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United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARLON E. PAGTAKHAN,  
Petitioner,  
v.  
ED FOULK,  
Respondent.

No. C 09-5495 SI (pr)

**ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS**

Docket Nos. 23, 24, 30 & 35

**INTRODUCTION**

Petitioner Marlon Pagtakhan, a pretrial detainee involuntarily committed to Napa State Hospital pending a restoration of his competency to stand trial in San Mateo County Superior Court, filed this pro se action seeking a writ of habeas corpus under 28 U.S.C. § 2241. Pagtakhan seeks relief in the form of enjoining all further state proceedings and his immediate release from state custody.

As set forth below, because state proceedings regarding Pagtakhan’s competency to stand trial are ongoing, the court must abstain from entertaining his federal petition. The petition will be **DISMISSED** without prejudice subject to Pagtakhan refileing once state proceedings have

1 been completed.<sup>1</sup>

2 **BACKGROUND**

3 On November 19, 2009, pro se petitioner Marlon Pagtakhan, a pretrial detainee  
4 involuntarily committed to Napa State Hospital pending a restoration of his competency to stand  
5 trial in San Mateo County Superior Court, filed a petition for writ of habeas corpus under 28  
6 U.S.C. § 2241. Doc. No. 1. His petition indicates he was arrested on August 11, 2007, and  
7 arraigned shortly thereafter on charges of multiple counts of stalking, stalking with a prior  
8 conviction for stalking, and making criminal threats. Before the preliminary hearing was held,  
9 Pagtakhan’s attorney declared a doubt about his competency. That eventually led to mental  
10 examinations and a determination on October 24, 2007 that Pagtakhan was not competent to  
11 stand trial; he subsequently was committed to the California Department of Mental Health on  
12 November 16, 2007. See Doc. No. 1, Petition Exhibits, Order Of Denial in In Re: Pagtakhan,  
13 San Mateo County Superior Court Case Nos. MH 463328A and HC 1973.

14 After reviewing the petition filed here, the court determined that “[t]he only claims that  
15 may proceed here are the claims pertaining to Pagtakhan’s allegedly improper commitment to  
16 a mental hospital pursuant to California Penal Code § 1370.” Doc. No. 3, Order of Partial  
17 Dismissal And To Show Cause, p. 4. The court then identified those claims as ineffective  
18 assistance of counsel, denial of the opportunity to cross examine witnesses (i.e., the doctors) and  
19 insufficient evidence to support the commitment order. Id., p. 5. Respondent has filed an  
20 answer and Pagtakhan has filed a traverse. See Doc. Nos. 6 & 7.

21 After the matter was submitted, Pagtakhan filed numerous documents with the court,  
22 some of which appeared to suggest that Pagtakhan had been returned to San Mateo County  
23 Superior Court and that further competency proceedings had been initiated against him. See,  
24 e.g., “Addendum Brief on Continued Barratry, Fraud, and Misrepresentation in the State Court,”

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25  
26 <sup>1</sup> Because the court must abstain from entertaining Pagtakhan’s habeas petition, his  
27 pending motions for reconsideration of the denial of his motion for speedy trial (Doc. No. 23),  
28 appointment of counsel (Doc. No. 24) and oral argument (Doc. No. 30), and his “Ex Parte  
Motion to Advance Proceedings (and Request for Immediate Habeas Corpus Relief)” (Doc. No.  
35), also are DISMISSED.

1 p. 2. Given the possibility that further competency proceedings may have rendered the present  
2 petition moot, the court directed the parties to show cause addressing the issue of mootness, and  
3 the parties complied. See Doc. Nos. 11 & 21.

