



1 **DISCUSSION**

2 A. Standard of Review

3 This court may entertain a petition for a writ of habeas corpus "in behalf  
4 of a person in custody pursuant to the judgment of a State court only on the  
5 ground that he is in custody in violation of the Constitution or laws or treaties of  
6 the United States." 28 U.S.C. § 2254(a).

7 It shall "award the writ or issue an order directing the respondent to show  
8 cause why the writ should not be granted, unless it appears from the application  
9 that the applicant or person detained is not entitled thereto." Id. § 2243.

10 B. Claims

11 Petitioner seeks federal habeas corpus relief on the grounds that the  
12 prosecutor's peremptory challenge to a prospective juror was exercised for  
13 racially discriminatory reasons and that the trial court's denial of petitioner's  
14 motion for a mistrial after a witness mentioned that petitioner was on probation  
15 for burglary violated his due process and Fifth Amendment rights. Liberally  
16 construed, the claims appear cognizable under § 2254 and merit an answer from  
17 respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal  
18 courts must construe pro se petitions for writs of habeas corpus liberally).

19 C. Request for Appointment of Counsel

20 Petitioner's request for appointment of counsel is DENIED without  
21 prejudice. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986) (unless  
22 an evidentiary hearing is required, the decision to appoint counsel in habeas  
23 corpus proceedings is within the discretion of the district court). Petitioner  
24 adequately presented his claims for relief in the petition and an order to show  
25 cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984)  
26 (although petitioner had no background in law, denial of appointment of counsel

1 within discretion of district court where petitioner clearly presented issues in  
2 petition and accompanying memorandum). The court will appoint counsel on its  
3 own motion if an evidentiary hearing is later required. See Knaubert, 791 F.2d at  
4 728 (appointment of counsel mandatory if evidentiary hearing is required).

### 5 CONCLUSION

6 For the foregoing reasons and for good cause shown,

7 1. Petitioner's request to proceed in forma pauperis (docket # 3) is  
8 GRANTED.

9 2. The clerk shall serve by certified mail a copy of this order and the  
10 petition and all attachments thereto on respondent and respondent's attorney, the  
11 Attorney General of the State of California. The clerk also shall serve a copy of  
12 this order on petitioner.

13 3. Respondent shall file with the court and serve on petitioner, within  
14 60 days of the issuance of this order, an answer conforming in all respects to Rule  
15 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
16 habeas corpus should not be granted. Respondent shall file with the answer and  
17 serve on petitioner a copy of all portions of the state trial record that have been  
18 transcribed previously and that are relevant to a determination of the issues  
19 presented by the petition.

20 If petitioner wishes to respond to the answer, he shall do so by filing a  
21 traverse with the court and serving it on respondent within 30 days of his receipt  
22 of the answer.

23 4. Respondent may file a motion to dismiss on procedural grounds in  
24 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the  
25 Rules Governing Section 2254 Cases. If respondent files such a motion,  
26 petitioner shall file with the court and serve on respondent an opposition or  
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1 statement of non-opposition within 30 days of receipt of the motion, and  
2 respondent shall file with the court and serve on petitioner a reply within 15 days  
3 of receipt of any opposition.

4 5. Petitioner is reminded that all communications with the court must  
5 be served on respondent by mailing a true copy of the document to respondent's  
6 counsel. Petitioner must also keep the court and all parties informed of any  
7 change of address.

8 SO ORDERED.

9 DATED: Aug. 5, 2010



10 CHARLES R. BREYER  
11 United States District Judge