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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE STEVEN BONILLA,

Nos. C 11-3180 CW (PR)  
C 11-3181 CW (PR)  
C 11-3206 CW (PR)  
C 11-3398 CW (PR)  
C 11-3441 CW (PR)  
C 11-3631 CW (PR)  
C 11-4334 CW (PR)  
C 11-4335 CW (PR)  
C 11-4534 CW (PR)  
C 11-4731 CW (PR)  
C 11-4737 CW (PR)

Plaintiff.

\_\_\_\_\_/

ORDER OF DISMISSAL; TERMINATING  
ALL PENDING MOTIONS; NOTIFYING  
PLAINTIFF OF APPLICATION OF 28  
U.S.C. § 1915(q) TO FUTURE  
ACTIONS

BACKGROUND

Plaintiff Steven Bonilla has been sentenced to death by the Superior Court of California for the County of Alameda. He is incarcerated at San Quentin State Prison. Although his state habeas case currently is being litigated, he filed a request for appointment of counsel for his future federal habeas litigation in this Court. See Bonilla v. Ayers, No. C 08-0471 CW (PR). Pursuant to Habeas Local Rule 2254-25, this Court granted his request for appointment of counsel and referred the matter to the Northern District's Selection Board for the recommendation of qualified counsel to represent Plaintiff in his federal habeas proceedings. Additionally, pursuant to Habeas Local Rule 2254-24(a), the Court granted Plaintiff's concurrent request for a stay of execution.

(Docket no. 3.)

Although Plaintiff's state habeas case is pending, Plaintiff has filed numerous pro se requests and motions in C 08-0471. All of the requests and motions have been denied by this Court or withdrawn by Plaintiff. In particular, on February 16, 2011, the

1 Court issued an Order telling Plaintiff that no further filings  
2 regarding CR 88-259 MISC AJZ (Grand Jury proceedings) would be  
3 accepted by this Court. (Docket no. 34.) Additionally, the Court  
4 dismissed with prejudice In re: Steven Wayne Bonilla, No. C 11-0441  
5 CW (PR), a pro se complaint filed by Plaintiff regarding CR 88-259  
6 MISC AJZ. (Id.) On March 29, 2011, the Court denied several more  
7 pro se motions filed by Plaintiff in C 08-0471. In doing so, the  
8 Court wrote:

9 As this Court has stated multiple times, Petitioner's  
10 state habeas case is still pending in the state court.  
11 The Court reiterates to Petitioner that challenges to his  
12 state trial conviction must be reviewed by the state  
13 courts before being considered by the federal court.  
14 Until that time, Petitioner's various claims in his pro se  
15 pleadings are not ripe for this Court to consider.

16 (Docket no. 54 at 2:16-22.)

17 Between June 1 and June 20, 2011, Plaintiff filed in this  
18 Court nineteen pro se civil rights actions under 42 U.S.C. § 1983.  
19 The Court dismissed all of those actions for the reason that none  
20 of the allegations in Plaintiff's complaints stated a claim for  
21 relief under § 1983. Specifically, the Court explained to  
22 Plaintiff that although challenges to the lawfulness of confinement  
23 or its duration can be addressed only by way of habeas corpus,

24 Here, in an apparent attempt to circumvent this Court's  
25 prior admonition to Plaintiff that no further filings  
26 regarding CR 88-259 MISC AJZ would be accepted by the  
27 Court and that additional unripe pro se motions in C 08-  
28 0471 would be denied, Plaintiff has filed the instant  
civil rights complaints in which he seeks access to  
certain discovery, witness testimony, declarations and  
other information that he claims would render his death  
penalty conviction invalid, including information  
regarding CR 88-259 MISC AJZ. Because all of Plaintiff's  
civil rights complaints seek relief that must be pursued  
by way of habeas corpus, all of the instant civil rights  
actions are hereby DISMISSED without prejudice to  
Plaintiff's bringing his claims in a federal habeas  
petition. See Trimble v. City of Santa Rosa, 49 F.3d

1 583, 586 (9th Cir. 1995). Plaintiff is reminded,  
2 however, that he must heed the Court's prior admonitions  
before filing additional pro se matters in C 08-0471.

3 In re Steven Bonilla, Nos. C 11-2612 et seq. CW (PR), Order of  
4 Dismissal at 2:28-3:15; see also In re Steven Bonilla, Nos.  
5 C 11-2808 et seq. CW (PR), Order of Dismissal; In re Steven  
6 Bonilla, Nos. C 11-3052 et seq. CW (PR), Order of Dismissal.