4 According to respondent's answer to the order to show cause, in December 2010 the San  
5 Mateo County District Attorney's office requested a current mental health evaluation for  
6 Pagtakhan and intended to pursue a "Murphy conservatorship" against him if that evaluation  
7 indicated he remained incompetent to stand trial.<sup>2</sup> See Doc. No. 26, Response to Order to Show  
8 Cause Re: Mootness, p. 2. Respondent also noted, based on the information conveyed by the  
9 county prosecutor, "it appears that at the present time the habeas petition is not moot, as  
10 petitioner is currently being detained as incompetent pursuant to the 2007 proceeding he has  
11 challenged in his habeas petition. However, if he is placed under a conservatorship, the petition  
12 will likely be moot." Id.

13 On September 16, 2011, respondent filed an "Update to Status of State Court  
14 Proceedings," explaining that Pagtakhan is awaiting a conservatorship trial, set for October 13,  
15 2011, and that his pending criminal trial is trailing the conservatorship proceedings. Doc. No.  
16 37 at 1.

## 17 DISCUSSION

### 18 A. Younger Abstention

19 This court may entertain a petition for a writ of habeas corpus under 28 U.S.C. §  
20 2241(c)(3) by a person who is in custody but not yet convicted or sentenced. See McNeely v.  
21 Blanas, 336 F.3d 822, 824 n.1 (9th Cir. 2003); Application of Floyd, 413 F. Supp. 574, 576 (D.  
22 Nev. 1976). Although there is no exhaustion requirement for a petition brought under 28 U.S.C.  
23 § 2241(c)(3), principles of comity and federalism require that a federal district court abstain and  
24 not entertain a pretrial habeas challenge unless the petitioner shows that: (1) he has exhausted

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25  
26 <sup>2</sup> A "Murphy conservatorship" refers to a conservatorship under California Welfare and  
27 Institutions code section 5008(h)(1)(B). See Conservatorship of Murphy, 134 Cal. App.3d 15  
28 (1982); People v. Karriker, 149 Cal.App.4th 763, 774-777, 780-781 (2007). That code section  
refers to a person previously found incompetent to stand trial under California Penal Code  
section 1370 and who presently is "gravely disabled" and consequently remains incompetent to  
stand trial for criminal charges.

1 available state judicial remedies, and (2) “special circumstances” warrant federal intervention.  
2 Carden v. Montana, 626 F.2d 82, 83–84 (1980); see also Younger v. Harris, 401 U.S. 37, 43–54  
3 (1971) (under principles of comity and federalism, a federal court should not interfere with  
4 ongoing state criminal proceedings by granting injunctive or declaratory relief absent  
5 extraordinary circumstances).

6 Younger abstention is required when: (1) state proceedings, judicial in nature, are  
7 pending; (2) the state proceedings involve important state interests; and (3) the state proceedings  
8 afford adequate opportunity to raise the constitutional issue. See Middlesex County Ethics  
9 Comm. v. Garden State Bar Ass’n., 457 U.S. 423, 432 (1982); Dubinka v. Judges of Superior  
10 Court, 23 F.3d 218, 223 (9th Cir. 1994). All three elements must be present. Agriesti v. MGM  
11 Grand Hotels, Inc., 53 F.3d 1000, 1001 (9th Cir. 1995) (abstention improper where arrest and  
12 issuance of citation were executive acts not judicial in nature, and only potential for future state  
13 judicial proceedings existed). A fourth requirement, articulated by the Ninth Circuit, is that “the  
14 federal court action would enjoin the state proceeding or have the practical effect of doing so,  
15 i.e., would interfere with the state proceeding in a way that Younger disapproves.”  
16 SJSVCCPAC v. City of San Jose, 546 F.3d 1087, 1092 (9th Cir. 2008) (citing cases). Although  
17 abstention is the exception, not the rule, see World Famous Drinking Emporium, Inc. v. City of  
18 Tempe, 820 F.2d 1079, 1082 (9th Cir. 1987), Younger and its companion cases generally require  
19 a federal district court to abstain from granting injunctive relief when state criminal actions or  
20 certain categories of state civil or administrative proceedings are pending against the federal  
21 plaintiff at the time he or she commences the federal action. See Pennzoil Co. v. Texaco, Inc.,  
22 481 U.S. 1, 10–18 (1987).

