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

HEVERD GUTIERREZ,

Petitioner,

No. CIV S-09-0329 EFB P

vs.

D.K. SISTO, et al.,

Respondents.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus.

See 28 U.S.C. § 2254. Petitioner has paid the filing fee.

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.

Petitioner has also requested that the court appoint 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 appointment counsel at any stage of the proceedings “if the interests of justice so require.” *See* 18 U.S.C. § 3006A; *see also*, Rule 8(c), Rules Governing

1 Section 2254 Cases. The court does not find that the interests of justice would be served by the
2 appointment of counsel at this stage of the proceedings.

3 Accordingly, it is hereby ordered that:

4 1. Respondents shall file and serve either an answer or a motion in response to
5 petitioner's application within 60 days from the date of this order. *See* Rule 4, Fed. R.

6 Governing § 2254 Cases. Any response shall be accompanied by any and all transcripts or other
7 documents relevant to the determination of the issues presented in the application. *See* Rules 4,
8 5, Fed. R. Governing § 2254 Cases.

9 2. Petitioner's reply, if any, shall be filed and served within 30 days of service of an
10 answer.

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

14 4. The Clerk of the Court shall serve a copy of this order together with a copy of
15 petitioner's January 29, 2009, petition for a writ of habeas corpus with any and all attachments
16 on Michael Patrick Farrell, Senior Assistant Attorney General for the State of California. The
17 Clerk of the Court also shall serve on the Senior Assistant Attorney General the consent form
18 used in this court.

19 5. Petitioner's January 29, 2009, request for appointment of counsel is denied without
20 prejudice.

21 DATED: July 31, 2009.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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