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UNITED STATES COURT OF APPEALS

FILED

MAY 7 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL R. SPENGLER, Petitioner-Appellant, v. ALEX VILLANUEVA, Respondent-Appellee.	No. 20-55080 D.C. No. 2:19-cv-08259-DOC-SP Central District of California, Los Angeles ORDER

Immediately

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Before: M. SMITH and LEE, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Wilson v. Belleque*, 554 F.3d 816, 825-26 (9th Cir. 2009).

Any pending motions are denied as moot.

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DENIED.

Clerk US Court of Appeals
9th Cir.
PO Box 193939
San Francisco, CA 94119-3939

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL R. SPENGLER, Petitioner, v. ALEX VILLANUEVA, Sheriff, Respondent.	Case No. CV 19-8259-DOC (SP) ORDER DENYING A CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts reads as follows:

> (a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to

reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means a showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (internal quotation marks omitted, citation omitted).

Two showings are required "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim." *Slack*, 529 U.S. at 484. In addition to showing that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," the petitioner must also make a showing that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* As the Supreme Court further explained:

> Section 2253 mandates that both showings be made before the court of appeals may entertain the appeal. Each component of the § 2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments.

Id. at 485.

Here, the Court has denied the Petition because petitioner's claim is not cognizable on federal habeas review. After duly considering petitioner's contentions, the Court finds that petitioner has failed to make the requisite showing that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling" with respect to its findings.

Accordingly, a Certificate of Appealability is denied in this case.

Dated: December 11, 2019

HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

Presented by:

Sheri Pym
United States Magistrate Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL R. SPENGLER, Petitioner, v. ALEX VILLANUEVA, Sheriff, Respondent.	Case No. CV 19-8259-DOC (SP) MEMORANDUM AND ORDER DENYING MOTIONS FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER, AND SUMMARILY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

I.

INTRODUCTION

On September 24, 2019, petitioner Michael R. Spengler, an inmate at the Twin Towers Correctional Facility ("TTCF"), filed what purports to be a "Pre-Conviction" Petition for Writ of Habeas Corpus (the "Petition"). Petitioner is a pretrial detainee, and challenges the conduct of jail officials and the prosecution, and the rulings of the trial court, in the investigation and prosecution of the state criminal case on which he is awaiting trial. With the Petition, petitioner also filed an "O.S.C. for a Preliminary Injunction" (the "Motion"). (The Petition and Motion were docketed together as a single document.) In the Motion, petitioner seeks a

stay of his state criminal case to allow this Court time to intervene in the state criminal case.

On November 26, 2019, petitioner also filed a Request for a temporary restraining order ("TRO") and supplement to his Motion for a preliminary injunction, in two parts (docket nos. 14, 15). Petitioner again asks the Court to stay his state criminal case, and also to inquire into problems with his receipt of legal mail at TTCF. On December 9, 2019, petitioner filed another Emergency Motion for a TRO and preliminary injunction (docket no. 16), again requesting the Court to stay his state criminal case.

For the reasons that follow, the Petition will be summarily dismissed. Most fundamentally, petitioner does not seek relief that is cognizable in a habeas petition, since petitioner is not challenging the legality of his confinement. Moreover, under the *Younger* Abstention Doctrine, this Court may not intervene in petitioner's pending state criminal case, as petitioner asks the Court to do. *See Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). Consequently, petitioner is not entitled to injunctive relief in this case, and the Motion for a preliminary injunction and requests for a TRO therefore will also be denied.

II.

BACKGROUND

This is not petitioner's first attempt to convince this Court to intervene in his state criminal proceedings. He has done so in numerous other cases, including by way of civil rights complaints (case numbers CV 17-450-DOC (SP), CV 17-3078-DOC (SP), CV 17-4100-DOC (SP), CV 17-6552-DOC (SP), CV 18-97-RGK (JPR), CV 17-2078-DOC (SP)), and in one other habeas petition (case number CV 17-884-DOC (SP)). The Court has denied all such efforts, repeatedly finding and advising petitioner that, inter alia, the Court must abstain from interfering with the

state criminal case under the *Younger* Abstention Doctrine.

In the instant Petition and Motion, petitioner again seeks this Court's assistance with his pending state criminal case. He alleges: the prosecution's re-use of evidence that was used against petitioner's co-defendant in a previous trial, in which the co-defendant was acquitted, violates his right against double jeopardy since petitioner is being re-tried as an aider and abettor to the acquitted principal; his self-representation has been revoked and the trial court will not hear his *Marsden* motions challenging his counsel; a jailhouse informant continues to circumvent petitioner's right to counsel; prosecutorial misconduct in multiple respects; and vindictive prosecution. He asks this Court to stay his state criminal case and intervene to protect his federal rights. Additionally, in his requests for a TRO and preliminary injunction, petitioner again asks the Court to stay his pending state criminal case and inquire into problems with his receipt of legal mail at TTCF.

