

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELMER DOSIO.

Plaintiff,

V.

ODELUGA, et al.,

Defendants.

1:19-cv-00675-DAD-GSA (PC)

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

(Document #25)

On May 26, 2021, plaintiff filed a motion seeking the appointment of counsel. 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 an 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, 109 S.Ct. 1814, 1816 (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.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether exceptional circumstances exist, the district court must evaluate both “the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted)

1 In the present case, the court does not find the required exceptional circumstances. At this
2 stage of the proceedings, the court cannot make a determination that plaintiff is likely to succeed
3 on the merits. Defendant Fernandez has not yet filed an answer or other responsive pleading.
4 Based on the record in this case, the court finds that plaintiff can adequately articulate his claims
5 and respond to court orders. Further, the legal issue in this case, whether defendant Fernandez
6 denied plaintiff adequate medical care in violation of the Eighth Amendment, does not appear
7 complex. Therefore, plaintiff's motion shall be denied without prejudice to renewal of the motion
8 at a later stage of the proceedings.

9 For the foregoing reasons, plaintiff's motion for the appointment of counsel is HEREBY
10 DENIED, without prejudice.

11 IT IS SO ORDERED.
12

13 || Dated: **June 3, 2021**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE