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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAUL HERRERA,

1:12-cv-01357-JLT HC

Petitioner,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL (Doc. 15)

vs.

JAMES D. HARTLEY,

ORDER DENYING PETITIONER'S MOTION
FOR EVIDENTIARY HEARING (Doc. 14)

Respondent.

_____ /

Petitioner has requested the appointment of counsel and an evidentiary hearing. (Docs. 14 & 15).

Regarding Petitioner's request for appointment of counsel, there currently exists no absolute right to appointment of counsel in habeas proceedings. See e.g., Anderson v. Heinze, 258 F.2d 479, 481 (9th Cir. 1958); Mitchell v. Wyrick, 727 F.2d 773, 774 (8th Cir. 1984). However, Title 18 U.S.C. § 3006A(a)(2)(B) authorizes the appointment of counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Rules Governing Section 2254 Cases. In the present case, the Court does not find that the interests of justice require the appointment of counsel at the present time. Accordingly, Petitioner's motion for appointment of counsel is denied without prejudice. ***If the Court determines, in the interests of justice, that appointment of counsel is required at some later date, the Court will make the appointment on its own motion.***

Regarding Petitioner's motion for an evidentiary hearing, the Court notes that Respondent

1 was ordered to file a response on August 21, 2012; however, as of yet, Respondent has not filed a
2 response to the petition. Until Respondent files a response, it is not clear whether there are any legal
3 issues, much less factual issues, that would require action by this Court in order to decide the merits
4 of the instant petition. Accordingly, Petitioner's motion for an evidentiary hearing is denied as
5 entirely premature. *When and if the Court decides that disputed issues of material fact require*
6 *such an evidentiary hearing, the Court will order the hearing on its own motion.*

7 ORDER

8 Accordingly, the Court HEREBY ORDERS as follows:

- 9 1. Petitioner's motion for appointment of counsel (Doc. 15), is DENIED.
10 2. Petitioner's motion for an evidentiary hearing (Doc. 14), is DENIED.

11 IT IS SO ORDERED.

12 Dated: September 20, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE