

1 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.
2 2001).

3 B. Abstention

4 Under principles of comity and federalism, a federal court should not interfere with
5 ongoing state criminal proceedings by granting injunctive or declaratory relief except under
6 special circumstances. Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention is
7 required when: (1) state proceedings, judicial in nature, are pending; (2) the state proceedings
8 involve important state interests; and (3) the state proceedings afford adequate opportunity to
9 raise the constitutional issue. Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457
10 U.S. 423, 432 (1982); Dubinka v. Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994).
11 The rationale of Younger applies throughout the appellate proceedings, requiring that state
12 appellate review of a state court judgment be exhausted before federal court intervention is
13 permitted. Dubinka, 23 F.3d at 223 (even if criminal trials were completed at time of abstention
14 decision, state court proceedings still considered pending).

15 The Supreme Court has further held that federal courts can abstain in cases that present a
16 federal constitutional issue, but which can be mooted or altered by a state court determination.
17 Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813-14 (1976). In
18 determining whether it should abstain, a federal court should consider problems which can occur
19 when two courts assume jurisdiction over the same claim - the inconvenience of the federal
20 forum, the avoidance of piecemeal litigation, and the order in which the parties filed the state and
21 federal proceedings. Id. at 818-19. Only in special circumstances such as harassment, bad faith
22 prosecutions, and other circumstances where irreparable harm can be proven would pretrial
23 federal habeas intervention be warranted. Carden v. State of Montana, 626 F.2d 82, 83-84 (9th
24 Cir. 1980).

25 The law of habeas corpus also provides guidance on when a district court should abstain
26 from review of a claim. In order to be granted federal habeas corpus relief, the petitioner must have
27 exhausted his available state remedies. 28 U.S.C. § 2254(b). The rule of exhaustion is based on
28 comity to the state court and gives the state court the initial opportunity to correct the state's

1 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991). In the
2 instant case, it appears that Petitioner has never exhausted the claims for which he currently seeks
3 federal relief.¹

4 To the contrary, Petitioner is currently awaiting trial before the Tulare County Superior
5 Court. Thus, Petitioner is asking this Court to step into the middle of a state criminal trial and
6 interfere with criminal proceedings. The Court recommends declining to do so and abstaining
7 under Younger. The state criminal proceedings are judicial in nature and the proceedings involve
8 the important state interest of protecting the public from criminals. Abstention is justified
9 because Petitioner has not presented the state court with any of his claims, and the state court's
10 resolution of the claims would moot the claims in his federal petition. Further, any violation of
11 the law or the Constitution could be appealed to the state court of appeals and to the California
12 Supreme Court. Therefore, under the rationale of Younger, the Court recommends dismissing the
13 petition without prejudice to re-filing after the criminal proceedings, including any appeals, are
14 completed.

15 C. Failure to State a Claim

16 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241
17 of Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner
18 unless he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states that the
19 federal courts shall entertain a petition for writ of habeas corpus only on the ground that the
20 petitioner "is in custody in violation of the Constitution or laws or treaties of the United States.
21 See also Rule 1 to the Rules Governing Section 2254 Cases in the United States District Court.
22 The U.S. Supreme Court has held that "the essence of habeas corpus is an attack by a person in
23 custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).
24 Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must
25 demonstrate that the adjudication of his claim in state court resulted in a decision that was
26 contrary to, or involved an unreasonable application of, clearly established Federal law, as

27 _____
28 ¹ The Court notes that Petitioner has captioned his petition to the Supreme Court of California so it is possible he
mailed the petition to the wrong court.

1 determined by the Supreme Court of the United States; or resulted in a decision that was based on
2 an unreasonable determination of the facts in light of the evidence presented in the State court
3 proceeding. 28 U.S.C. § 2254(d)(1), (2).

4 Here, Petitioner's claims are unclear and nonsensical. The Court cannot discern a single
5 claim for relief. As his first claim for relief, Petitioner states:

6 Double jeopardy [sic] PCF309336 CCAP ITNO#72938 these were chosen to seek
7 capital punishment and they retracted two cases by embezzling VCM390011-PCM
8 298 B. Judicial performance bankruptcy was paid by automated transaction out of
my portfolio that was distributed to him by Valeriano Trustee Saucedo a civil
judge civil fraud was utilized to keep charges dormant.

9 (Pet. at 3.)

10 His second claim for relief is as follows:

11 Jones IV. Burge, 164 F.Supp.2d 1096 (W.D.Wisc.2001). Kaufman v. Schneiter
12 474 F.Supp.2d 1014 (W.D.Wisc.2007), Trujillo v. Williams, 465 F.3d 1010 (10th
13 Cir.2006); Marange v. Fontcolot, 879 F.Supp. 679 (E.D.Tex.1995). Its federal
crime for state actor (the prison officials) to threaten or assault witnesses in federal
litigation 18 U.S.C. § 1512(2) false imprisonment defacto preventive detention.

14 (Pet. at 4.)

15 As evidenced above, the claims are incomprehensible. The supporting facts offer no
16 clarity to the above statements. Normally, the Court would dismiss the petition with leave to file
17 an amended petition to cure the noted deficiencies; however, because the Court has also
18 determined that it must abstain from interference in ongoing state criminal proceedings, it will
19 recommend the petition be dismissed without leave to amend.

20 D. Failure to Name a Proper Respondent

21 A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state
22 officer having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing
23 § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California
24 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an
25 incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because
26 the warden has "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d
27 378, 379 (9th Cir. 1992); Stanley, 21 F.3d at 360. However, the chief officer in charge of state
28 penal institutions is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a

1 petitioner is on probation or parole, the proper respondent is his probation or parole officer and
2 the official in charge of the parole or probation agency or state correctional agency. Id.

3 Petitioner has named President Obama as Respondent. However, President Obama is not
4 the warden or chief officer of the institution where Petitioner is confined and, thus, does not have
5 day-to-day control over Petitioner. Petitioner's failure to name a proper respondent requires
6 dismissal of his habeas petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v.
7 California Adult Auth., 423 F.2d 1326, 1326 (9th Cir. 1970).

8 **II. ORDER**

9 The Court DIRECTS the Clerk of Court to assign a District Judge to this case.

10 **III. RECOMMENDATION**

11 Based on the foregoing, the Court RECOMMENDS that the petition for writ of habeas
12 corpus be **DISMISSED** without prejudice to refile at the conclusion of the state process.

13 This Findings and Recommendation is submitted to the United States District Court Judge
14 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304
15 of the Local Rules of Practice for the United States District Court, Eastern District of California.
16 Within twenty-one days after being served with a copy, Petitioner may file written objections
17 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings
18 and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28
19 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified
20 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
21 (9th Cir. 1991).

22
23 IT IS SO ORDERED.

24 Dated: December 14, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE