



1 assistance of counsel at his arraignment; and (4) he was denied his  
2 right to a "speedy preliminary examination" under California Penal  
3 Code section 859(b).

4           This Court may entertain a Petition for a Writ of Habeas  
5 Corpus under 28 U.S.C. section 2241(c) (3) by a person who is in  
6 custody but not yet convicted or sentenced. See McNeely v. Blanas,  
7 336 F.3d 822, 824 n.1 (9th Cir. 2003); Application of Floyd, 413 F.  
8 Supp. 574, 576 (D. Nev. 1976). Although there is no exhaustion  
9 requirement for a petition brought under 28 U.S.C. section  
10 2241(c) (3), principles of comity and federalism require that this  
11 Court abstain and not entertain a pretrial habeas challenge unless  
12 the petitioner shows that: (1) he has exhausted available state  
13 judicial remedies, and (2) "special circumstances" warrant federal  
14 intervention. Carden v. Montana, 626 F.2d 82, 83-84 (1980), cert.  
15 denied, 449 U.S. 1014 (1980); see also Younger v. Harris, 401 U.S.  
16 37, 43-54 (1971) (under principles of comity and federalism, a  
17 federal court should not interfere with ongoing state criminal  
18 proceedings by granting injunctive or declaratory relief absent  
19 extraordinary circumstances). The special circumstances that might  
20 warrant federal habeas intervention before trial include proven  
21 harassment, bad faith prosecutions and other extraordinary  
22 circumstances where irreparable injury can be shown. Carden, 626  
23 F.2d at 84 (violation of Sixth Amendment right to a speedy trial not  
24 alone an extraordinary circumstance).

25           Because Petitioner has not shown special circumstances  
26 that warrant federal intervention before the trial is held and any  
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1 appeal is completed, this Court will abstain and DISMISS the  
2 Petition without prejudice. See Carden, 626 F.2d at 84. The  
3 alleged constitutional violations that Petitioner claims he is  
4 enduring are matters that can and should be addressed in the first  
5 instance by the trial court, and then by the state appellate courts,  
6 before he seeks a federal writ of habeas corpus.

7           Petitioner is advised that he should not file a new  
8 federal petition for writ of habeas corpus unless and until he gets  
9 convicted, and then not until his direct appeal and state habeas  
10 proceedings have concluded and he has given the state's highest  
11 court a fair opportunity to rule on each of his claims.

12           Petitioner's application to proceed in forma pauperis  
13 application (Doc. #3) is GRANTED.

14           The Clerk is directed to terminate any pending motions as  
15 moot and close the file.

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18           IT IS SO ORDERED.

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21 DATED           06/16/09



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THELTON E. HENDERSON  
United States District Judge

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