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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN EDWARD FINDLEY,
Petitioner,
v.
COUNTY OF EL DORADO, et al.,
Respondents.

No. 2:21-cv-1117 AC P

ORDER AND FINDINGS &
RECOMMENDATIONS

Petitioner, a pretrial detainee proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

I. Petition

The Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) are appropriately applied to proceedings undertaken pursuant to 28 U.S.C. § 2241. Habeas Rule 1(b). Rule 4 of the Habeas Rules requires the court to summarily dismiss a habeas petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” “[A] petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted.” Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971) (citations omitted).

Petitioner challenges his confinement on the grounds that his counsel is ineffective because it has been six months since his arrest without any discovery or investigation, counsel

1 talked petitioner into waiving time, and he failed to obtain petitioner’s release to visit his mother
2 in the hospital or attend her funeral. ECF No. 1 at 3-4.

3 Pursuant to 28 U.S.C. § 2241, the courts have jurisdiction to consider a habeas petition
4 brought by a pretrial detainee. McNeely v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir. 2003)
5 (citations omitted). Under § 2241(c)(3), a pretrial detainee may seek a writ of habeas corpus
6 when “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.”
7 However, under Younger v. Harris, 401 U.S. 37 (1971), federal courts may not interfere with a
8 pending state criminal case. “Younger abstention is a jurisprudential doctrine rooted in
9 overlapping principles of equity, comity, and federalism.” San Jose Silicon Valley Chamber of
10 Commerce Political Action Comm. v. City of San Jose, 546 F.3d 1087, 1091-92 (9th Cir. 2008)
11 (citations and footnote omitted). Younger abstention is required

12 if four requirements are met: (1) a state-initiated proceeding is
13 ongoing; (2) the proceeding implicates important state interests; (3)
14 the federal plaintiff is not barred from litigating federal constitutional
15 issues in the state proceeding; and (4) the federal court action would
enjoin the proceeding or have the practical effect of doing so, i.e.,
would interfere with the state proceeding in a way that Younger
disapproves.

16 Id. at 1092 (citations omitted).

17 In the instant case, the court finds that all four requirements for exercising Younger
18 abstention are met. The state-initiated criminal proceeding against plaintiff appears to still be
19 ongoing; the proceeding implicates important state interests; to the extent plaintiff may have
20 federal constitutional challenges, he is not barred from raising them in the state criminal
21 proceeding; and this court’s failure to abstain would directly interfere with the state proceeding.
22 These factors demonstrate that the court should abstain from considering petitioner’s claims and
23 dismiss them.

24 II. Certificate of Appealability

25 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must
26 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A
27 certificate of appealability may issue “only if the applicant has made a substantial showing of the
28 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in these

1 findings and recommendations, a substantial showing of the denial of a constitutional right has
2 not been made in this case. Therefore, no certificate of appealability should issue.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly
4 assign a United States District Judge to this action.

5 IT IS FURTHER RECOMMENDED that:

- 6 1. Petitioner's application for a writ of habeas corpus be dismissed without prejudice.
- 7 2. This court decline to issue the certificate of appealability referenced in 28 U.S.C.
8 § 2253.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
11 after being served with these findings and recommendations, petitioner may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Petitioner is advised that
14 failure to file objections within the specified time may waive the right to appeal the District
15 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: June 24, 2021

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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