

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

MARCUS DANIEL CHAVARRIA,

No. C 01-02242 SI

Petitioner,

ORDER RE MOTIONS

v.

JIM HAMLET, WARDEN,

Respondent.

Petitioner Marcus Chavarria has moved for appointment of counsel and for extension of time to file his traverse (reply) in support of his petition for a writ of habeas corpus. Respondent, Warden Jim Hamlet, has moved for a third extension of time to file an answer to the habeas petition. For the reasons set forth below, the Court hereby GRANTS petitioner's motions for appointment of counsel and for extension of time, and DENIES as moot respondent's motion for extension of time.

DISCUSSION

The Court previously denied petitioner's pro se habeas petition. Petitioner appealed to the Ninth Circuit, and the Court appointed Neil Rosenbaum to represent petitioner in his appeal. At petitioner's request, the Ninth Circuit dismissed his appeal and remanded the case back to this Court so petitioner could seek leave to amend his original habeas petition. This Court subsequently granted petitioner's motion for leave to file an amended habeas petition, and noted that Mr. Rosenbaum's representation of petitioner had ended upon remand from the Ninth Circuit. Petitioner now seeks re-appointment of Mr. Rosenbaum as counsel.

A district court may appoint counsel to represent a habeas petitioner whenever "the court


1 determines that the interests of justice so require” and that the petitioner is “financially unable to obtain
2 adequate representation.” 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the
3 discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986).

4 Petitioner has stated in a sworn declaration that he is indigent and unable to understand legal
5 proceedings. Moreover, Mr. Rosenbaum has filed a letter with the Court requesting that he be
6 reappointed as petitioner’s counsel on the grounds that petitioner is indigent, “functionally illiterate and
7 has no education in law,” and has no alternative way to retain counsel. In light of these representations,
8 the Court concludes that it is appropriate to appoint Mr. Rosenbaum as petitioner’s counsel and
9 GRANTS petitioner’s motion for appointment of counsel. (Docket No. 42).

10 The Court GRANTS petitioner’s motion for extension of time to file his reply. (Docket Nos.
11 47,49). Petitioner’s reply shall be filed **no later than November 18, 2009**. The Court DENIES as moot
12 respondent’s motion for extension of time to file an answer to the habeas petition (Docket No. 43), as
13 respondent’s answer was filed on August 17, 2009.

14
15 **IT IS SO ORDERED.**

16
17 Dated: October 20, 2009

18 
19 _____
20 SUSAN ILLSTON
21 United States District Judge
22
23
24
25
26
27
28