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

DEREK MARTINEZ,

Petitioner,

No. 2:12-cv-2273 DAD P

vs.

DIRECTOR OF CDCR,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis, a motion for appointment of counsel (Doc. No. 3) and a motion for stay and abeyance (Doc. No. 4).

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will, by subsequent order, be directed to file a response to petitioner’s habeas petition. First, however, respondent will be directed to respond to petitioner’s motion for stay and abeyance.

1 There currently exists no absolute right to appointment of counsel in habeas
2 proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C.
3 § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice
4 so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does
5 not find that the interests of justice would be served by the appointment of counsel at the present
6 time. Accordingly, petitioner’s motion for appointment of counsel will be denied without
7 prejudice.

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

9 1. Petitioner’s motion to proceed in forma pauperis (Doc. No. 6) is granted.

10 2. Respondent is directed to file a response to petitioner’s September 4, 2012
11 motion for stay and abeyance (Doc. No. 4) within twenty-eight days from the date of this order.
12 Petitioner’s reply, if any, shall be filed and served within fourteen days thereafter.

13 3. Petitioner’s September 4, 2012 motion for appointment of counsel (Doc. No.
14 3) is denied without prejudice.

15 4. The Clerk of the Court shall serve a copy of this order, the form Consent to
16 Proceed Before a United States Magistrate Judge, a copy of the petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254, and a copy of the motion for stay and abeyance on Michael Patrick
18 Farrell, Senior Assistant Attorney General.

19 DATED: December 7, 2012.

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22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE
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DAD:12
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