

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

MICHAEL D. SMITH,

Petitioner,

No. 2:09-cv-2260 JFM (HC)

VS.

JOHN W. HAVILAND,

## Respondent.

## ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

Since petitioner may be entitled to the requested relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner's application.

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

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

2                   1. Respondent is directed to file an answer within forty-five days from the date of  
3 this order. See Rule 4, Rules Governing Section 2254 Cases. Respondent shall include with the  
4 answer any and all transcripts or other documents relevant to the determination of the issues  
5 presented in the application. Rule 5, Rules Governing Section 2254 Cases;

6                   2. Petitioner's traverse, if any, is due on or before thirty days from the date  
7 respondent's answer is filed;

8                   3. The Clerk of the Court shall serve a copy of this order together with a copy of  
9 petitioner's application for writ of habeas corpus and an Order Re Consent or Request for  
10 Reassignment on Michael Patrick Farrell, Senior Assistant Attorney General; and

11                  4. Petitioner's August 17, 2009 request for appointment of counsel is denied  
12 without prejudice to a renewal of the motion at a later stage of the proceedings.

13 DATED: September 1, 2009.

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16                  UNITED STATES MAGISTRATE JUDGE

17                  12/mp  
18                  smit2260.100fee+110