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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAIME I. ESTRADA,

Petitioner,

v.

MARTIN BITER,

Respondent.

Case No. 1:14-cv-00679-AWI-GSA-HC

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
(ECF No. 24)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 5, 2014, Petitioner filed a motion 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.

Petitioner argues that counsel should be appointed now, because he anticipates that the Court will order an evidentiary hearing in this matter and he would like counsel to file a traverse to Respondent’s answer. The Court has issued a Findings and Recommendation that recommended that Respondent’s motion to dismiss be denied. If the assigned District Judge

1 adopts the Findings and Recommendation, then the Court will order Respondent to file an  
2 answer and Petitioner will have the opportunity to file a traverse. As the Court has not yet  
3 ordered Respondent to file an answer and Petitioner to file a traverse, it is premature to appoint  
4 counsel to aid Petitioner in filing a traverse. In addition, the Court has not yet ordered an  
5 evidentiary hearing or expressed any opinion on whether an evidentiary hearing will be  
6 necessary in this case. Furthermore, Petitioner has been able to articulate his points to the Court  
7 in his petition, motions, and his opposition to the motion to dismiss. Therefore, the Court does  
8 not find that the interests of justice require the appointment of counsel at the present time.

9           Accordingly, IT IS HEREBY ORDERED that Petitioner's motion for appointment of  
10 counsel is DENIED.

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IT IS SO ORDERED.

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Dated: January 13, 2015

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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