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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EMMANUEL WELLS,  
  
                                Petitioner,  
  
                                v.  
  
PEOPLE OF THE STATE OF  
CALIFORNIA, et al.,  
  
                                Respondent.

No. 2:19-CV-1434-KJM-DMC

FINDINGS AND RECOMMENDATIONS

                                Petitioner brings this petition for a writ of habeas corpus. Pending before the court is petitioner’s petition for a writ of habeas corpus (ECF No.1).

                                Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the instant case, it is plain that petitioner is not entitled to federal habeas relief.

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1 **I. PETITIONER’S ALLEGATIONS**

2 On January 26, 2018 petitioner was arrested by police in Roseville, California.  
3 Petitioner is currently released on his own recognizance pending trial. He claims that evidence  
4 was obtained in violation of his Fourth Amendment rights.

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6 **II. DISCUSSION**

7 **A. Section 2254**

8 “The Supreme Court, a Justice thereof, a circuit judge, or a district court shall  
9 entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to  
10 the judgment of a State court only on the ground that he is in custody in violation of the  
11 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The court lacks  
12 jurisdiction here because petitioner is not a person in custody pursuant to the judgement of a State  
13 court. See Prince v. Bailey, 464 F.2d 544 (5th Cir. 1972) (affirming denial of appellant’s petition  
14 for habeas corpus where, at the time of filing application for writ, petitioner was incarcerated  
15 awaiting state trial so that his incarceration was not pursuant to a state court judgement and thus  
16 lacking federal jurisdiction); see also Inman v. Landry, No. 2:15-cv-00113-GZS, 2016 U.S. Dist.  
17 LEXIS 22825, at \*4-6 (D. Me. Feb. 23, 2016); Krauel v. Florida, No. 08-14093-CIV-  
18 MARTINEZ-B, 2008 U.S. Dist. LEXIS 77437, at \*4 (S.D. Fla. July 15, 2008). In this case,  
19 petitioner is awaiting his state court trial, as in Prince, and has not been convicted. Section 2254  
20 is inapplicable where the petitioner is not challenging a state court judgment. See McNeely v.  
21 Blanas, 336 F.3d 822, 834 n.1 (9th Cir. 2003).

22 **B. Section 2241**

23 To the extent petitioner’s Fourth Amendment claim is cognizable under 28 U.S.C.  
24 § 2241, see McNeely, 336 F.3d at 834 n.1, petitioner is not entitled to relief. A Fourth  
25 Amendment claim can only be litigated on federal habeas review where the petitioner  
26 demonstrates that the state did not provide an opportunity for full and fair litigation of the claim;  
27 it is immaterial whether the petitioner actually litigated the Fourth Amendment claim. See  
28 Gordan v. Duran, 895 F.2d 610, 613 (9th Cir. 1990). Here, it is clear from the face of petitioner’s

1 petition that petitioner was afforded a full and fair opportunity to litigate his Fourth Amendment  
2 claim. As petitioner notes in the petition, the trial court held a hearing on petitioner's motion to  
3 suppress, which was denied, and the issue was then litigated to the California Court of Appeal  
4 and then finally to the California Supreme Court.

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6 **III. CONCLUSION**

7 Based on the foregoing, the undersigned recommends that petitioner's petition for  
8 a writ of habeas corpus (ECF No.1) be summarily dismissed.

9 These findings and recommendations are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
11 after being served with these findings and recommendations, any party may file written  
12 objections with the court. Responses to objections shall be filed within 14 days after service of  
13 objections. Failure to file objections within the specified time may waive the right to appeal. See  
14 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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17 Dated: October 2, 2019



18 DENNIS M. COTA  
19 UNITED STATES MAGISTRATE JUDGE