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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUBEN HERRERA,  
Petitioner,  
v.  
BRANDON PRICE, Executive Director  
,  
Respondent.

Case No. 1:17-cv-00972-MJS  
**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS AND DISMISSING  
PETITION FOR WRIT OF HABEAS CORPUS  
(ECF NO. 10)  
CLERK TO CLOSE CASE**

Petitioner is a detainee proceeding with counsel on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondent Brandon Price, Executive Director of Coalinga State Hospital, is represented by Julie Anne Hokins of the Attorney General's Office for the State of California. All parties have consented to Magistrate Judge jurisdiction for all purposes pursuant to 28 U.S.C. § 636(c). (ECF Nos. 3, 7.)

Briefly stated, Petitioner is in the custody of the California Department of State Hospitals pending a jury trial on a petition for commitment as a Sexually Violent Predator under California's Sexually Violent Predator Act ("SVPA"), California Welfare & Institutions Code § 6600 et seq. Petitioner contends he is statutorily ineligible for SVPA

1 commitment because he was not convicted of a “sexually violent offense.” Accordingly,  
2 he contends, his detention is unlawful. He further contends that the SVPA petition  
3 violates his due process rights and the bar against double jeopardy. He asks this court to  
4 order dismissal of the petition and his release from custody. (ECF No. 1.)

5 Before the Court is Respondent’s motion to dismiss the petition pursuant to  
6 Younger v. Harris, 401 U.S. 37 (1971). (ECF No. 10.) The motion is submitted and  
7 stands ready for adjudication. For the reasons stated below, Respondent’s motion will be  
8 granted and the petition will be dismissed.

9 **I. Factual and Procedural History**

10 On October 14, 2004, Petitioner was convicted pursuant to a plea agreement of a  
11 lewd act with a child of 14 or 15 years when the person is at least 10 years older than  
12 the child, and sodomy by a person over 21 years with a person who is under the age of  
13 sixteen. (ECF No. 1-2 at 30-33.) He was sentenced to a two year term of incarceration  
14 but, due to time served, was immediately released on parole. Thereafter, he was twice  
15 taken into custody for parole violations (failure to register, removal of GPS monitoring  
16 device, and absconding from parole supervision). (ECF No. 1 at 8-9.)

17 On December 4, 2007, while Petitioner was in custody on the parole violations,  
18 the Fresno County District Attorney filed a petition for civil commitment of Petitioner  
19 pursuant to the SVPA. (ECF No. 1-2 at 5-7.) On January 16, 2008, the Fresno County  
20 Superior Court found probable cause to support the commitment petition and ordered  
21 Petitioner detained at Coalinga State Hospital. (Id. at 9-12.)

22 Petitioner since has challenged the petition in a number of ways. On October 28,  
23 2009, he filed a motion to dismiss the commitment petition and/or to overturn the finding  
24 of probable cause. (Id. at 36-54.) Therein, he argued, inter alia, that he had not been  
25 convicted of an offense that would render him eligible for SVPA commitment. The  
26 Superior Court denied the motion on December 9, 2009. (Id. at 81.)

1 On July 27, 2011, Petitioner challenged the denial of his motion by filing in the  
2 California Court of Appeal for the Fifth Appellate District a petition for writ of mandate or  
3 prohibition. (Id. at 90, 106-29.) The Court of Appeal denied the petition on October 7,  
4 2011. (Id. at 90.) Petitioner sought review in the California Supreme Court; the petition  
5 was denied on November 22, 2011. (Id. at 90-91, 132.)

6 On December 30, 2011, Petitioner, proceeding pro se, filed a petition for writ of  
7 habeas corpus in this court in Case No. 1:11-cv-02166-LJO-DLB. (Id. at 87-134.) On  
8 March 7, 2012, the petition was dismissed without prejudice on the basis of Younger  
9 abstention. Herrera v. Ahlin, No. 1:11-cv-02166-LJO-DLB (E.D. Cal. Mar. 7, 2012).

10 On August 24, 2016,<sup>1</sup> Petitioner filed a petition for writ of habeas corpus in the  
11 Fresno County Superior Court, again arguing that he lacked a conviction for a sexually  
12 violent offense and thus was ineligible for commitment under the SVPA. (Id. at 166-69.)  
13 On September 19, 2016, the Superior Court denied the petition. (Id. at 199-205.)

14 Petitioner then pursued this claim through the Fifth District Court of Appeal and  
15 the California Supreme Court. (Id. at 326-27.) The Fifth District Court of Appeal denied  
16 the petition and, on March 22, 2017, the California Supreme Court denied review. (Id.;  
17 id. at 208.)

18 Petitioner filed the instant petition on July 20, 2017. (ECF No. 1.) On October 10,  
19 2017, Respondent was ordered to respond to the petition, and to specifically address  
20 whether the Court should abstain from entertaining the petition pursuant to Younger.  
21 (ECF No. 4.) Respondent then filed the instant motion to dismiss. (ECF No. 10.)  
22 Petitioner filed an opposition. (ECF No. 11.) Respondent filed no reply and the time for  
23 doing so has passed.

## 24 **II. Discussion**

25 “Younger abstention is a jurisprudential doctrine rooted in overlapping principles  
26 of equity, comity, and federalism.” San Jose Silicon Valley Chamber of Commerce

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28 <sup>1</sup> In the intervening five year period, Petitioner challenged the SVPA proceedings on other grounds.

