

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. 39 and 40]

At Docket No. 39 Petitioner Melvin Richard Pena has moved for the appointment of counsel, and at Docket No. 40 he has also moved to extend the time to file his Traverse. The record reflects that this is the third request by Pena to appoint counsel. This Court denied both of Pena's earlier requests.¹ While this Court is not unmindful of the plight of unrepresented state prisoners in federal habeas proceedings, as noted in the prior Orders, there is no constitutional right to counsel in federal habeas proceedings, and Pena has not provided any reason for this Court to reconsider and reverse its prior determinations not to appoint counsel in this case.

Pena's request for additional time to reply to Respondent's answer stands on a different footing. Although this Court has granted two prior requests by Pena for an extension of time to reply, both were reasonably necessary as a result of circumstances beyond Pena's control. Indeed, the last extension was necessitated by the fact that Respondent lost Pena's papers in

¹ Docket Nos. 30, 37.

transit between prisons. This Court also notes, however, that more than four months have lapsed since Respondent's answer was served on Pena. Contrary to Pena's contentions, the issues presented in this case are not unduly complex, either legally or factually. Accordingly, while this Court is agreeable to granting a further reasonable extension of time, Pena is cautioned that he is not entitled to an open-ended extension while he seeks out and obtains assistance in pursuing this matter. Therefore, Pena should *not* assume that this Court will view favorably any further requests for additional time to reply.

IT IS THEREFORE ORDERED THAT the Motion for Appointment of Counsel at Docket No. 39 is **DENIED**.

IT IS FURTHER ORDERED THAT Petitioner is granted until **March 30, 2013**, within which to file his reply to Respondent's answer.

Dated: February 27, 2013.

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