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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN CLARK,

Petitioner,

No. CIV S-05-2606 MCE GGH P

vs.

DAVID RUNNEL, et al.,

ORDER

Respondents.

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding pro se and in forma pauperis with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Since petitioner may be entitled to the requested relief if the claimed violation of constitutional rights is proved, respondents will be served with the petition, but shall not file a response at the present time.

In light of the length of petitioner’s sentence, the court has determined that the interests of justice require appointment of counsel. See 18 U.S.C. § 3006A(a)(2)(B); see also Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Petitioner's request to proceed in forma pauperis is granted;

3 2. Petitioner's December 23, 2005, motion for the appointment of counsel is  
4 granted; the Federal Defender is appointed to represent petitioner;

5 3. Within thirty days of this order, the parties shall file a joint scheduling  
6 statement which addresses the timing and order of the following matters:

7 a. The number of days petitioner's counsel estimates it will take to file  
8 either:

9 1. A statement indicating petitioner will stand on the existing  
10 petition, and supplemental memorandum of points and authorities, if any;

11 2. An amended petition which will proceed on exhausted claims  
12 only; or

13 3. An amended petition which identifies both exhausted and  
14 unexhausted claims, **demonstrates good cause for having failed to exhaust state court**  
15 **remedies as to any claims,**<sup>1</sup> and any intention to pursue unexhausted claims, after which the  
16 court **may** recommend that the proceedings be held in abeyance while petitioner exhausts any  
17 new claims in state court.

18 b. Discovery and investigations;

19 c. Anticipated motions;

20 d. The need for and timing of an evidentiary hearing;

21 e. Enumeration and resolution of unexhausted claims; and

22 f. Possible future amendments to the pleadings.

23 Counsel are reminded of the importance of timely filing a joint scheduling statement. Failure to  
24 do so may result in sanctions.

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26 <sup>1</sup> Rhines v. Weber, \_\_\_ U.S. \_\_\_, 125 S. Ct. 1528 (2005).

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4. The Clerk of the Court shall serve a copy of this order on Jo Graves, Senior

Assistant Attorney General, and David Porter, Assistant Federal Defender.

DATED: 2/3/06

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

ggh:kj  
cl2606.110