1 Political Action Comm. v. San Jose, 546 F.3d 1087, 1091 (9th Cir. 2008). The Younger  
2 doctrine extends to state civil judicial proceedings if the following four factors are met:  
3 (1) there is an ongoing state-initiated judicial proceeding; (2) the proceeding implicates  
4 important state interests; (3) the federal litigant is not barred from litigating federal  
5 constitutional issues in the state proceeding; and (4) federal court action would enjoin  
6 the proceeding or have the practical effect of doing so, i.e., would interfere in a way that  
7 Younger disapproves. Gilbertson v. Albright, 381 F.3d 965, 978 (9th Cir. 2004) (en  
8 banc).

9 Here, the first element is satisfied because there is an ongoing state-initiated civil  
10 commitment proceeding pending against Petitioner. Although many years have passed  
11 since the SVPA petition was first filed, no final judgment has been entered, and the case  
12 is still ongoing for the purposes of Younger abstention. See San Jose Silicon Valley  
13 Chamber of Commerce Political Action Comm., 546 F.3d 1087, 1093. See also Williams  
14 v. King, 696 F. App'x 283, 284 (9th Cir.), cert. denied, 138 S. Ct. 506 (2017). Petitioner  
15 concedes this point. (ECF No. 11 at 3.)

16 The second element also is satisfied: The SVPA proceeding implicates “the  
17 important state interests of protecting the public from sexually violent offenders and  
18 providing such offenders with mental health treatment.” Smith v. Plummer, 458 F. App'x  
19 642, 643-44 (9th Cir. 2011). See also, e.g., Arceo v. King, No. 2:14-cv-2712-GEB-DBP,  
20 2016 WL 7384024, at \*2 (E.D. Cal. Dec. 21, 2016), report and recommendation adopted,  
21 No. 2017 WL 6888521 (E.D. Cal. Feb. 24, 2017). Nonetheless, Petitioner contends that  
22 this element is not satisfied because he is not a sexually violent offender, and thus there  
23 is no important interest in protecting the public from him. (ECF No. 11 at 3.) But, this  
24 rationale would apply in every case where a petitioner disputes whether he meets the  
25 SVPA criteria, thus eviscerating the Younger doctrine. The argument is therefore  
26 unpersuasive.

1 As to the third element, Petitioner argues that the state court proceedings are  
2 inadequate because his efforts to raise his constitutional claims in state court have been  
3 unsuccessful. However, there is no question that Petitioner has been afforded the  
4 opportunity to raise his federal constitutional claims in the state proceedings and indeed  
5 has done so, in some regard, through every level of the California judicial system.  
6 Petitioner has not shown that “state procedural law barred presentation of [his] claims,”  
7 Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14 (1987), or that “extraordinary  
8 circumstances” rendered the California courts “incapable of fairly and fully adjudicating”  
9 his federal constitutional issues, Kugler v. Helfant, 421 U.S. 117, 124 (1975). Petitioner  
10 “obviously disagrees vigorously with the result that he has achieved thus far in California.  
11 However, his lack of success does not render the forum inadequate.” Baffert v. California  
12 Horse Racing Bd., 332 F.3d 613, 621 (9th Cir. 2003).

13 As to the fourth element, if this Court were to grant Petitioner the relief he seeks, it  
14 would have the practical effect of enjoining the state SVPA proceedings. Smith, 458 F.  
15 App’x at 643-44.

16 Finally, although Younger abstention provides an equitable exception in cases  
17 where extraordinary circumstances threaten great, immediate and irreparable injury, see  
18 Younger, 401 U.S. at 45-46, 53-54 (irreparable injury shown where statute flagrantly and  
19 patently violative of express constitutional prohibitions); Perez v. Ledesma, 401 U.S. 82,  
20 85 (1971) (federal injunctive relief in pending state prosecutions proper in cases of  
21 proven harassment or prosecutions undertaken by state officials in bad faith without  
22 hope of obtaining a valid conviction), petitioner fails to demonstrate that this is such a  
23 case. Petitioner has not shown bad faith or harassment by state officials responsible for  
24 his commitment proceedings, nor other extraordinary circumstances to indicate  
25 irreparable injury. See Kugler, 421 U.S. at 124. He argues primarily that he is suffering  
26 irreparable injury just by being detained and forced to face the SVPA proceeding  
27 pending against him. However, Younger makes clear that any injury suffered by a  
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1 petitioner as a result of being forced to defend himself against a state prosecution  
2 brought in good faith does not rise to the level of “irreparable injury,” even where the  
3 petitioner alleges the prosecution is unlawful. Younger, 401 U.S. at 46 (“No citizen or  
4 member of the community is immune from prosecution, in good faith, for his alleged  
5 criminal acts. The imminence of such a prosecution even though alleged to be  
6 unauthorized and hence unlawful is not alone ground for relief in equity . . . .” (internal  
7 quotation marks omitted)). Furthermore, the Court must reject Petitioner’s claim that the  
8 SVPA proceedings are causing irreparable injury to his Fifth Amendment right to avoid  
9 being twice put in jeopardy for the same offense. See Hydrick v. Hunter, 500 F.3d 978,  
10 993 (9th Cir. 2007) (civil nature of SVPA proceedings forecloses challenges based on  
11 violation of Double Jeopardy clause), vacated on other grounds by Hunter v. Hydrick,  
12 556 U.S. 1256 (2009).

13 **III. Conclusion and Order**

14 Based on the foregoing, the Court must abstain under Younger from reaching the  
15 merits of Petitioner’s claims. Accordingly, it is HEREBY ORDERED that Respondent’s  
16 motion to dismiss (ECF No. 10) is GRANTED, and the petition is dismissed without  
17 prejudice.

18 The Clerk of Court is directed to close the case.

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20 IT IS SO ORDERED.

21 Dated: February 11, 2018

22 1st Michael J. Seng  
23 UNITED STATES MAGISTRATE JUDGE  
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