Petitioner here argues, inter alia, he faces irreparable injury because he is being retried in violation of the Double Jeopardy Clause, and as such the *Younger* Abstention Doctrine is inapplicable. Given this argument, on October 4, 2019, the Court ordered respondent to file a response addressing just the double jeopardy issue and Motion for preliminary injunction. After an extension, respondent filed his initial response on November 15, 2019.

III.

FACTS OF WHICH THE COURT TAKES JUDICIAL NOTICE

On November 15, 2019, in his response to the Court's October 4, 2019 order, respondent requested this Court to take judicial notice of the records from the state criminal proceedings in case numbers KA105957 and BA451330. *See* Response at 1-2. A fact subject to judicial notice is one that is "not subject to reasonable dispute because it: (1) is generally known within the trial court's

territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2). Courts "'may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'" *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citation omitted); *see Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 n.3 (9th Cir. 2005) (taking judicial notice of the docket in a related case; "'[m]aterials from a proceeding in another tribunal are appropriate for judicial notice'") (citation omitted); *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) (taking judicial notice of opinion and briefs filed in another proceeding).

The Court here takes judicial notice of the records from the state criminal proceedings that respondent has submitted with his initial response to the Petition, consisting of Los Angeles County Superior Court records, specifically, docket records, minute orders, complaint, information, and trial transcript from case numbers KA105957 and BA451330. *See* Response, Exs. 1-6. These records reflect the following facts, of which the Court also and specifically takes judicial notice.

Petitioner was charged in an information filed on December 17, 2014 in the Los Angeles County Superior Court in case number KA105957 with murder in violation of California Penal Code § 187(a). Response, Ex. 1 at 10. At a preliminary hearing held two weeks prior to the information's filing, petitioner was held to answer in that case for the murder of Michael Meza. *Id.* at 7-8. On October 31, 2016, a jury found petitioner not guilty of the crime of first degree murder of Michael Meza, but the jury was unable to reach a verdict on the lesser included offense of second degree murder. *Id.*, Ex. 1 at 41; Ex. 3 at 98-101. The

court declared a mistrial on the second degree murder charge against petitioner. *Id.*, Ex. 1 at 41; Ex. 3 at 101. The jury acquitted petitioner's co-defendant, Fernando Gonzalez, in the same case of both first and second degree murder. *Id.*, Ex. 2 at 91; Ex. 3 at 95. On December 2, 2016, the prosecution dismissed case number KA105957 without prejudice over petitioner's objection. *Id.*, Ex. 1 at 43.

Meanwhile, petitioner had been charged in case number BA451330 in the Los Angeles Superior Court with the murder of Marcus Nieto in violation of California Penal Code § 187(a). *See id.*, Ex. 5 at 113; *see also id.*, Ex. 4 at 108. That complaint was amended on November 18, 2016 to also charge petitioner with Meza's murder. *Id.*, Ex. 4 at 108; Ex. 5 at 114. Petitioner was held to answer on both charges at a preliminary hearing held on December 20, 2017. *Id.*, Ex. 5 at 129-30. In the two-count information ultimately filed on January 3, 2018 in case number BA451330, petitioner was charged in count one with the February 16, 2013 murder of Marcus Nieto, and in count two with the January 9, 2013 murder of Michael Meza. *Id.*, Ex. 5 at 132; Ex. 6 at 158-60. That case remains pending and is currently set for jury trial on January 13, 2020. *Id.*, Ex. 5 at 156.

IV.

DISCUSSION

Rule 4 of the Rules Governing Section 2254 Cases authorizes the Court to summarily dismiss a habeas petition "[i]f it plainly appears from the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court." Rule 4 also authorizes dismissals on procedural grounds. *See* 28 U.S.C. foll. § 2254, Rule 4 Advisory Committee Note (1976); *White v. Lewis*, 874 F.2d 599, 602 (9th Cir. 1989). Here, the Petition must be dismissed because, as discussed below, it does not raise a cognizable habeas corpus claim over which this Court has jurisdiction, and because it asks this Court to intervene in a pending state criminal case in contravention of the *Younger* Abstention Doctrine. For the same

reasons, the Motion for a preliminary injunction and requests for a temporary restraining order will be denied.

