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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KENNETH A. JACKSON,  
Petitioner,  
v.  
ERIC ARNOLD,  
Respondent.

Case No. 1:17-cv-01670-JDP  
ORDER DENYING PETITIONER’S MOTION  
FOR APPOINTMENT OF COUNSEL  
(Doc. No. 17)

Petitioner Kenneth A. Jackson is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 21, 2018, the court received the instant motion, in which petitioner requests appointment of counsel. (Doc. No. 17.) In support of his request, petitioner submits that his case involves “substantial and complex procedural, legal or mixed legal and factual questions.” (Id. at 3.)

A petitioner in a habeas proceeding does not have an absolute right to counsel. See *Anderson v. Heinze*, 258 F.2d 479, 481 (9th Cir. 1958) (“The Sixth Amendment has no application here . . .”). There are three specific circumstances where appointment of counsel is required in habeas proceedings. First, appointment of counsel is required for an indigent person seeking to vacate or set aside a death sentence in post-conviction proceedings under 28 U.S.C §§ 2254 or 2255. See 18 U.S.C. § 3599(a)(2). Second, appointment of counsel may be required if

1 an evidentiary hearing is warranted. See Rules Governing Section 2254 and 2255 Cases 8(c).  
2 Third, appointment of counsel may be necessary for effective discovery. See Rules Governing  
3 Section 2254 and 2255 Cases 6(a). None of these situations is present at this time.

4 This court is further authorized to appoint counsel for an indigent petitioner in a habeas  
5 proceeding if the court determines that the interests of justice require the assistance of counsel.  
6 See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); 18 U.S.C. § 3006A(a)(2)(B).  
7 However, “[i]ndigent state prisoners applying for habeas corpus relief are not entitled to  
8 appointed counsel unless the circumstances of a particular case indicate that appointed counsel is  
9 necessary to prevent due process violations.” Chaney, 801 F.2d at 1196. In assessing whether to  
10 appoint counsel, the court evaluates the petitioner’s likelihood of success on the merits as well as  
11 the ability of the petitioner to articulate his claims pro se, considering the complexity of the legal  
12 issues involved. See Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

13 The court cannot conclude at this point that counsel is necessary to prevent a due process  
14 violation. The legal issues currently involved are not exceptionally complicated and petitioner  
15 has not demonstrated a likelihood of success on the merits. Accordingly, the court finds that  
16 appointed counsel is not necessary to guard against a due process violation and that the interests  
17 of justice do not require the appointment of counsel at this time.

18 The court may revisit this issue at a later stage of the proceedings if the interests of justice  
19 so require. If petitioner later renews his request for counsel, he should provide a detailed  
20 explanation of the circumstances that he believes justify appointment of counsel.

21 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion for the appointment of  
22 counsel (Doc. No. 17) is DENIED.

23  
24 IT IS SO ORDERED.

25 Dated: June 8, 2018

26 /s/ Jeremy D. Peterson  
27 UNITED STATES MAGISTRATE JUDGE  
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