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

BINH C. TRAN,

Petitioner,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA,

Respondent.

No. C 08-04686 CW (PR)

ORDER DENYING SECOND MOTION FOR  
APPOINTMENT OF COUNSEL

Petitioner has filed a second motion for appointment of  
counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas  
corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th  
Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes  
a district court to 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. 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); Knaubert, 791 F.2d at 728; Bashor v.  
Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made  
appointment of counsel the exception rather than the rule by

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

14 The Court finds that appointment of counsel is not warranted  
15 in this case. Petitioner's claims are typical claims that arise in  
16 criminal appeals and are not especially complex. This is not an  
17 exceptional case that would warrant representation on federal  
18 habeas review. Therefore, Petitioner's motion for appointment of  
19 counsel is DENIED. This denial is without prejudice to  
20 reconsideration should the Court on its own motion find an  
21 evidentiary hearing necessary following consideration of the merits  
22 of Petitioner's claims.

23 IT IS SO ORDERED.

24 Dated: 2/16/10



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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 BINH C. TRAN,  
5 Plaintiff,

Case Number: CV08-04686 CW

**CERTIFICATE OF SERVICE**

6 v.

7 PEOPLE OF THE STATE OF CALIFORNIA  
8 et al,

9 Defendant.  
/

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

12 That on February 16, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
15 in the Clerk's office.

16 Binh Cuong Tran F-26944  
17 TCCF  
18 415 U.S. Highway 49N  
19 Tutwiler, MS 38963

20 Dated: February 16, 2010

21 Richard W. Wiekling, Clerk  
22 By: Sheilah Cahill, Deputy Clerk  
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