A. Petitioner Is Not Entitled to a TRO or Preliminary Injunction

Petitioner here seeks both a TRO and a preliminary injunction. A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 (1997) (per curiam) (internal quotations marks and citation omitted). The moving party bears the burden to establish that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008) (citations omitted). Alternatively, where there are merely "serious questions going to the merits," the moving party may still obtain a preliminary injunction where the balance of hardships "tips sharply" in the moving party's favor, and where the moving party also shows a likelihood of irreparable injury and that an injunction is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

Where the moving party has not made the minimum showing of irreparable injury, it is not necessary for the court to decide whether the movant is likely to succeed on the merits. *Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1378 (9th Cir. 1985). Likewise, if the moving party "fails to show that he has some chance on the merits, that ends the matter." *Developmental Servs. Network v. Douglas*, 666 F.3d 540, 544 (9th Cir. 2011) (citation omitted).

"The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or

damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons it should not be required." Fed. R. Civ. P. 65(b)(1).

The Motion for a preliminary injunction, filed concurrently with the Petition on September 24, 2019, asks the Court to stay petitioner's state criminal case to allow this Court time to intervene in the state criminal case. Petitioner argues he faces irreparable harm if the Court does not intervene in his state case, but the only harm he in fact faces is the normal harm any criminal defendant faces if a court rules against him and he is convicted. Such harm may be addressed through the normal process: an appeal.

Moreover, even if the harm petitioner faced were irreparable, petitioner has not shown he is likely to succeed on the merits. In fact, petitioner has no chance to succeed on the merits of the instant Petition because, as discussed below, he has not raised a cognizable claim for habeas relief, and the *Younger* Abstention Doctrine applies. As such, petitioner is not entitled to a preliminary injunction.

Petitioner's Request for a TRO and Emergency Motion for a TRO and preliminary injunction filed on November 26, 2019 and December 9, 2019 again ask the Court to stay his state criminal case and inquire into problems with receipt of his legal mail at TTCF. Petitioner claims Deputy Vasquez has intentionally interfered with his legal mail by making petitioner wait more than a month after his legal mail arrives at TTCF in order to give it to him. Specifically, petitioner argues Vasquez's delay in giving petitioner his legal mail has caused him to miss court deadlines and resulted in the denial of his petition for review in the California Supreme Court on October 21, 2019. *See* Mtn., Ex. 10. Petitioner further contends that he suffers irreparable harm because he filed a *Marsden* motion on November 12, 2019 and he will not be able to vigorously pursue his claim because Vasquez will give it to him a month after the deadline has passed.

The Court has already addressed petitioner's request to stay his state case and none of petitioner's allegations suggest he faces a likelihood of irreparable harm from Deputy Vasquez absent court intervention. Petitioner fails to allege facts indicating the delayed mail is anything more than ordinary, albeit frustrating, inconveniences of life in the jail system at TTCF. Although petitioner alleges he suffered harm from the delayed mail that resulted in his October 21, 2019 writ denial, he has not alleged any facts to support his conclusory assertions that the writ was denied due to delays in the mail or that Deputy Vasquez did anything to interfere with his *Marsden* motion such that he is unable to vigorously pursue his claim. Additionally, where petitioner has complained about delayed mail in the past, it appears that TTCF subsequently resolved the issue without court intervention. *See* case number CV 16-6509-DOC (SP), docket no. 53. As such, petitioner fails to show that he is likely to suffer irreparable harm due to delays in receiving his mail. And again, he will not succeed on the merits in this case.

In sum, because petitioner has not shown either a likelihood of success on the merits or that he is likely to suffer irreparable harm if he does not receive the injunctive relief he seeks, his Motion for a preliminary injunction and requests for a TRO will be denied.

B. <u>The Petition Does Not Raise a Cognizable Claim for Habeas Relief</u>

Section 2254 permits a federal court to entertain a habeas petition by a prisoner in state custody "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). "[T]he essence of habeas corpus is an attack by a person in state custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973); *Burnett v. Lampert*, 432 F. 3d 996, 999 (9th Cir. 2005). Here, this Court lacks jurisdiction to entertain the instant Petition because

petitioner is not claiming that he is in custody in violation of the Constitution or other federal law. *See Baily v. Hill*, 599 F.3d 976, 979-82 (9th Cir. 2010) (§ 2254's jurisdictional requirement includes that the habeas challenge be to the lawfulness of petitioner's custody). Instead, he is challenging the tactics used in the investigation of his criminal case and by the prosecutor in the litigation and trial of his criminal case, as well as some rulings by the trial court in that case. This is not a cognizable habeas corpus claim over which this Court has jurisdiction.

