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

MICHAEL V. LUJAN,

Petitioner,

No. CIV S-06-0923 LKK EFB P

vs.

JAMES YATES, Warden,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. On March 20, 2007, this court filed findings and recommendations, which recommended that the petition be dismissed because it contained unexhausted claims and granted petitioner leave to file an amended petition presenting only exhausted claims. On May 8, 2007, the district judge assigned to this action adopted this court’s findings and recommendations.

On April 24, 2007, petitioner filed an amended petition. On September 26, 2008, petitioner requested permission to file a traverse as well as a request for appointment of counsel.

There currently exists no absolute right to appointment of counsel in habeas proceedings. *See Nevius v. Sumner*, 105 F.3d 453, 460 (9th Cir. 1996). The court may appoint counsel at any

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1 stage of the proceedings “if the interests of justice so require.” *See* 18 U.S.C. § 3006A; *see also*,
2 Rule 8(c), Rules Governing Section 2254 Cases. The court does not find that the interests of
3 justice would be served by the appointment of counsel at this stage of the proceedings.

4 Accordingly, it hereby is ORDERED that:

5 1. Respondent shall file and serve either an answer or a motion in response to
6 petitioner’s application within 60 days from the date of this order. *See* Rule 4, Fed. R.
7 Governing § 2254 Cases. Any response shall be accompanied by any and all transcripts or other
8 documents relevant
9 to the determination of the issues presented in the application. *See* Rules 4, 5, Fed. R. Governing
10 § 2254 Cases.

11 2. Petitioner’s reply, if any, shall be filed and served within 30 days of service of an
12 answer.

13 3. If the response to petitioner’s application is a motion, petitioner’s opposition or
14 statement of non-opposition shall be filed and served within 30 days of service of the motion,
15 and respondents’ reply, if any, shall be filed within 15 days thereafter.

16 4. Petitioner’s September 26, 2008, motion for appointment of counsel is denied without
17 prejudice.

18 5. Petitioner’s September 26, 2008 request to file a traverse is denied as unnecessary.

19 DATED: January 20, 2009.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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