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

ISMAEL VIVEROS, JR.,

Petitioner,

No. CIV S-09-3107 KJM P

vs.

MICHAEL MARTEL,

Respondent.

ORDER

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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 not, however, filed an in forma pauperis affidavit or paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a), 1915(a). Petitioner will be provided the opportunity to either submit the appropriate affidavit in support of a request to proceed in forma pauperis or submit the appropriate filing fee.

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. Petitioner shall submit, within thirty days from the date of this order, an  
3 affidavit in support of his request to proceed in forma pauperis or the appropriate filing fee;  
4 petitioner's failure to comply with this order will result in the dismissal of this action;

5 2. The Clerk of the Court is directed to send petitioner a copy of the in forma  
6 pauperis form used by this district; and

7 3. Petitioner's motion for appointment of counsel (Docket No. 3) is denied  
8 without prejudice to a renewal of the motion at a later stage of the proceedings.

9 DATED: November 23, 2009.

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12 U.S. MAGISTRATE JUDGE

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