A federal court has the discretion to construe a mislabeled habeas corpus petition as a civil rights action and permit the action to proceed, such as when the petition seeks relief from the conditions of confinement. *See Wilwording v. Swenson*, 404 U.S. 249, 251, 92 S. Ct. 407, 30 L. Ed. 2d 418 (1971) (per curiam) (holding that where a habeas corpus petition presents § 1983 claims challenging conditions of confinement, the petition should be construed as a civil rights action), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81, 84, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006). But as set forth above, petitioner previously sought to raise similar claims by filing civil rights complaints, and those complaints were dismissed as prohibited by the *Younger* Abstention Doctrine. As discussed below, *Younger* also precludes this Court from acting in the instant case. Consequently, construing the instant habeas Petition as a civil rights complaint would be futile.

C. <u>This Court Must Abstain Under *Younger*</u>

The *Younger* Abstention Doctrine prohibits federal courts from staying or enjoining pending state criminal court proceedings or "considering a pre-conviction habeas petition that seeks preemptively to litigate an affirmative constitutional defense unless the petitioner can demonstrate that extraordinary circumstances warrant federal intervention." *Brown v. Ahern*, 676 F.3d 899, 901 (9th Cir. 2012) (internal quotation marks omitted); *see Younger v. Harris*, 401 U.S.

37. *Younger* abstention is appropriate when: (1) the state court proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise the constitutional claims. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982); *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 617 (9th Cir. 2003).

The first two *Middlesex* elements for the *Younger* Abstention Doctrine to be invoked are plainly present here. There is an ongoing state proceeding, i.e., the criminal case against petitioner. And the criminal proceeding implicates important state interests because it involves an alleged violation of state criminal law that is being adjudicated in state court. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987) (enforcement of state court judgments and orders implicates important state interests); *see also People of State of Cal. v. Mesa*, 813 F.2d 960, 966 (9th Cir. 1987) ("A [state's] ability to protect its citizens from violence and other breaches of the peace through enforcement of criminal laws is the centermost pillar of sovereignty.").

Petitioner's arguments and assertions in the Petition implicitly challenge the third *Middlesex* element, in that he maintains he faces irreparable injury because his federal civil rights are being violated in the prosecution of him. Petitioner claims he has no forum to present his claims, but that plainly is not the case. For example, the prosecutorial misconduct he alleges may be challenged before and during the state criminal trial, and in any appeal he might bring if he is convicted. It is thus apparent that, contrary to petitioner's argument, the state court criminal proceedings have provided and will provide an adequate opportunity for petitioner to litigate his constitutional claims by way of a suppression motion or other challenges to the evidence. And if petitioner is convicted, he may raise the claims on appeal. "The 'adequate opportunity' prong of *Younger* . . . requires only the

absence of 'procedural bars' to raising a federal claim in the state proceedings." *Commc'ns Telesystems Int'l v. Cal. Pub. Util. Comm'n*, 196 F.3d 1011, 1020 (9th Cir. 1999). Petitioner here faces no such procedural bars.

Petitioner also argues he faces irreparable injury due to being retried in violation of the Double Jeopardy Clause, and as such the *Younger* Abstention Doctrine is inapplicable. *See Mannes v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992) ("A claim that a state prosecution will violate the Double Jeopardy Clause presents an exception to the general rule of *Younger* . . . ."); *Auvaa v. City of Taylorsville*, 506 F. Supp. 2d 903, 915 (D. Utah 2007) ("'*Younger* abstention is unwarranted where a criminal accused presents a colorable claim that a forthcoming second state trial will constitute a violation of her double jeopardy rights'") (quoting *Walck v. Edmondson*, 472 F.3d 1227, 1234 (10th Cir. 2007)). "Because full vindication of the right [against double jeopardy] necessarily requires intervention before trial, federal courts will entertain pretrial habeas petitions that raise a colorable claim of double jeopardy." *Mannes*, 967 F.2d at 1312 (citations omitted).

Petitioner here does not, however, raise a colorable claim of double jeopardy. Petitioner is not claiming that he is being retried on a claim for which he was acquitted. Instead, he is arguing that he cannot be tried under an aiding and abetting theory where the principal he is alleged to have aided has been acquitted. However, "[n]othing in the Double Jeopardy Clause or the Due Process Clause forecloses putting petitioner on trial as an aider and abettor simply because another jury has determined that his principal was not guilty of the offenses charged." *Standefer v. U.S.*, 447 U.S. 10, 22 n.16, 100 S. Ct. 1999, 64 L. Ed. 2d 689 (1980). Thus, petitioner fails to raise a colorable claim of double jeopardy since he may be tried as an aider and abettor even though the named principal he was alleged to have aided was acquitted of the charged offense.

