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

JOHN DALTON,  
  
                    Defendant/Petitioner,  
  
v.  
  
UNITED STATES OF AMERICA,  
  
                    Plaintiff/Respondent.

No. C 02-4949 SI  
No. CR 96-0276 SI

**ORDER DENYING PETITIONER’S  
MOTION FOR APPOINTMENT OF  
COUNSEL AND EVIDENTIARY  
HEARING**


United States District Court  
For the Northern District of California

John Dalton has filed a motion seeking appointment of counsel. A district court may appoint counsel to represent a habeas petitioner whenever “the court determines that the interests of justice so require and such person is financially unable to obtain representation.” 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986). Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. *See id.* The Court finds that appointment of counsel is not necessary in this action. The motion for appointment of counsel is DENIED.

Mr. Dalton also seeks an evidentiary hearing to determine his mental competency. This motion is a direct attack on his now final criminal conviction and is properly brought through a petition for habeas corpus. Mr. Dalton is referred to the Court’s January 26, 2009 Order, at 3 [Docket No. 659] for instructions on obtaining an order from the United States Court of Appeals for the Ninth Circuit authorizing this Court to consider this, the most recent of his successive habeas petitions. This action is DISMISSED without prejudice to Mr. Dalton filing a petition in this Court after he obtains the necessary order from the Court of Appeals for the Ninth Circuit.

**IT IS SO ORDERED.**

Dated: May 15, 2009

  
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SUSAN ILLSTON  
United States District Judge