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

DENNIS LOUIS NELSON,

Petitioner,

No. CIV S-09-2793 WBS EFB P

vs.

JOHN W. HAVILAND,

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).

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           Petitioner has requested that the court appoint counsel. There currently exists no  
2 absolute right to appointment of counsel in habeas proceedings. *See Nevius v. Sumner*, 105 F.3d  
3 453, 460 (9th Cir. 1996). The court may appointment counsel at any stage of the proceedings “if  
4 the interests of justice so require.” *See* 18 U.S.C. § 3006A; *see also*, Rule 8(c), Rules Governing  
5 Section 2254 Cases. The court does not find that the interests of justice would be served by the  
6 appointment of counsel at this stage of the proceedings.

7           Accordingly, it is hereby ordered that:

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

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

14           3. Petitioner’s reply, if any, shall be filed and served within 30 days of service of an  
15 answer.

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

19           5. The Clerk of the Court shall serve a copy of this order together with a copy of  
20 petitioner’s October 7, 2009 petition for a writ of habeas corpus with any and all attachments on  
21 Michael Patrick Farrell, Senior Assistant Attorney General for the State of California. The Clerk  
22 of the Court also shall serve on the Senior Assistant Attorney General the consent form used in  
23 this court.

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1           6. Petitioner's October 7, 2009, request for appointment of counsel is denied without  
2 prejudice.

3 Dated: January 20, 2010.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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