Moreover, the state court records plainly reflect that the jury in petitioner's first trial was unable to reach a verdict on the lesser included offense of second degree murder, and a mistrial on that charge was declared. "It is well settled that retrial of an accused after a mistrial because the jury is unable to agree is not a denial of the constitutional right against double jeopardy." *Forsberg v. U.S.*, 351 F.2d 242, 244 (9th Cir. 1965) (citing *Downum v. U.S.*, 372 U.S. 734, 735, 83 S. Ct. 1033, 10 L. Ed. 2d 100 (1963)). In *Forsberg*, as here, the jury deadlocked on the lesser offense and acquitted on the greater offense, and the court found double jeopardy was not implicated by retrial on the lesser offense. *Id.* at 248; *accord U.S. v. Jose*, 425 F.3d 1237, 1243 (9th Cir. 2005) (retrial on one offense following acquittal on related offense "does not violate the Double Jeopardy Clause notwithstanding that jeopardy has terminated on, what is for double jeopardy purposes, the 'same' offense – its greater or lesser included concomitant").

For this Court to grant the injunctive relief petitioner requests, or even to allow this case to proceed, would amount to interfering with the investigation and trial of petitioner's state criminal case. There are no "extraordinary circumstances" present here that would warrant federal intervention. The Ninth Circuit found under *Perez v. Ledesma*, 401 U.S. 82, 91 S. Ct. 674, 27 L. Ed. 2d 701 (1971), the Supreme Court has "limited the category of 'extraordinary circumstances' to encompass only 'cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction,' or where 'irreparable injury can be shown.'" *Brown*, 676 F.3d at 901 (citing *Carden v. State of Montana*, 626 F.2d 82, 84 (9th Cir. 1980)); *see Juidice v. Vail*, 430 U.S. 327, 338, 97 S. Ct. 1211, 51 L. Ed. 2d 376 (1977). Petitioner's allegations do not indicate he is being prosecuted without reasonable hope of conviction. Indeed, a jury hung on a charge against him, and he will be retried on that and another charge. Nor, as discussed above, does petitioner allege he faces irreparable injury

"other than that incidental to every criminal proceeding brought lawfully and in good faith." *Younger*, 401 U.S. at 47 (internal quotation marks omitted) (quoting *Douglas v. City of Jeannette*, 319 U.S. 157, 164, 63 S. Ct. 877, 87 L. Ed. 1324 (1943)). Petitioner here simply disagrees with the legality of the investigation conducted by law enforcement, but that is a matter he can raise in his state case. Petitioner's arguments do not demonstrate extraordinary circumstances that warrant this Court's intervention in the state court proceedings.

In sum, this Court lacks jurisdiction over the Petition because it does not raise a cognizable claim for habeas relief. But even if the Petition were cognizable, this Court would need to abstain under *Younger*.

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V.

CONCLUSION

IT IS THEREFORE ORDERED that: (1) petitioner's Motion for Preliminary Injunction (docket no. 1) is DENIED; (2) petitioner's Request for a Temporary Restraining Order and Preliminary Injunction (docket nos. 14, 15) is DENIED; (3) petitioner's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction (docket no. 16) is DENIED; and (4) Judgment be entered summarily dismissing the Petition and this action with prejudice.

DATED: December 11, 2019

HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

Presented by:

SHERI PYM
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 11 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL R. SPENGLER,

Petitioner-Appellant,

v.

ALEX VILLANUEVA,

Respondent-Appellee.

No. 20-55080

D.C. No. 2:19-cv-08259-DOC-SP
Central District of California,
Los Angeles

ORDER

C

Before: TROTT and N.R. SMITH, Circuit Judges.

Appellant's motion for reconsideration en banc (Docket Entry No. 9) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

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Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

January 23, 2020

A

No.:	20-55080
D.C. No.:	2:19-cv-08259-DOC-SP
Short Title:	Michael Spengler v. Alex Villanueva

Dear Appellant

The Clerk's Office of the United States Court of Appeals for the Ninth Circuit has received a copy of your notice of appeal and/or request for a certificate of appealability.

A briefing schedule will not be set until the court determines whether a certificate of appealability should issue.

Absent an emergency, all subsequent filings in this matter will be referred to the panel assigned to consider whether or not to grant the certificate of appealability.

All subsequent letters and requests for information regarding this matter will be added to your file to be considered at the same time the cause is brought before the court.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

[redacted]

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[redacted]