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

WENDELL STUART,

Petitioner,

No. 2:10-cv-2098 MCE KJN P

vs.

SINGH, safe

Respondent.

ORDER

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Petitioner requests an extension of time to file an opposition to respondent’s motion to dismiss filed December 27, 2010. For good cause shown, the request is granted.

Petitioner shall file and serve his opposition on or before Friday, February 25, 2011.

As directed by the court, respondent has, in the motion to dismiss, addressed the status of petitioner’s outstanding motion for discovery and an evidentiary hearing. Because respondent seeks dismissal of the petition based on statute of limitations grounds, as well as an alleged failure to state a claim, the court finds it appropriate to presently deny without prejudice petitioner’s motion for discovery and an evidentiary hearing. The motion may be renewed should this case proceed on the merits after the court’s decision on respondent’s motion to dismiss.


The court also denies without prejudice petitioner’s request for appointment of

1 counsel. There is no absolute right to appointment of counsel in habeas proceedings. See Nevius  
2 v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). While appointment of counsel may be authorized  
3 “if the interests of justice so require,” Rule 8(c), Fed. R. Governing §2254 Cases; 18 U.S.C. §  
4 3006A, the court finds that such interests would not be served by the appointment of counsel at  
5 the present time. Petitioner may again request appointment of counsel at a later stage of this  
6 proceeding.

7 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion filed August 6,  
8 2010 (Dkt. No. 2) is denied without prejudice. IT IS FURTHER ORDERED that petitioner’s  
9 motion for an extension of time to file an opposition to respondent’s motion to dismiss is  
10 granted; petitioner shall file and serve his opposition on or before February 25, 2011.

11 SO ORDERED.

12 DATED: January 7, 2011

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15 KENDALL J. NEWMAN  
16 UNITED STATES MAGISTRATE JUDGE

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