

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

MELVIN RICHARD PENA,

Petitioner,

vs.

MATTHEW CATE, Secretary, California  
Department of Corrections and  
Rehabilitation,

Respondent.

No. 2:11-cv-01003-JKS

ORDER

[Re: Motions at Docket Nos. 26 and 29]

At Docket No. 26, Melvin Richard Pena, a state prisoner appearing *pro se*, filed a Motion to Appoint Counsel. Pena also filed a Motion to Extend the Time to File a Traverse at Docket No. 29.

There is no constitutional right to counsel in federal habeas proceedings.<sup>1</sup> Appointment of counsel is not required in a habeas corpus proceeding in the absence of an order granting discovery or an evidentiary hearing.<sup>2</sup> This Court may appoint counsel under the Criminal Justice Act in this case if the court determines that the interests of justice so require.<sup>3</sup> This Court does not so determine.

Pena has shown good cause to extend the time to respond to Respondent's answer.

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<sup>1</sup> See *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007) (citing *Coleman v. Thompson*, 501 U.S. 722, 756-57 (1991)).

<sup>2</sup> Rules Governing Section 2254 Cases in the U.S. Dist. Courts, Rules 6(a), 8(c) (2012).

<sup>3</sup> 28 U.S.C. § 2254(h); 18 U.S.C. § 3006A(a)(2)(B); see *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (“In deciding whether to appoint counsel in a habeas proceeding, the district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.”).

**IT IS THEREFORE ORDERED THAT** the Motion to Appoint Counsel at Docket No. 26 is **DENIED**.

**IT IS FURTHER ORDERED THAT** the Motion for Extension of Time to File a Traverse at Docket No. 29 is **GRANTED**. Pena's time to respond to the answer is extended to **December 28, 2012**.

Dated: November 28, 2012.

/s/ James K. Singleton, Jr.  
JAMES K. SINGLETON, JR.  
United States District Judge