23 Abstention may be inappropriate in the “extraordinary circumstance” that: (1) the party  
24 seeking relief in federal court does not have an adequate remedy at law and will suffer  
25 irreparable injury if denied equitable relief, see Mockaitis v. Harcleroad, 104 F.3d 1522, 1528  
26 (9th Cir. 1997) (citing Younger, 401 U.S. at 43–44); or (2) the state tribunal is incompetent by  
27 reason of bias, see Gibson v. Berryhill, 411 U.S. 564, 577–79 (1973). For instance, special  
28 circumstances that might warrant federal habeas intervention before trial include proven

1 harassment, bad faith prosecutions and other extraordinary circumstances where irreparable  
2 injury can be shown. Carden, 626 F.2d at 84 (violation of Sixth Amendment right to a speedy  
3 trial not alone an extraordinary circumstance).

4 **B. Competency Proceedings Under California Statutory Law**

5 California Penal Code section 1367 prohibits the trial or punishment of a mentally  
6 incompetent person, as follows:

7 A person cannot be tried or adjudged to punishment while that  
8 person is mentally incompetent. A defendant is mentally  
9 incompetent for purposes of this chapter if, as a result of mental  
10 disorder or developmental disability, the defendant is unable to  
understand the nature of the criminal proceedings or to assist  
counsel in the conduct of a defense in a rational manner.

11 Id., subd. (a).<sup>3</sup>

12 At the time of Pagtakhan’s pre-trial proceedings, California Penal Code section 1368 read  
13 in relevant part:

14 . . . .

- 15 (b) If counsel informs the court that he believes the defendant is or may be mentally  
16 incompetent, the court shall order that the question of the defendant’s mental  
17 competence is to be determined in a hearing which is held pursuant to Sections  
18 1368.1 and 1369. If counsel informs the court that he or she believes the  
19 defendant is mentally competent, the court may nevertheless order a hearing. Any  
20 hearing shall be held in the superior court.
- 21 (c) Except as provided in Section 1368.1, when an order for a hearing into the present  
22 mental competence of the defendant has been issued, all proceedings in the  
23 criminal prosecution shall be suspended until the question of the present mental  
24 competence of the defendant has been determined.

21 Id. Once defense counsel has declared a doubt as to the defendant’s competency, “[t]he court  
22 court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may  
23 deem appropriate, to examine the defendant.” Cal. Penal Code § 1369, subd. (a). The  
24 examining doctors must then:

25 evaluate the nature of the defendant’s mental disorder, if any, the  
26 defendant’s ability or inability to understand the nature of the

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27 <sup>3</sup> “It is well established that the Due Process Clause of the Fourteenth Amendment  
28 prohibits the criminal prosecution of a defendant who is not competent to stand trial.” Medina  
v. California 505 U.S. 437, 439 (1992).

1 criminal proceedings or assist counsel in the conduct of a defense  
2 in a rational manner as a result of a mental disorder and, if within  
3 the scope of their licenses and appropriate to their opinions, whether  
4 or not treatment with antipsychotic medication is medically  
5 appropriate for the defendant and whether antipsychotic medication  
6 is likely to restore the defendant to mental competence.

7 Id.

8 After a competency hearing is held and the defendant is determined incompetent to stand  
9 trial, the trial “shall be suspended until the person becomes mentally competent.” Cal. Penal  
10 Code § 1370, subdivision (a)(1)(B). The court then “shall order that the mentally incompetent  
11 defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally  
12 disordered[] ... .” Id., subd. (a)(1)(B)(i).

13 California Penal Code section 1370, subdivision (c)(1) provides the following limit on  
14 the duration of time a defendant may be committed to a state hospital for incompetency  
15 treatment:

16 At the end of three years from the date of commitment or a period  
17 of commitment equal to the maximum term of imprisonment  
18 provided by law for the most serious offense charged in the  
19 information, indictment, or misdemeanor complaint, whichever  
20 is shorter, a defendant who has not recovered mental competence shall  
21 be returned to the committing court. The court shall notify the  
22 community program director or a designee of the return and of any  
23 resulting court orders.

