

1 the Ninth Circuit denied petitioner's request for a certificate of appealability.

2 Petitioner has recently exhausted allegedly new claims in the state courts. Nevertheless,
3 before petitioner can proceed with the instant application, he must move in the Ninth Circuit
4 Court of Appeals for an order authorizing the district court to consider the application. See 28
5 U.S.C. § 2244(b)(3). Therefore, petitioner's current application must be dismissed without
6 prejudice to its re-filing upon authorization from the Court of Appeals.

7 Petitioner also requests the appointment of counsel in a boiler-plate motion. There is no
8 absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d
9 453, 460 (9th Cir. 1996). Although appointment may be authorized under 18 U.S.C. § 3006A "if
10 the interests of justice so require," Rule 8(c), Fed. R. Governing § 2254 Cases, this requirement is
11 not met at the present time. Therefore, petitioner's request for appointment of counsel is denied.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Petitioner's motion to proceed in forma pauperis, ECF No. 2, is granted.


14 2. Petitioner's motion for appointment of counsel, ECF No. 3, is denied without
15 prejudice.

16 3. The Clerk of Court is directed to randomly assign a district judge to this action.

17 In addition, IT IS HEREBY RECOMMENDED that that this action be dismissed without
18 prejudice.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
21 days after being served with these findings and recommendations, petitioner may file written
22 objections with the court. The document should be captioned "Objections to Magistrate Judge's
23 Findings and Recommendations." Petitioner is advised that failure to file objections within the
24 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
25 F.2d 1153 (9th Cir. 1991).

26 DATED: December 8, 2015

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28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE