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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JUSTIN COYLE,  <p style="text-align: right;">Petitioner,</p>	Case No.: 16-0379 BTM (KSC)
v.  SAN DIEGO SUPERIOR COURT,  <p style="text-align: right;">Respondent.</p>	<b>ORDER DISMISSING CASE WITHOUT PREJUDICE</b>

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup>

**FAILURE TO SATISFY FILING FEE REQUIREMENT**

Petitioner has failed to either pay the \$5.00 filing fee or submit adequate proof of his inability to pay the fee. This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis. See Rule 3(a), 28 U.S.C. foll. § 2254.

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<sup>1</sup> Petitioner submitted his Petition on a form intended for a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2255. Since Petitioner does not challenge a criminal sentence in federal court, however, the Court has construed his Petition as one filed pursuant to 28 U.S.C. § 2254.

1 **ABSTENTION**

2 The Petition must be dismissed because it is clear that, to the degree Petitioner is  
3 challenging the proceedings in his state criminal prosecution, this Court is barred from  
4 consideration of his claims by the abstention doctrine announced in *Younger v. Harris*,  
5 401 U.S. 37 (1971). Under *Younger*, federal courts may not interfere with ongoing state  
6 criminal proceedings absent extraordinary circumstances. *Id.* at 45-46; see *Middlesex*  
7 *County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982) (*Younger*  
8 “espouse[d] a strong federal policy against federal-court interference with pending state  
9 judicial proceedings.”) These concerns are particularly important in the habeas context  
10 where a state prisoner’s conviction may be reversed on appeal, thereby rendering the  
11 federal issue moot. *Sherwood v. Tompkins*, 716 F.2d 632, 634 (9th Cir. 1983).

12 Absent extraordinary circumstances, abstention under *Younger* is required when:  
13 (1) state judicial proceedings are ongoing; (2) the state proceedings involve important  
14 state interests; and (3) the state proceedings afford an adequate opportunity to raise the  
15 federal issue. *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 799 (9th  
16 Cir. 2001). All three of these criteria are satisfied here. At the time Petitioner filed the  
17 instant Petition, it appears he is in custody awaiting trial in state court. (See Pet. at 83-  
18 88.) Thus Petitioner’s criminal case is still ongoing in the state courts. Further, there is  
19 no question that the state criminal proceedings involve important state interests. Finally,  
20 Petitioner has failed to show that he has not been afforded an adequate opportunity to  
21 raise the federal issues on direct appeal, as he has not yet proceed to trial. Abstention is  
22 therefore required. See *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975) (*Younger*  
23 applies to state appellate proceedings as well as ongoing proceedings in state trial court);  
24 see also *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972) (“[O]nly in the most unusual  
25 circumstances is a defendant entitled to have federal interposition by way of injunction or  
26 habeas corpus until after the jury comes in, judgment has been appealed from that the  
27 case concluded in the state courts.”)

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1 Because Petitioner has failed to demonstrate that extraordinary circumstances exist  
2 which would relieve this Court of its obligation to abstain from interfering with ongoing  
3 state criminal proceedings, his Petition is **DISMISSED** without prejudice. *Juidice v.*  
4 *Vail*, 430 U.S. 327, 337 (1977) (holding that if Younger abstention applies, a court may  
5 not retain jurisdiction but should dismiss the action.)

6 The Court notes that Petitioner has attached numerous pages alleging various  
7 violations of the grievance procedure at the George Baily Detention Facility and  
8 complaints about the conditions of his confinement at that facility. It is not clear whether  
9 Petitioner intended to raise these claims in the current Petition or whether those  
10 documents are attached as supporting evidence for the claims he makes in the habeas  
11 corpus petition. In any event, challenges to the fact or duration of confinement are  
12 brought by petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254; challenges  
13 to conditions of confinement are brought pursuant to the Civil Rights Act, 42 U.S.C.  
14 § 1983. See *Preiser v. Rodriguez*, 411 U.S. 475, 488-500 (1973). When a state prisoner  
15 is challenging the very fact or duration of his physical imprisonment, and the relief he  
16 seeks is a determination that he is entitled to immediate release or a speedier release from  
17 that imprisonment, his sole federal remedy is a writ of habeas corpus. *Id.* at 500. On the  
18 other hand, a § 1983 action is a proper remedy for a state prisoner who is making a  
19 constitutional challenge to the conditions of his prison life, but not to the fact or length of  
20 his custody. *Id.* at 499; *McIntosh v. United States Parole Comm'n*, 115 F.3d 809, 811-12  
21 (10th Cir. 1997). To the degree Petitioner seeks to challenges the conditions of his  
22 confinement, but not the fact or length of his custody, Petitioner has not stated a  
23 cognizable habeas claim pursuant to § 2254. The Court notes Petitioner has a pending 42  
24 U.S.C. § 1983 case in this Court, case number 15cv2867 H (DHB).

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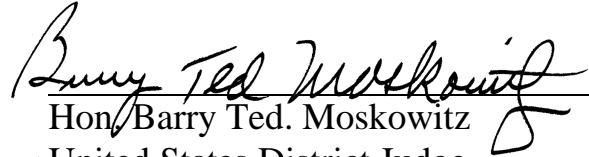
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1 **CONCLUSION**

2 For the foregoing reasons, the Court **DISMISSES** the Petition without prejudice  
3 because this Court must abstain from interfering with the ongoing state criminal  
4 proceedings pursuant to the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971).

5 **IT IS SO ORDERED.**

6 Dated: February 24, 2016

7   
8 Hon. Barry Ted. Moskowitz  
9 United States District Judge

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