24 Id. Once an incompetent defendant has been committed for the maximum commitment period  
25 and returned to the committing court, if it appears to the court that the defendant is “gravely  
26 disabled,” the court shall order the county conservatorship investigator to initiate a “Murphy  
27 conservatorship.” See People v. Karriker, 149 Cal.App.4th at 774–777; Cal. Penal code § 1370,  
28 subd. (c)(2); Cal. Welf. & Inst. Code § 5008, subd. (h)(1)(B). A person is considered “gravely  
disabled” under California Welfare and Institutions Code section 5008(h)(1)(B) if the following  
conditions are met:

(i) The indictment or information pending against the defendant at  
the time of commitment charges a felony involving death, great  
bodily harm, or a serious threat to the physical well-being of  
another person.

(ii) The indictment or information has not been dismissed.

1 (iii) As a result of mental disorder, the person is unable to  
2 understand the nature and purpose of the proceedings taken against  
3 him or her and to assist counsel in the conduct of his or her defense  
4 in a rational manner.

5 Id. The court may impose a Murphy conservatorship if it finds the defendant, as a result of a  
6 mental disorder, “represents a substantial danger of physical harm to others.” Karriker, 149  
7 Cal.App. 4th at 776; Conservatorship of Hofferber, 28 Cal.3d 161, 176–177 (1980).  
8 Alternatively, the court may dismiss the charges and order the defendant released, without  
9 prejudice to the initiation of alternative commitment proceedings under the  
10 Lanterman–Petris–Short Act.<sup>4</sup> Cal. Penal code § 1370, subd. (e); In re Davis, 8 Cal.3d 798, 806  
11 (1973).

12 **C. Analysis**

13 Here, the record shows that competency proceedings were initiated against Pagtakhan  
14 once his defense counsel declared a doubt about Pagtakhan’s competency. Pagtakhan then  
15 underwent mental examinations and was found not competent to stand trial; he subsequently was  
16 committed to the California Department of Mental Health. See Doc. No. 1, Petition Exhibits,  
17 Order Of Denial in In Re: Pagtakhan, San Mateo County Superior Court Case Nos. MH  
18 463328A and HC 1973. The record further demonstrates that at the end of Pagtakhan’s three-  
19 year commitment and in accordance with California Penal Code section 1370, subdivision (c)(1),  
20 Pagtakhan became the subject of conservatorship proceedings. See Doc. No. 37, Update to  
21 Status of State Court Proceedings.

22 While it is clear from Pagtakhan’s many filings with this court he is dissatisfied with his  
23 present situation, it is equally as clear that this action meets all the requirements for  
24 Younger abstention to apply. See Middlesex County Ethics Comm. v. Garden State Bar Ass’n.,  
25 457 U.S. at 432; Dubinka v. Judges of Superior Court, 23 F.3d at 223 (federal district court must  
26 abstain when: (1) state proceedings, judicial in nature, are pending; (2) the state proceedings


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28 <sup>4</sup> Cal. Welf. & Inst. Code section 5000 et seq.

1 involve important state interests; and (3) the state proceedings afford adequate opportunity to  
2 raise the constitutional issue); SJSVCCPAC v. City of San Jose, 546 F.3d at 1092 (federal  
3 district court must abstain when “the federal court action would enjoin the state proceeding or  
4 have the practical effect of doing so, i.e., would interfere with the state proceeding in a way that  
5 Younger disapproves.”).

6 Accordingly, the action is DISMISSED without prejudice. The clerk is directed to  
7 terminate any pending motions as moot and close the file.

8  
9 IT IS SO ORDERED.

10 DATED: October 3, 2011

  
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SUSAN ILLSTON  
United States District Judge