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

CHRISTOPHER JAMES XIMENEZ,

Petitioner,

No. CIV S-08-3056 MCE EFB P

vs.

DERREL G. ADAMS,

Respondent.

ORDER

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus. See 28 U.S.C. § 2254. Petitioner seeks leave to proceed *in forma pauperis*, see 28 U.S.C. § 1915(a), and requests that the court appoint counsel to represent him.

Examination of the *in forma pauperis* affidavit reveals that petitioner is unable to afford the costs of suit.

A judge “entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. It is not apparent from the face of the application that the petitioner is not entitled to relief.

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1           The court has examined the request for counsel in relation to the petition. There  
2 currently exists no absolute right to appointment of counsel in habeas proceedings. *See Nevius v.*  
3 *Sumner*, 105 F.3d 453, 460 (9th Cir. 1996). The court may appointment counsel at any stage of  
4 the proceedings “if the interests of justice so require.” *See* 18 U.S.C. § 3006A; *see also*, Rule  
5 8(c), Rules Governing Section 2254 Cases. The court does not find that the interests of justice  
6 would be served by the appointment of counsel at this stage of the proceedings. Therefore, the  
7 request for counsel must be denied without prejudice to renewal should renewal be appropriate at  
8 a later stage of these proceedings.

9           Accordingly, it is hereby ordered that:

10           1. Petitioner’s request for leave to proceed *in forma pauperis* is granted.

11           2. Petitioner’s December 17, 2008, motion for the appointment of counsel is denied  
12 without prejudice.

13           3. Respondent shall file and serve either an answer or a motion in response to  
14 petitioner’s application within 60 days from the date of this order. *See* Rule 4, Fed. R.  
15 Governing § 2254 Cases. Any response shall be accompanied by any and all transcripts or other  
16 documents relevant to the determination of the issues presented in the application. *See* Rules 4,  
17 5, Fed. R. Governing § 2254 Cases.

18           4. Petitioner’s reply, if any, shall be filed and served within 30 days of service of an  
19 answer.


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

23           6. The Clerk of the Court shall serve a copy of this order together with a copy of  
24 petitioner’s December 17, 2008, petition for a writ of habeas corpus with any and all attachments  
25 on Michael Patrick Farrell, Senior Assistant Attorney General for the State of California. The

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1 Clerk of the Court also shall serve on the Senior Assistant Attorney General the consent form  
2 used in this court.

3 Dated: July 17, 2009.

  
4 EDMUND F. BRENNAN  
5 UNITED STATES MAGISTRATE JUDGE  
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