

1 petition, we recommend that the court decline to exercise jurisdiction and dismiss the petition
2 without prejudice.

3 **Discussion**

4 In *Younger v. Harris*, 401 U.S. 37, 44 (1971), the Supreme Court held that a federal court
5 generally cannot interfere with pending state criminal proceedings. This holding, commonly
6 referred to as the *Younger* abstention doctrine, is based on the principle of federal-state comity.
7 *See id.* In the habeas context, “[w]here . . . no final judgment has been entered in state court, the
8 state court proceeding is plainly ongoing for purposes of *Younger*.” *Page v. King*, 932 F.3d 898,
9 902 (9th Cir. 2019). Absent rare circumstances, a district court must dismiss such actions. *See*
10 *Cook v. Harding*, 190 F. Supp. 3d 921, 935, 938 (C.D. Cal. 2016), *aff’d*, 879 F.3d 1035 (9th Cir.
11 2018); *Perez v. Ledesma*, 401 U.S. 82, 85 (1971) (“Only in cases of proven harassment or
12 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid
13 conviction and perhaps in other extraordinary circumstances where irreparable injury can be
14 shown” is federal intervention in an on-going state proceeding appropriate.).

15 Here, petitioner claims that the state superior court violated his constitutional rights when
16 it failed to award him certain custody credits under California law. ECF No. 1 at 3-4. Petitioner
17 is currently seeking habeas relief before the state superior court on these same claims.¹ *Id.* at 5;
18 *In re: Application of: Antoine D Barnes for Writ of Habeas Corpus*, No. 20W-0072A (Kings
19 Cnty. Super. Ct. Apr. 10, 2020). Because his state habeas petition is still pending, this court
20 should refrain from intervening in this case.

21 **Certificate of Appealability**

22 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
23 court’s denial of a petition; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253;

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25 ¹ Petitioner also recently sought habeas relief in this court on the same claims raised here. *See*
26 *Barnes v. Roberts*, No. 1:20-cv-00454-DAD-SKO (E.D. Cal. May 27, 2020). Because that
27 petition was dismissed without prejudice for failure to exhaust, the instant petition is not
28 considered “second or successive” for our purposes. *See Slack v. McDaniel*, 529 U.S. 473, 487
(2000). However, petitioner is directed to refrain from filing any additional habeas petitions with
this court until his claim has been exhausted in the state courts.

1 *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing § 2254 Cases requires a
2 district court to issue or deny a certificate of appealability when entering a final order adverse to a
3 petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th
4 Cir. 1997). A certificate of appealability will not issue unless a petitioner makes “a substantial
5 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This standard requires
6 the petitioner to show that “jurists of reason could disagree with the district court’s resolution of
7 his constitutional claims or that jurists could conclude the issues presented are adequate to
8 deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327; *accord Slack v.*
9 *McDaniel*, 529 U.S. 473, 484 (2000). Here, petitioner has not made a substantial showing of the
10 denial of a constitutional right. Thus, we recommend that the court not issue a certificate of
11 appealability.

12 **Order**

13 The clerk of court is directed to assign this case to a district judge for the purposes of
14 reviewing these findings and recommendations.

15 **Findings and Recommendations**

16 For the foregoing reasons, we recommend that the court decline to exercise jurisdiction
17 under the *Younger* abstention doctrine, dismiss the case without prejudice to refile once
18 petitioner has exhausted his claims before the state courts, and decline to issue a certificate of
19 appealability. ECF No. 1. These findings and recommendations are submitted to the U.S. district
20 judge presiding over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within
21 fourteen days of the service of the findings and recommendations, the parties may file written
22 objections to the findings and recommendations with the court and serve a copy on all parties.
23 That document must be captioned “Objections to Magistrate Judge’s Findings and
24 Recommendations.” The presiding district judge will then review the findings and
25 recommendations under 28 U.S.C. § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: June 23, 2020


UNITED STATES MAGISTRATE JUDGE

No. 206.