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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALFONSO HENRY MARTINEZ,  
Petitioner,  
v.  
BRIAN CATES,<sup>1</sup>  
Respondent.

No. 2:23-cv-1323 KJN P

ORDER

Petitioner is a state prisoner, proceeding pro se, with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2018 conviction for, inter alia, five counts of attempted premeditated murder, and raises 22 claims for relief. On October 30, 2023, petitioner filed a notice that he no longer seeks to stay the instant petition because he has now exhausted his state court remedies. Petitioner also seeks the appointment of counsel, claiming he has new evidence that someone else was the shooter, and claims he has never received his file or discovery.

The undersigned construes petitioner’s notice as a request to withdraw his motion for stay and grants the request. Considering the complexity of the legal issues involved, the court finds

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<sup>1</sup> Petitioner is now housed at the California Correctional Institution. The current warden is Brian Cates, who is substituted as respondent in this matter. Fed. R. Civ. P. 25(d); see Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992).

1 that the interests of justice require appointment of counsel. See 18 U.S.C. § 3006A(a)(2)(B); see  
2 also Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

3 Petitioner also filed a document styled, “Motion for Equitable Tolling.” (ECF No. 13.)  
4 However, no motion based on the statute of limitations has been filed, and the court will not sua  
5 sponte address the issue of equitable tolling. Petitioner’s “motion” is denied without prejudice.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Petitioner’s notice (ECF No. 12) is construed as a motion to withdraw his prior motion  
8 to stay this action; petitioner’s motion for stay (ECF No. 4) is withdrawn.

9 2. Petitioner’s motion for appointment of counsel (ECF No. 11) is granted.

10 3. The Federal Defender is appointed to represent petitioner.

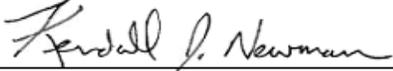
11 4. The Clerk of the Court shall serve a copy of this order on the Federal Defender,  
12 Attention: Habeas Appointment.

13 5. Petitioner’s October 30, 2023 motion (ECF No. 13) is denied without prejudice.

14 6. Within sixty days from the date of this order, petitioner’s counsel shall inform the court  
15 whether petitioner intends to file an amended petition.

16 7. Brian Cates, warden of California Correctional Institution, is substituted as respondent.

17 Dated: November 13, 2023

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20 KENDALL J. NEWMAN  
21 UNITED STATES MAGISTRATE JUDGE

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