



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

4 B. Younger Abstention

5 Petitioner is currently incarcerated in the Fresno County Jail. He states the criminal  
6 process is ongoing in Case No. F17902918. He raises a number of claims challenging the  
7 charged filed against him.

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

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

27 In the instant case, state criminal proceedings are ongoing. California has an important  
28 interest in passing upon and correcting violations of a defendant's rights. *Roberts v. Dicarlo*, 296

1 F.Supp.2d 1182, 1185 (C.D. Cal. 2002) (citing Koerner v. Grigas, 328 F.3d 1039, 1046 (9th Cir.  
2 2003). Finally, the California Court of Appeal and the California Supreme Court are adequate  
3 forums for Petitioner to seek relief for his claims. Roberts, 296 F.Supp.2d at 1185. Therefore,  
4 the Court recommends that the petition be dismissed pursuant to Younger.

5 **RECOMMENDATION**

6 Accordingly, the Court RECOMMENDS that the petition be DISMISSED WITHOUT  
7 PREJUDICE as premature.

8 This Findings and Recommendation is submitted to the United States District Court Judge  
9 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304  
10 of the Local Rules of Practice for the United States District Court, Eastern District of California.  
11 Within twenty-one days after being served with a copy, any party may file written objections with  
12 the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
13 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28  
14 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to  
15 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

16  
17 IT IS SO ORDERED.

18 Dated: December 16, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE