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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTINA RITTER HOOK,
Petitioner,
v.
MICHAEL RODDY, et al.,
Respondents.

Case No.: 24-CV-1939 JLS (KSC)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Presently before the Court is *pro se* Petitioner Christina Ritter Hook’s Petition for a Writ of Habeas Corpus (“Pet.,” ECF No. 1), filed pursuant to 28 U.S.C. § 2254. For the reasons discussed below, the Court dismisses the case without prejudice.

FAILURE TO SATISFY THE FILING FEE REQUIREMENT

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed *in forma pauperis*. The Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or has qualified to proceed *in forma pauperis*. See R. 3(a), Rules Governing Section 2254 Cases (2019). Accordingly, the instant case is subject to dismissal for failure to satisfy the filing fee requirement.

BASIS FOR PETITION

In the Petition, Petitioner seeks habeas relief “from unlawful incarceration in violation of church and state separate and in violation of Article VI section III of the United

1 States Constitution” and asserts she “is being unlawfully detained,” citing case numbers
2 CN443326 and SCN457249. Pet. at 1. Meanwhile, the San Diego County Sheriff’s
3 Department’s website reflects that Petitioner was arrested by the San Diego Sheriff Office,
4 was booked on September 17, 2024, is being held on \$101,000 bail, and that Petitioner’s
5 cases, case numbers CN443326 and SCN457249, are set to be heard in San Diego Superior
6 Court for further proceedings on November 15, 2024, on a misdemeanor charge of petty
7 theft and a felony charge of second degree robbery pursuant to Cal. Penal Codes
8 §§ 484–490.5 and 211, respectively. See Sheriff’s Who is in Jail, San Diego County
9 Sheriff’s Department, <https://apps.sdsheriff.net/wij/wij.aspx> (last visited October 22,
10 2024). While Petitioner alleges she is being held in custody in violation of the United
11 States Constitution, she is not currently in custody pursuant to the judgment of a state court.
12 Thus, any federal habeas challenge to Petitioner’s current detention is properly brought
13 under 28 U.S.C. § 2241, not 28 U.S.C. § 2254. As the Ninth Circuit has explained:

14 Section 2254 is properly understood as “in effect implement(ing)
15 the general grant of habeas corpus authority found in § 2241, as
16 long as the person is in custody pursuant to the *judgment* of a
17 state court, and not in state custody for some other reason, such
18 as pre-conviction custody, custody awaiting extradition, or other
19 forms of custody that are possible without a conviction.

20 *White v. Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004) (quoting *Walker v. O’Brien*, 216
21 F.3d 626, 633 (7th Cir. 2000) (additional citations omitted)).

22 “Subject matter jurisdiction under the federal habeas corpus statute, 28 U.S.C.
23 § 2254(a), is limited to those persons ‘in custody pursuant to the judgment of a State.’”
24 *Brock v. Weston*, 31 F.3d 887, 889 (9th Cir. 1994); see also 28 U.S.C. § 2241(c)(3). It is a
25 jurisdictional requirement that, at the time a habeas petition is filed, “the habeas petitioner
26 be ‘in custody’ under the conviction or sentence under attack.” *Maleng v. Cook*, 490 U.S.
27 488, 490–91 (1989) (citing 28 U.S.C. §§ 2241(c)(3) & 2254(a)); see *Carafas v. LaVallee*,
28 391 U.S. 234, 238 (1968). Accordingly, if Petitioner seeks to challenge the

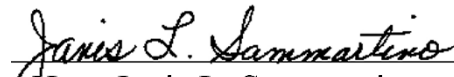
1 constitutionality of her pre-trial detention, she must file a petition for a writ of habeas
2 corpus pursuant to 28 U.S.C. § 2241, not 28 U.S.C. § 2254.

3 **CONCLUSION**

4 For the reasons discussed above, the Court **DISMISSES** the case without prejudice.
5 *For Petitioner's convenience, the Clerk of Court is directed to send Petitioner a blank In*
6 *Forma Pauperis Application and a blank 28 U.S.C. § 2241 Habeas Petition form*
7 *together with a copy of this Order.*

8 **IT IS SO ORDERED.**

9 Dated: October 25, 2024

10 
11 Hon. Janis L. Sammartino
12 United States District Judge
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