



1 1983 action to challenge the fact or duration of his confinement. He must seek federal habeas  
2 corpus relief (or appropriate state relief) instead.”); see also Heck v. Humphrey, 512 U.S. 477, 486-  
3 87 (1994) (stating that a claim for damages for allegedly unconstitutional conviction or  
4 imprisonment is not cognizable under § 1983 unless “the conviction or sentence has been reversed  
5 on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to  
6 make such determination, or called into question by a federal court’s issuance of a writ of habeas  
7 corpus, 28 U.S.C. § 2254.”). Therefore, Plaintiff’s requests for a new trial, review of evidence,  
8 immediate release, and restoration of bail must be denied.

9 Further, with regards to Plaintiff’s request for appointment of counsel, the Court notes that  
10 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland,  
11 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to represent Plaintiff  
12 pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States District Court for the Southern District  
13 of Iowa, 490 U.S. 296, 298 (1989). Nevertheless, in certain exceptional circumstances, the Court  
14 may request the voluntary assistance of counsel pursuant to § 1915(e)(1). Rand, 113 F.3d at 1525.  
15 Without a reasonable method of securing and compensating counsel, the Court will seek volunteer  
16 counsel only in the most serious and exceptional cases. In determining whether “exceptional  
17 circumstances exist, the district court must evaluate both the likelihood of success on the merits  
18 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
19 legal issues involved.” Id. (internal quotation marks and citations omitted). “Neither of these  
20 considerations is dispositive and instead must be viewed together.” Palmer v. Valdez, 560 F.3d  
21 965, 970 (9th Cir. 2009). The burden of demonstrating exceptional circumstances is on Plaintiff.  
22 Id.

23 Having considered the factors under Palmer, the Court finds that Plaintiff has failed to meet  
24 his burden of demonstrating exceptional circumstances warranting the appointment of counsel at  
25 this time. Therefore, Plaintiff’s request for the appointment of counsel is denied, without prejudice.

26 Accordingly, it is HEREBY ORDERED that:

- 27 1. Plaintiff’s motion for a new trial, review of evidence, immediate release, and  
28 restoration of bail, (ECF No. 38), is DENIED; and

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2. Plaintiff's request for appointment of counsel, (ECF No. 38), is DENIED, without prejudice.

IT IS SO ORDERED.

Dated: August 1, 2019

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE