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

**ANTWOINE SCONIERS,**  
Petitioner,  
  
v.  
  
**RICHARD A. CIUMMO AND  
ASSOCIATES, et al.,**  
Respondents.

**Case No. 1:14-cv-02001 MJS (HC)**  
**FINDINGS AND RECOMMENDATION  
REGARDING PETITION FOR WRIT OF  
HABEAS CORPUS**  
**(Doc. 1.)**  
**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT COURT JUDGE TO  
THE PRESENT MATTER**

Petitioner filed the instant petition for writ of habeas corpus on December 17, 2014. It appears from the face of the Petition and the attachments thereto that Petitioner is in custody of the County of Fresno while awaiting state criminal proceedings in Fresno County Superior Court.

**I. DISCUSSION**

**A. Screening the Petition**

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a

1 petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to  
2 relief." Rule 4 of the Rules Governing § 2254 Cases; Hendricks v. Vasquez, 908 F.2d  
3 490 (9th Cir.1990). Otherwise, the Court will order Respondent to respond to the  
4 petition. Rule 5 of the Rules Governing § 2254 Cases.

5 **B. Pending State Proceedings**

6 As the challenged state proceeding is still being adjudicated, this Court must  
7 refrain from granting relief based on abstention grounds, under Younger v. Harris, 401  
8 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971).

9 Under principles of comity and federalism, a federal court should not interfere  
10 with ongoing state criminal proceedings by granting injunctive or declaratory relief  
11 absent extraordinary circumstances. Id. at 43-54. The rationale of Younger applies to  
12 non-criminal proceedings when important state interests are involved. See Middlesex  
13 County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432, 102 S. Ct. 2515,  
14 73 L. Ed. 2d 116 (1982); SJSVCCPAC v. City of San Jose, 546 F.3d 1087, 1092 (9th  
15 Cir. 2008). Younger abstention is required when (1) state proceedings, judicial in nature,  
16 are pending; (2) the state proceedings involve important state interests; and (3) the  
17 state proceedings afford adequate opportunity to raise the constitutional issue.  
18 Middlesex, 457 U.S. at 432. A fourth requirement has been articulated by the Ninth  
19 Circuit: that "the federal court action would enjoin the state proceeding or have the  
20 practical effect of doing so, i.e., would interfere with the state proceeding in a way that  
21 Younger disapproves." SJSVCCPAC, 546 F.3d at 1092 (citing cases).

22 The rationale of Younger applies throughout appellate proceedings, requiring that  
23 state appellate review of a state court judgment be exhausted before federal court  
24 intervention is permitted. See Huffman v. Pursue, Ltd., 420 U.S. 592, 607-11, 95 S. Ct.  
25 1200, 43 L. Ed. 2d 482 (1975). Moreover, a petitioner who intends to seek federal  
26 habeas corpus relief must await the outcome of his state court appeal before doing so;  
27 that appeal may result in reversal of the petitioner's conviction on some other ground,  
28 thereby mooting the claims raised in his federal habeas petition. See Sherwood v.

1 Tomkins, 716 F.2d 632, 634 (9th Cir. 1983) (citations omitted).

2 Here, Petitioner has filed a petition relating to state criminal proceedings that  
3 have yet to be fully adjudicated. Petitioner's state criminal proceedings, as well as  
4 California's habeas process, afford an opportunity for Petitioner to raise his  
5 constitutional challenges.

6 The present petition is not ripe for review, and as Petitioner has not exhausted  
7 any of his claims in state court, he is not eligible to stay the present proceedings. The  
8 interests set forth in Henderson v. Johnson are not implicated here. 710 F.3d 872, 874  
9 (9th Cir. 2013) ("Although district courts cannot adjudicate mixed petitions, Sherwood  
10 does not undermine the important precedent requiring district courts first to grant leave  
11 to amend and, if requested, to consider a petitioner's eligibility for a stay.") Accordingly,  
12 the Court recommends that the petition be dismissed without prejudice.

13 **II. ORDER AND RECOMMENDATION**

14 The Court RECOMMENDS that the petition for writ of habeas corpus be  
15 DISMISSED without prejudice. The Court further directs the Clerk of Court to assign a  
16 District Court Judge to the present matter.

17 These findings and recommendations are submitted to the United States District  
18 Court Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636  
19 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,  
20 Eastern District of California. Within thirty (30) days after being served with a copy, any  
21 party may file written objections with the Court and serve a copy on all parties. Such a  
22 document should be captioned "Objections to Magistrate Judge's Findings and  
23 Recommendations." Replies to the objections shall be served and filed within fourteen  
24 (14) days (plus three days if served by mail) after service of the objections. The Court  
25 will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(c). The  
26 parties are advised that failure to file objections within the specified time may result in  
27 the waiver of rights on appeal. Wilkerson v. Wheeler, \_\_\_ F.3d \_\_\_, \_\_\_, No. 11-17911,  
28

1 2014 WL 6435497, at \*3 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d  
2 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: December 19, 2014

/s/ Michael J. Seng  
6 UNITED STATES MAGISTRATE JUDGE

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