7 Now pending before the Court are eleven new pro se civil  
8 rights actions filed by Plaintiff. For the reasons discussed  
9 below, the actions are DISMISSED.

10 DISCUSSION

11 With the exception of one complaint filed against an attorney  
12 Plaintiff hired in a civil proceeding, all of Plaintiff's newly-  
13 filed civil rights actions bear some connection to his state  
14 criminal proceedings. Rather than seeking habeas corpus relief,  
15 however, as Plaintiff previously attempted to do in his prior civil  
16 rights actions, most of the instant complaints seek monetary  
17 damages and/or injunctive relief from individuals or entities that  
18 allegedly presented perjured testimony, provided false evidence or  
19 otherwise conspired with the prosecution to obtain Plaintiff's  
20 conviction. See Bonilla v. FBI, No. C 11-3631 CW (PR) (seeking  
21 return of property seized by FBI that was used at trial); Bonilla  
22 v. Keyes, No. C 11-4534 CW (PR) (suing private individual who  
23 testified at Plaintiff's trial and allegedly committed perjury);  
24 Bonilla v. Rand Investigation, No. C 11-4731 CW (PR) (suing private  
25 investigation company that obtained personal phone records later  
26 used against Plaintiff at trial); Bonilla v. Rule, No. C 11-4737 CW  
27 (PR) (suing private author for damages for libel in relation to  
28 Plaintiff's conviction).

1           Additionally, three of Plaintiff's complaints seek damages  
2 from private actors who allegedly unlawfully took possession of  
3 Plaintiff's business and its proceeds while conspiring to convict  
4 Plaintiff. See Bonilla v. Baptist, et al., No. C 11-3398 CW (PR);  
5 Bonilla v. Pacific Growers, No. C 11-4334 CW (PR); Bonilla v.  
6 Baptist, et al., No. C 11-4335 CW (PR). And, as noted, one of  
7 Plaintiff's complaints seeks monetary damages from a private  
8 attorney hired by Plaintiff in a civil proceeding. See Bonilla v.  
9 Lively, No. C 11-3180 CW (PR).

10           The above eight cases are subject to dismissal for the  
11 following reasons. As an initial matter, Plaintiff cannot seek  
12 monetary damages from private individuals under § 1983. See Gomez  
13 v. Toledo, 446 U.S. 635, 640 (1980); Ouzts v. Maryland Nat'l Ins.  
14 Co., 505 F.2d 547, 550 (9th Cir. 1974). This includes private  
15 attorneys. See Franklin v. Oregon, 662 F.2d 1337, 1345 (9th Cir.  
16 1981). Accordingly, all such claims are DISMISSED for failure to  
17 state a claim upon which relief may be granted.

18           Further, Plaintiff cannot pursue any claim for damages or  
19 injunctive relief that, if successful, necessarily would call into  
20 question the validity of his conviction or confinement. Heck v.  
21 Humphrey, 512 U.S. 477 (1994), holds that in order to state a claim  
22 for damages for an allegedly unconstitutional conviction or term of  
23 imprisonment, or for other harm caused by actions whose  
24 unlawfulness would render a conviction or sentence invalid, a  
25 plaintiff asserting a violation of 42 U.S.C. § 1983 must prove that  
26 the conviction or sentence has been reversed or declared invalid.  
27 Id. at 486-87. If success in the § 1983 lawsuit would necessarily  
28 demonstrate the invalidity of the confinement or its duration, the

1 § 1983 lawsuit is barred, irrespective of whether the plaintiff  
2 seeks monetary damages or equitable relief. Wilkinson v. Dotson,  
3 544 U.S. 74, 81 (2005).

4 Here, Plaintiff's complaints seeking damages and/or injunctive  
5 relief from those who allegedly conspired to prosecute and convict  
6 him would, if successful, necessarily call into question the  
7 validity of Plaintiff's conviction. Accordingly, the complaints  
8 that raise such claims are DISMISSED for failure to state a claim  
9 upon which relief may be granted. See Heck, 512 U.S. at 487.

10 Another three of Plaintiff's complaints raise claims  
11 concerning actions taken by the state courts. In one case,  
12 Plaintiff seeks damages and injunctive relief from a state court  
13 judge for alleged erroneous evidentiary rulings in Plaintiff's  
14 criminal proceedings. See Bonilla v. Goodman, No. C 11-3260 CW  
15 (PR). A state judge, however, is absolutely immune from civil  
16 liability for damages under § 1983 for judicial acts. See Pierson  
17 v. Ray, 386 U.S. 547, 553-55 (1967). Further, any claim for  
18 injunctive relief regarding evidentiary matters at Plaintiff's  
19 trial must be brought by way of habeas corpus. Accordingly, this  
20 complaint is DISMISSED for failure to state a claim upon which  
21 relief may be granted.

