

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

ROGELIO MAY RUIZ,	)	Case No. 1:17-cv-01404-AWI-SAB (PC)
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING PLAINTIFF’S MOTION FOR
	)	APPOINTMENT OF COUNSEL, WITHOUT
L. ARAKAKI, et al.,	)	PREJUDICE
	)	
Defendants.	)	[ECF No. 44]
	)	
	)	

---

Plaintiff Rogelio May Ruiz is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for appointment of counsel, filed November 14, 2018.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

///  
///

1 Without a reasonable method of securing and compensating counsel, the court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the  
4 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
5 legal issues involved.” Id. (internal quotation marks and citations omitted). The test for exceptional  
6 circumstances requires the Court to evaluate the Plaintiff’s likelihood of success on the merits and the  
7 ability of the Plaintiff to articulate his claims pro se in light of the complexity of the legal issues  
8 involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718  
9 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal  
10 education and limited law library access, do not establish exceptional circumstances that would  
11 warrant a request for voluntary assistance of counsel.

12 In this instance, Plaintiff requests counsel because he does not speak English and speaks only  
13 Spanish. However, “[a]n inability to speak, write and/or under English, in and of itself, does not  
14 automatically give a [inmate] reasonable cause for failing to know about the legal requirements for  
15 filing his claims.” Hernandez v. Soto, No. CV 15-01374-PSG (AS), 2015 WL 5553543, at \*7 (C.D.  
16 Cal. Sept. 14, 2015) (quoting Cobas v. Burgess, 306 F.3d 441, 444 (6th Cir. 2002)). Plaintiff’s  
17 inability to read and/or write English is not an extraordinary circumstance, and a review of the record  
18 demonstrates that Plaintiff has been able to communicate and respond to court orders. Accordingly,  
19 Plaintiff’s motion for appointment of counsel is denied, without prejudice.

20  
21 IT IS SO ORDERED.

22 Dated: November 15, 2018

  
UNITED STATES MAGISTRATE JUDGE