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

HUNG DUONG NGUON,

Petitioner,

No. CIV-S-11-0124 LKK DAD (TEMP) P

vs.

TIM V. VIRGA,

Respondent.

ORDER

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 2, 2011, the court recommended that this action be dismissed. In his objections to the findings and recommendations, petitioner requests leave to file an amended petition. Because petitioner is allowed to amend his original pleading as a matter of right under Rule 15(a) of the Federal Rules of Civil Procedure, petitioner’s request for leave to amend will be granted.

In his objections, petitioner also requests 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

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1 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the  
2 interests of justice would be served by the appointment of counsel.

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

4 1. The court's February 2, 2011, findings and recommendations are vacated.

5 2. Petitioner's habeas corpus petition is dismissed.

6 3. Petitioner's request for leave to file an amended petition for writ of habeas  
7 corpus is granted. Any amended petition must be submitted on the form to be provided by the  
8 Clerk of the Court. Failure to submit an amended petition within thirty days will result in this  
9 action being dismissed.

10 4. The Clerk of the Court is directed to send petitioner the court's form-  
11 application for writ of habeas corpus by persons in state custody.

12 5. Petitioner's request for the appointment of counsel, contained in his objections  
13 filed March 8, 2011, is denied.

14 DATED: March 10, 2011.

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18 DALE A. DROZD  
19 UNITED STATES MAGISTRATE JUDGE

18 DAD:kc  
19 nguo0124.vfrs