22 In Plaintiff's remaining two cases, he challenges the  
23 constitutionality of the California Supreme Court's policy  
24 requiring that an attorney be appointed to represent capital  
25 defendants in all automatic appeals. See Bonilla v. Supreme Court  
26 of Cal., No. C 11-3181 CW (PR); Bonilla v. Supreme Court of Cal., C  
27 11-3441 CW (PR). In particular, Plaintiff claims that because of  
28 such policy he has been forced to proceed with an attorney who is

1 providing ineffective assistance of counsel. Under principles of  
2 comity and federalism, a federal court should not interfere with  
3 ongoing state criminal proceedings by granting injunctive or  
4 declaratory relief absent extraordinary circumstances. See Younger  
5 v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention is  
6 required when: (1) state proceedings, judicial in nature, are  
7 pending, (2) the state proceedings involve important state  
8 interests, and (3) the state proceedings afford adequate  
9 opportunity to raise the constitutional issue. See Middlesex  
10 County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432  
11 (1982). The rationale of Younger applies throughout appellate  
12 proceedings, requiring that state appellate review of a state court  
13 judgment be exhausted before federal court intervention is  
14 permitted. See Huffman v. Pursue, Ltd., 420 U.S. 592, 607-11  
15 (1975).

16 Here, the Court declines, under Younger, to intervene in  
17 Plaintiff's ongoing appellate proceedings before the California  
18 Supreme Court. Accordingly, the Court will abstain from addressing  
19 Plaintiff's challenges to the California Supreme Court's policy and  
20 these two cases are DISMISSED without prejudice.

21 CONCLUSION

22 For the foregoing reasons, the Court orders as follows:

23 1. The following nine actions are DISMISSED without leave to  
24 amend for failure to state a claim upon which relief may be  
25 granted: Bonilla v. Lively, C 11-3180; Bonilla v. Goodman, C 11-  
26 3260; Bonilla v. Baptist, et al., C 11-3398; Bonilla v. FBI, C 11-  
27 3631; Bonilla v. Pacific Growers, C 11-4334; Bonilla v. Baptist, et  
28 al., C 11-4335; Bonilla v. Keyes, C 11-4534; Bonilla v. Rand

1 Investigation, C 11-4731; Bonilla v. Rule, C 11-4737 CW.

2       2. The following two actions are DISMISSED without prejudice  
3 on abstention grounds: Bonilla v. Supreme Court of Cal., C 11-3181;  
4 Bonilla v. Supreme Court of Cal., C 11-3441.

5       3. In light of the above dismissals for failure to state a  
6 claim upon which relief may be granted, Plaintiff is advised that  
7 he will not be permitted to proceed in forma pauperis (IFP) in any  
8 future civil action he files in this Court, as set forth in 28  
9 U.S.C. § 1915(g). Specifically, under that section, a prisoner may  
10 not bring a civil action IFP "if the prisoner has, on 3 or more  
11 prior occasions, while incarcerated or detained in any facility,  
12 brought an action or appeal in a court of the United States that  
13 was dismissed on the grounds that it is frivolous, malicious, or  
14 fails to state a claim upon which relief may be granted, unless the  
15 prisoner is under imminent danger of serious physical injury." 28  
16 U.S.C. § 1915(g).

17       Consequently, Plaintiff will be required to pay the full  
18 \$350.00 filing fee at the time of filing any future civil action  
19 unless he meets the "imminent danger" exception.

20       4. The Clerk of the Court shall enter judgment in each of  
21 the above civil rights actions, terminate all pending motions  
22 therein, and close the files. The Clerk of the Court also shall  
23 file a copy of this Order in C 08-0471.

24       IT IS SO ORDERED.

25 Dated: 10/25/2011

26 

27 CLAUDIA WILKEN  
28 UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 STEVEN W BONILLA,

5 Plaintiff,

6 v.

7 DAVID LIVELY et al,

8 Defendant.

Case Number: CV11-03180 CW

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on October 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 Steven Wayne Bonilla J-48500  
16 San Quentin State Prison  
17 San Quentin, CA 94964

Dated: October 25, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk