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

GILBERT GUZMAN,	)	No. C 06-5241 JSW (PR)
	)	
Petitioner,	)	<b>ORDER ADDRESSING PENDING</b>
	)	<b>MOTIONS</b>
vs.	)	
	)	
M. S. EVANS, Warden,	)	(Docket Nos. 29, 33, 39, 44, 46)
	)	
Respondent.	)	
	)	
_____	)	

Petitioner, a prisoner of the State of California, currently incarcerated at California State Prison-Sacramento in Represa, California, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. On February 22, 2008, this Court ordered Respondent to show cause why the amended petition should not be granted. Further, the Court denied Petitioner’s motion for discovery for failure to show good cause. Thereafter, Respondent filed two motions seeking an extension of time to file an answer which are now GRANTED (docket nos. 29, 33). Respondent’s answer to the amended petition, filed on May 28, 2008, is deemed timely filed. Respondent’s motion seeking leave to file excess pages is GRANTED (docket no. 39).

Thereafter, Petitioner filed a traverse to Respondent’s answer on June 16, 2008. He has also filed a motion to schedule an evidentiary hearing (docket no. 44). Petitioner’s motion for an evidentiary hearing is DENIED as premature (docket no. 44). The Court will reconsider the motion when the petition is considered on the merits.

1           Petitioner has also filed a motion seeking appointment of counsel (docket no. 46).  
2           However, the Sixth Amendment’s right to counsel does not apply in habeas corpus  
3           actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. §  
4           3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner  
5           whenever “the court determines that the interests of justice so require and such person is  
6           financially unable to obtain representation.” The decision to appoint counsel is within  
7           the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.  
8           1986), *cert. denied*, 481 U.S. 1023 (1987); *Knaubert*, 791 F.2d at 728.

9           The courts have made appointment of counsel the exception rather than the rule  
10          by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex  
11          procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or  
12          mentally or physically impaired petitioners; (4) cases likely to require the assistance of  
13          experts either in framing or in trying the claims; (5) cases in which petitioner is in no  
14          position to investigate crucial facts; and (6) factually complex cases. *See generally* 1 J.  
15          Liebman & R. Hertz, *Federal Habeas Corpus Practice and Procedure* § 12.3b at 383-86  
16          (2d ed. 1994). Appointment is mandatory only when the circumstances of a particular  
17          case indicate that appointed counsel is necessary to prevent due process violations. *See*  
18          *Chaney*, 801 F.2d at 1196; *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir. 1965), *cert.*  
19          *denied*, 382 U.S. 996 (1966).

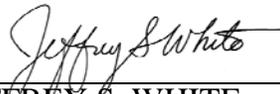
20          The denial of appointment of counsel is reviewed for abuse of discretion. *See*  
21          *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (no abuse of discretion where  
22          pleadings illustrate that petitioner had good understanding of issues and ability to present  
23          forcefully and coherently his contentions); *Bashor*, 730 F.2d at 1234 (although petitioner  
24          was over 60 years of age and had no background in law, he thoroughly presented issues  
25          in petition and accompanying memorandum).

26          In the motion, Petitioner argues that the prison’s restrictions on his possession of  
27          legal materials, cases and paper denies him meaningful access to the courts and,  
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1 therefore, requires that pro bono be appointed to represent him. However, although  
2 Petitioner has established the difficulties of litigating for a *pro se* petitioner, he has not  
3 established that he meets the standard of exceptional circumstances necessitating the  
4 appointment of counsel. Through his pleadings, Petitioner has shown that he is able to  
5 effectively raise and address the issues before the Court. Therefore, the Court concludes  
6 that the interests of justice do not require appointment of counsel at this time.  
7 Accordingly, Petitioner's motion for appointment of counsel (docket no. 46) is DENIED  
8 without prejudice.

9 IT IS SO ORDERED.

10 DATED: February 12, 2009

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13 JEFFREY S. WHITE  
14 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 GILBERT GUZMAN,  
6 Plaintiff,  
7

Case Number: CV06-05241 JSW

**CERTIFICATE OF SERVICE**

8 v.

9 M.S. EVANS et al,  
10 Defendant.  
\_\_\_\_\_ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on February 12, 2009, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
16 delivery receptacle located in the Clerk's office.

17 Gilbert Guzman  
18 Salinas Valley State Prison  
19 T65316  
20 P.O. Box 1050  
21 Soledad, CA 93960

22 Dated: February 12, 2009

*Jennifer Ottolini*  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk

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