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

TERRANCE BUTLER,	)	Case No.: 1:15-cv-01509-JLT
Petitioner,	)	
v.	)	FINDINGS AND RECOMMENDATIONS TO
	)	DISMISS PETITION FOR WRIT OF HABEAS
JERRY BROWN,	)	CORPUS
Respondents.	)	
	)	ORDER DIRECTING THAT OBJECTIONS BE
	)	FILED WITHIN TWENTY-ONE DAYS
	)	
	)	ORDER DIRECTING CLERK OF THE COURT TO
	)	ASSIGN DISTRICT JUDGE TO CASE

Petitioner claims he is in pre-hearing commitment pursuant to California’s Sexually Violent Predator Act. Petitioner challenges the application of the SVPA and claims that it fails to identify those likely to commit sexually violent acts. Finally, Petitioner claims that a trial under the SVPA violates the Double Jeopardy clause. Because the Court finds that it is required to abstain from determining this matter, it recommends the matter be **DISMISSED**.

**DISCUSSION**

A. Preliminary Review of Petition.

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas

1 corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after  
2 an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9<sup>th</sup> Cir.2001).

3 The instant petition alleges he is being held in pre-hearing commitment pursuant to California’s  
4 Sexually Violent Predator Act (“SVPA”). Petitioner alleges California’s SVPA law is fatally flawed  
5 because (1) the California Department of State Hospitals (“DSH”) has initiated policies requiring its  
6 evaluators to fraudulently contend that patients are subject to the SVPA and that these policies were  
7 “designed to fail” and do not actually determine the likelihood that a SVP designee is “likely” to  
8 commit sexual offenses. (Doc. 1, p. 40). Petitioner also alleges the DSH staff disregard evidence that  
9 individuals charged as SVP’s do not suffer from serious mental issues such that they are likely to  
10 commit sexual crimes in the future. (Id.). Petitioner alleges that these flawed policies have deprived  
11 him of his liberty and have subjected him to the possibility of a “second” trial on his prior sexual  
12 offenses in violation of the Double Jeopardy Clause of the U.S. Constitution. (Id., p. 42).

13 B. Younger Abstention.

14 After fully considering the circumstances of this case, the Court finds it should not proceed with  
15 this petition. Notably, Petitioner’s state court proceedings are ongoing and, generally, the writ of  
16 habeas corpus will not extend to one awaiting trial unless special circumstances exist such that there is  
17 an absence of state processes effective to protect a federal right. See Ex parte Royall, 117 U.S. 241,  
18 245–254 (1886); Fay v. Noia, 372 U.S. 391, 420 (1963), *overruled* in part by Wainwright v. Sykes, 433  
19 U.S. 72 (1977) and Coleman v. Thompson, 501 U.S. 722 (1991). Federal courts will not interfere with  
20 pending state criminal proceedings unless the petitioner has exhausted all state court remedies with  
21 respect to the claim raised. See Mannes v. Gillespie, 967 F.2d 1310, 1311–1312 (9th Cir.1992).

22 Further, a federal court generally will not enjoin or directly intercede in ongoing state criminal  
23 proceedings absent extraordinary circumstances. Younger v. Harris, 401 U.S. 37, 43-45 (1971);  
24 Samuels v. Mackell, 401 U.S. 66, 68- 69 (1971). Younger and its progeny are based on the interests of  
25 comity and federalism that counsel federal courts to maintain respect for state functions and not unduly  
26 interfere with the state's good faith efforts to enforce its own laws in its own courts. Middlesex County  
27 Ethics Committee v. Garden State Bar Assoc., 457 U.S. 423, 431 (1982); Dubinka v. Judges of  
28 Superior Court of State of California, Los Angeles, 23 F.3d 218, 223 (9<sup>th</sup> Cir. 1994); Lebbos v. Judges

1 of Superior Court, Santa Clara, 883 F.2d 810, 813 (9<sup>th</sup> Cir.1989). The Younger doctrine stems from this  
2 longstanding public policy against federal court interference with state court proceedings. Younger, 401  
3 U.S. at 43. Federal courts should not enjoin pending state criminal prosecutions absent a showing of  
4 the state's bad faith or harassment. Younger, 401 U.S. at 46, 53-54 (holding that the cost, anxiety and  
5 inconvenience of criminal defense are not the kind of special circumstances or irreparable harm that  
6 justify federal court intervention); Dubinka, 23 F.3d at 225-26. Nor is federal injunctive relief to be  
7 used to test the validity of an arrest or the admissibility of evidence in a state criminal proceeding.  
8 Perez v. Ledesma, 401 U.S. 82, 83-85 (1971).

9         The Ninth Circuit follows a three-prong test espoused by the Supreme Court to determine  
10 whether abstention under the Younger doctrine is appropriate. Younger abstention is required when: (1)  
11 state proceedings, judicial in nature, are pending; (2) the state proceedings involve important state  
12 interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue.  
13 Middlesex County, 457 U.S. at 432; Delta Dental Plan of California, Inc. v. Mendoza, 139 F.3d 1289,  
14 1294 (9<sup>th</sup> Cir.1998); Dubinka, 23 F.3d at 223.

