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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LOUIS CHARLES DANIELS,

No. C 10-565 SI (pr)

Petitioner,

**ORDER**

v.

ROBERT K. WONG, warden,

Respondent.

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Respondent has moved to dismiss this action on the grounds that state court remedies were not exhausted before the petition was filed and one of the claims is not for the violation of the treaties, laws or Constitution of the United States. The court now sets the following briefing schedule for that motion: No later than **November 19, 2010**, petitioner must file and serve on respondent's counsel his opposition to the motion to dismiss. No later than **December 10, 2010**, respondent must file and serve his reply, if any.

Petitioner has filed a motion for 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 interests of justice do not require appointment of counsel in this action. The motion for appointment of counsel is DENIED. (Docket # 3, # 6.)

1           Petitioner's two in forma pauperis applications are DENIED. (Docket # 4 and # 6.)  
2           Petitioner had paid the filing fee before he filed those application, so it was not necessary to be  
3           given leave to proceed in forma pauperis to avoid the filing fee. Also, pauper status is  
4           unnecessary to facilitate appointment of counsel, because the court has declined to appoint  
5           counsel.

6           IT IS SO ORDERED.

7           DATED: October 25, 2010

  
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SUSAN ILLSTON  
United States District Judge

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