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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	JERRY OWENS,	No. 1:17-cv-01622-JLT (HC)
12	Petitioner,	ORDER DIRECTING CLERK OF COURT
13	V.	TO ASSIGN DISTRICT JUDGE
14	FRESNO COUNTY SUPERIOR COURT,	FINDINGS AND RECOMMENDATION TO DISMISS PREMATURE PETITION
15	Respondent.	[Doc. 16]
16		[TWENTY-ONE DAY OBJECTION DEADLINE]
17		
18	Petitioner filed a habeas petition on December 1, 2017. He is a pretrial detainee at the	
19	Fresno County Jail. The Court finds the petition to be premature and will recommend the petition	
20	be DISMISSED.	
21	DISCUSSION	
22	A. Preliminary Review of Petition	
23	Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a	
24	petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not	
25	entitled to relief in the district court" Rule 4 of the Rules Governing Section 2254 Cases.	
26	The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of	
27	habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to	
28	dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th	

Cir.2001).

B. Younger Abstention

Petitioner is currently incarcerated in the Fresno County Jail. He states the criminal process is ongoing in Case No. F17902111. He claims he should be released because he is falsely imprisoned.

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

The law of habeas corpus also provides guidance on when a district court should abstain from review of a claim. In order to be granted federal habeas corpus relief, the petition must have exhausted his available state remedies. 28 U.S.C. § 2254(b). The rule of exhaustion is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991). The exhaustion requirement can be satisfied by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971)

In the instant case, state criminal proceedings are ongoing. California has an important interest in passing upon and correcting violations of a defendant's rights. Roberts v. Dicarlo, 296 F.Supp.2d 1182, 1185 (C.D. Cal. 2002) (citing Koerner v. Grigas, 328 F.3d 1039, 1046 (9th Cir. 2003). Finally, the California Court of Appeal and the California Supreme Court are adequate

forums for Petitioner to seek relief for his claims. Roberts, 296 F.Supp.2d at 1185. Therefore, the Court recommends that the petition be dismissed pursuant to Younger. RECOMMENDATION Accordingly, the Court RECOMMENDS that the petition be DISMISSED WITHOUT PREJUDICE as premature. This Findings and Recommendation is submitted to the United States District Court Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one days after being served with a copy, any party may file written objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). IT IS SO ORDERED. **December 11, 2017** /s/ Jennifer L. Thurston Dated: UNITED STATES MAGISTRATE JUDGE