15         For abstention to be appropriate, the federal court action must enjoin the state proceeding or  
16 have the practical effect of doing so by interfering in a way that Younger disapproves. Gilbertson v.  
17 Albright, 381 F.3d 965, 977-78 (9<sup>th</sup> Cir.2004) (en banc). This principle of abstention has been applied  
18 to collateral attacks on criminal convictions; federal habeas corpus does not lie, absent special  
19 circumstances, to adjudicate the merits of a state criminal charge prior to a judgment of conviction by a  
20 state court, Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489 (1973), or even  
21 during the time a case is on appeal in the state courts, New Orleans Pub. Serv., Inc. v. Council of City  
22 of New Orleans, 491 U.S. 350, 369 (1989). This principle has also been applied to pending state civil  
23 proceedings where important state interests are at stake. Middlesex County, 457 U.S. at 432; Moore v.  
24 Sims, 442 U.S. 415, 423 (1979) (pending child custody proceeding); Huffman v. Pursue, Ltd., 420 U.S.  
25 592, 604 (1975) (pending nuisance action).

26         If these three requirements are met, the Court must also consider whether any of the narrow  
27 exceptions to the Younger abstention doctrine apply. The Court need not abstain if the state court  
28 proceedings were undertaken for bad faith or for purposes of harassment or the statute at issue is

1 “flagrantly and patently violative of express constitutional prohibitions.” Dubinka, 23 F.3d at 223 &  
2 225; Lebbos, 883 F.2d at 816. The extraordinary circumstances exception recognizes that a federal  
3 court need not abstain when faced with a statute that is flagrantly unconstitutional in every clause.  
4 Dubinka, 23 F.3d at 225.

5 The first requirement is satisfied here because the state proceedings have not concluded.  
6 Indeed, it does not appear that a civil commitment trial has been commenced in the state court or that  
7 Petitioner has been found to be a SVP by the State of California. Petitioner does not dispute that at the  
8 time the petition was filed, state SVPA proceedings were ongoing. For purposes of Younger abstention,  
9 the critical determination is whether state proceedings were underway at the time the federal action was  
10 filed, and state proceedings are deemed ongoing for purposes of Younger abstention until state  
11 appellate review is completed. Steffel v. Thompson, 415 U.S. 452, 462 (1974); Gilbertson v. Albright,  
12 381 F.3d at 969 n. 4. It appears undisputed that Petitioner's SVPA trial has not yet occurred as of the  
13 filing of the petition, and Petitioner has not presented his constitutional claims to the California  
14 Supreme Court.

15 The second requirement is satisfied because an important state interest, that of not having the  
16 federal courts interfere in state criminal proceedings by precluding a prosecution, is at issue here. See  
17 Dubinka, 23 F.3d at 223. Finally, the third requirement is met because Petitioner can address his federal  
18 constitutional claims related to the allegedly illegal conduct of the DSH and prosecutors in the state  
19 court civil SVP proceedings.

20 Petitioner argues that “irreparable injury will result” if the state proceedings continue because  
21 he will be subjected to a second trial on prior sex convictions that would violate the Double Jeopardy  
22 Clause. (Doc. 1, p. 66). However, the cost, anxiety, and inconvenience of presenting a defense are not  
23 the kind of special circumstances or irreparable harm that justify federal court intervention. Younger,  
24 401 U.S. at 46, 53-54. Where a district court finds Younger abstention appropriate as to a request for  
25 declaratory or injunctive relief, the court may not retain jurisdiction, but must dismiss. Judice v. Vail,  
26 430 U.S. 327, 348 (1977); Beltran v. California, 871 F.2d 777, 782 (9<sup>th</sup> Cir. 1988). The rationale of  
27 Younger applies throughout appellate proceedings, requiring that state appellate review of a conviction  
28 be exhausted before federal court intervention is permitted. Huffman v. Pursue, Ltd., 420 U.S. 592,

1 607-11 (1975); Dubinka, 23 F.3d at 223 (stating that even if the trial is complete at the time of the  
2 abstention decision, state court proceedings are still considered pending).

3 It is apparent that Plaintiff is seeking to have the Court intervene in an ongoing state SVP  
4 proceeding. This is precisely the type of circumstance to which the Younger doctrine was intended to  
5 apply. Petitioner has not established that any exception to Younger abstention is applicable in this case,  
6 i.e., that the state court proceedings were undertaken for bad faith or for purposes of harassment.  
7 Dubinka, 23 F.3d at 223 & 225; Lebbos, 883 F.2d at 816. Indeed, the state civil proceedings are  
8 currently pending, and Petitioner can raise his concerns within the context of those state court  
9 proceedings or on appeal at the conclusion of the SVP hearing.

10 **ORDER**

11 For the foregoing reasons, the Court DIRECTS the Clerk of the Court to assign a United States  
12 District Judge to this case.

13 **RECOMMENDATION**

14 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be  
15 DISMISSED under the Younger abstention doctrine.

16 This Findings and Recommendation is submitted to the United States District Court Judge  
17 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the  
18 Local Rules of Practice for the United States District Court, Eastern District of California. **Within 21**  
19 **days** after being served with a copy, any party may file written objections with the court and serve a  
20 copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
21 and Recommendation.” Replies to the objections shall be served and filed **within 10 days** after service  
22 of the objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636  
23 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the  
24 right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

25  
26 IT IS SO ORDERED.

27 Dated: October 29, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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