

1 leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave
2 granted.” Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971) (per curiam) (citations omitted).

3 Petitioner alleges he has been and continues to be denied a bail hearing and bail setting in
4 violation of his Eighth and Fourteenth Amendment rights, and that his counsel was ineffective in
5 addressing the matter. ECF No. 1 at 3, 7. He seeks an order from this court directing the
6 Sacramento Superior Court to commence a bail hearing and to allow him to post bail as he poses
7 no danger to the public or to himself. Id. at 8.

8 Pursuant to 28 U.S.C. § 2241, the courts have jurisdiction to consider a habeas petition
9 brought by a pretrial detainee. McNeely v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir. 2003)
10 (citations omitted). Under § 2241(c)(3), a pretrial detainee may seek a writ of habeas corpus
11 where “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.”
12 Although Younger v. Harris, 401 U.S. 37, 45 (1971), provides that federal courts may not
13 interfere with a pending state criminal case absent extraordinary circumstances, abstaining under
14 Younger is improper if the issue raised is “distinct from the underlying criminal prosecution and
15 would not interfere with it,” such as a challenge to bail proceedings, Arevalo v. Hennessy, 882
16 F.3d 763, 766 (9th Cir. 2018) (emphasis added). However, even if the court need not abstain due
17 to the ongoing criminal case, the petition at bar should still be dismissed because the claims have
18 not been exhausted.

19 Section 2241 “does not specifically require petitioners to exhaust direct appeals before
20 filing petitions for habeas corpus. However, [the Ninth Circuit] require[s], as a prudential matter,
21 that habeas petitioners exhaust available judicial and administrative remedies before seeking
22 relief under § 2241.” Castro-Cortez v. INS, 239 F.3d 1037, 1047 (9th Cir. 2001) (citations and
23 footnote omitted), abrogated on other grounds by Fernandez-Vargas v. Gonzales, 548 U.S. 30
24 (2006). A petitioner satisfies the exhaustion requirement by fairly presenting all federal claims to
25 the highest state court before presenting them to the federal court. Baldwin v. Reese, 541 U.S.
26 27, 29 (2004) (citations omitted). Here, petitioner explicitly represents that he has not exhausted

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1 his available state court remedies¹ and, while he claims counsel was ineffective in addressing this
2 matter, he has provided no reason why he was unable to seek relief in the state courts.

3 Accordingly, the petition should be dismissed.

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

5 1. Petitioner's motion to proceed in forma pauperis (ECF No. 2) is GRANTED.

6 2. The Clerk of the Court shall randomly assign a United States District Judge to this
7 action.

8 IT IS FURTHER RECOMMENDED that petitioner's application for a writ of habeas
9 corpus be dismissed.

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

17 DATED: July 31, 2023

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19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE

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28 ¹ A search of the California Supreme Court's website indicates that there have been no petitions
filed by petitioner.