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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VENCIL C. GREEN,
Petitioner,
v.
J. LIZARAGA,
Respondent.

No. 2:16-cv-2090 MCE KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel. On March 15, 2018, this action was summarily dismissed. On March 20, 2018, under the mailbox rule,¹ petitioner filed a motion for certificate of appealability and a motion to appoint counsel in the Court of Appeals for the Ninth Circuit. Because petitioner had not filed an appeal, the motions were transferred to this court.

The district court previously declined to issue a certificate of appealability. (ECF No. 17.) Good cause appearing, the undersigned construes petitioner’s motion for certificate of appealability as a notice of appeal. The Clerk of the Court is directed to process petitioner’s appeal.

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¹ See Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (under the mailbox rule, the petition is deemed filed when handed to prison authorities for mailing, and applies to both state and federal filings by incarcerated parties).

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

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Petitioner’s motion for certificate of appealability (ECF No. 19) is construed as a
10 notice of appeal;
- 11 2. The Clerk of the Court is directed to process petitioner’s appeal; and
- 12 3. Petitioner’s request for appointment of counsel (ECF No. 20) is denied without
13 prejudice.

14 Dated: May 1, 2018

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17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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