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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 ALEX LEONARD AZEVEDO,

12 Petitioner,

13 v.

14 COLUSA COUNTY,

15 Respondent.  
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No. 2:17-cv-0117 KJN P

ORDER

17 Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas  
18 corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.  
19 Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs  
20 of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C.  
21 § 1915(a). Petitioner consented to proceed before the undersigned for all purposes. See 28  
22 U.S.C. § 636(c). As explained below, this case must be dismissed.

23 The instant petition was filed on January 18, 2017, and challenges his November 23, 2016  
24 conviction in the Colusa County Superior Court. Federal court records reveal that on January 18,  
25 2017, petitioner filed a federal habeas petition that also challenges the 2016 Colusa County  
26 conviction. Azevedo v. People of the State of California, Case No. 2:17-cv-0115 GGH (E.D.

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1 Cal.).<sup>1</sup> Petitioner is cautioned that all federal challenges to the same conviction must be raised in  
2 one federal petition. See Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008) (If a new petition is  
3 filed when a previous habeas petition is still pending before the district court without a decision  
4 having been rendered, then the new petition should be construed as a motion to amend the  
5 pending petition.). However, in the earlier-filed petition, petitioner concedes that he is trying to  
6 appeal the criminal conviction “now.” Id., ECF No. 1 at 5.

7 Review of the California Courts Appellate Courts Case Information website confirms that  
8 petitioner is pursuing two appeals that remain pending in the Third Appellate District, Case Nos.  
9 C083685, C083727. In both cases, petitioner was appointed counsel on January 20, 2017, and his  
10 opening brief is due February 21, 2017. Id. The California Supreme Court website reflects no  
11 filing on behalf of petitioner.

12 Because petitioner’s criminal appeal remains pending, this court must abstain from  
13 addressing the instant petition. Principles of comity and federalism weigh against a federal court  
14 interfering with ongoing state criminal proceedings by granting injunctive or declaratory relief  
15 absent extraordinary circumstances. Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger  
16 abstention is required when 1) state proceedings, judicial in nature, are pending; 2) state  
17 proceedings involve important state interests; and 3) the state proceedings afford adequate  
18 opportunity to raise the constitutional issue. See Middlesex County Ethic Comm. v. Garden State  
19 Bar Ass’n., 457 U.S. 423, 432 (1982); Ohio Civil Rights Comm’n v. Dayton Christian Schs., Inc.,  
20 477 U.S. 619, 627 (1986). “When a case falls within the proscription of Younger, a district court  
21 must dismiss the federal action.” Fresh Int’l Corp. v. Agricultural Labor Relations Bd., 805 F.2d  
22 1353, 1356 (9th Cir. 1986). In addition, there is no discretion to grant injunctive relief if the case  
23 is within the Younger category of cases. Id. (citing Colorado River Water Conservation Dist. v.  
24 United States, 424 U.S. 800, 816 n.22 (1976)).

25 In his earlier-filed federal petition, petitioner concedes his direct appeal of his criminal  
26 conviction is pending, and in the instant case, he references his appeal No. C083685, which state

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27 <sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d  
28 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).


1 court records confirm remains pending. Id. Criminal proceedings, by their very nature, involve  
2 important state interests. Petitioner has an adequate opportunity to raise the constitutional issues  
3 underlying his conviction in either his habeas case or his direct appeal. Irreparable injury does  
4 not exist in such situations if the threat to petitioner's federally protected rights may be eliminated  
5 by his appeal of the criminal case. Moreover, "even irreparable injury is insufficient [to permit  
6 interference with the proceeding] unless it is 'both great and immediate.'" Younger, 401 U.S. at  
7 46 (quoting Fenner v. Boykin, 271 U.S. 240, 243-44 (1926)). Petitioner has failed to demonstrate  
8 extraordinary circumstances; therefore this petition is barred by the Younger abstention doctrine.

9 In accordance with the above, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's motion to proceed in forma pauperis is granted;
- 11 2. Petitioner's application for a writ of habeas corpus is dismissed without prejudice; and
- 12 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.

13 § 2253.

14 Dated: January 26, 2017

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16 KENDALL J. NEWMAN  
17 UNITED STATES MAGISTRATE JUDGE

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