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

TENG YANG,

Petitioner,

No. CIV S-08-2233 KJM P

vs.

D.K. "KRIS" SISTO,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a). Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner’s habeas petition.

Petitioner has requested the 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). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing

1 § 2254 Cases. In the present case, the court does not find that the interests of justice would be  
2 served by the appointment of counsel at the present time.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Petitioner's application to proceed in forma pauperis is granted;

5 2. Respondent is directed to file a response to petitioner's habeas petition within  
6 sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer  
7 shall be accompanied by all transcripts and other documents relevant to the issues presented in  
8 the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

9 3. If the response to the habeas petition is an answer, petitioner's reply, if any,  
10 shall be filed and served within thirty days after service of the answer;

11 4. If the response to the habeas petition is a motion, petitioner's opposition or  
12 statement of non-opposition to the motion shall be filed and served within thirty days after  
13 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days  
14 thereafter;

15 5. The Clerk of the Court shall serve a copy of this order, the  
16 consent/reassignment form contemplated by Appendix A(k) to the Local Rules of this court, and  
17 a copy of the petition for writ of habeas corpus on Michael Patrick Farrell, Senior Assistant  
18 Attorney General; and

19 6. Petitioner's request for appointment of counsel (docket no. 2) is denied  
20 without prejudice to a renewal of the motion at a later stage of the proceedings.

21 DATED: February 3, 2009.

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24 U.S. MAGISTRATE JUDGE

25 1/mp  
26 yang2233.100(9.26.08)