



1 evidence” that the State of California is in “default by acquiescence, in possession of an  
2 Order/Writ for my release yet has not filed a return or released me.” Id. Petitioner provides no  
3 further details or information about the alleged order requiring her release. In the request for  
4 relief, petitioner seeks her immediate release from custody as well as the return of her property  
5 that was stolen following her unlawful arrest which includes the bodies of her two sons which  
6 petitioner asserts that she holds the lien on. ECF No. 1 at 7.

## 7 **II. Analysis**

8 Since petitioner is a state pretrial detainee, federal habeas relief is only available pursuant to  
9 28 U.S.C. § 2241. See McNeely v. Blanas, 336 F.3d 822, 824 n. 1 (9th Cir. 2003) (citing Braden  
10 v. Judicial Circuit Court, 410 U.S. 484, 503 (1973) (explaining that § 2241 authorizes district  
11 courts to issue the writ of habeas corpus before a judgment is rendered in a state criminal  
12 proceeding)). The court declines to construe petitioner’s habeas application as one pursuant to 28  
13 U.S.C. § 2241, however, because it fails to raise any constitutional, statutory, or treaty based  
14 claim. See 28 U.S.C. § 2241(c) (stating that the writ shall not issue unless the pretrial detainee is  
15 in custody “in violation of the Constitution or laws or treaties of the United States”). Petitioner’s  
16 allegation that the State of California does not have status or standing to continue to detain her  
17 does not raise a constitutional claim. The court is unable to discern the factual basis, much less  
18 any legal basis, supporting petitioner’s claim for relief. Accordingly, this court lacks jurisdiction  
19 over petitioner’s claim for relief. The instant habeas petition should therefore be dismissed based  
20 on lack of jurisdiction.

## 21 **III. Plain Language Summary for Pro Se Party**

22 Since petitioner is acting as her own attorney in this case, the court wants to make sure that  
23 the words of this order are understood. The following information is meant to explain this order  
24 in plain English and is not intended as legal advice.

25 The court does not have the ability to review your habeas corpus petition because you have  
26 not been convicted pursuant to a state court judgment. As a state pretrial detainee, the proper  
27 manner of challenging your confinement at Napa State Hospital or at the Placer County Jail is a  
28 habeas corpus petition filed pursuant to 28 U.S.C. § 2241. Even if this court were to construe

1 your petition as one filed pursuant to § 2241, however, no relief would be available because there  
2 is no Constitutional, statutory, or treaty based claim presented in your petition. As a result, the  
3 undersigned is recommending that your case be dismissed without prejudice.

4 If you disagree with this recommendation, you have 14 days to explain why it is not the  
5 correct result in your case by filing “Objections to Magistrate Judge’s Findings and  
6 Recommendations.”

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner’s motion to proceed in forma pauperis (ECF No. 2) is granted.  
9

10 IT IS FURTHER RECOMMENDED that petitioner’s application for a writ of habeas  
11 corpus be summarily dismissed without prejudice based on lack of jurisdiction.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
14 after being served with these findings and recommendations, any party may file written  
15 objections with the court and serve a copy on all parties. Such a document should be captioned  
16 “Objections to Magistrate Judge’s Findings and Recommendations.” In her objections petitioner  
17 may address whether a certificate of appealability should issue in the event she files an appeal of  
18 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district  
19 court must issue or deny a certificate of appealability when it enters a final order adverse to the  
20 applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of  
21 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it  
22 debatable whether the district court was correct in its procedural ruling;’ and (2) ‘that jurists of  
23 reason would find it debatable whether the petition states a valid claim of the denial of a  
24 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.  
25 McDaniel, 529 U.S. 473, 484 (2000)). Any response to the objections shall be served and filed

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1 within fourteen days after service of the objections. The parties are advised that failure to file  
2 objections within the specified time may waive the right to appeal the District Court's order.

3 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: November 26, 2018

5   
6 CAROLYN K. DELANEY  
7 UNITED STATES MAGISTRATE JUDGE

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