  
21 upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

22 In this case, Petitioner is not “in custody” for purposes of federal habeas corpus.  
23 Petitioner complains that he is being fined as a result of a traffic infraction. The imposition of a  
24 fine does not satisfy the “custody” requirement. See Bailey v. Hill, 599 F.3d 976 (9th Cir.2010);  
25 Dremann v. Francis, 828 F.2d 6, 7 (9th Cir. 1987) (per curiam). Therefore, the Court is without  
26 jurisdiction to entertain the petition.

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1 **II.**

2 **RECOMMENDATION**

3 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas  
4 corpus be SUMMARILY DISMISSED with prejudice.

5 This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill,  
6 United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B)  
7 and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District  
8 of California.

9 Within fourteen (14) days after being served with a copy, Petitioner may file written  
10 objections with the Court. Such a document should be captioned "Objections to Magistrate  
11 Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's  
12 ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections  
13 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
14 Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 Dated: January 7, 2014

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19 UNITED STATES MAGISTRATE JUDGE  
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