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

AMADO REYES TRUJILLO,

Petitioner,

v.

RANDY GROUNDS, Warden,

Respondent.

No. C 11-01908 CW (PR)

ORDER GRANTING PETITIONER AN  
EXTENSION OF TIME TO PAY THE  
FILING FEE OR FILE IN FORMA  
PAUPERIS APPLICATION; DENYING  
APPOINTMENT OF COUNSEL;  
DIRECTING CLERK OF THE COURT TO  
SEND PETITIONER IN FORMA  
PAUPERIS APPLICATION FORM

Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On that same date, the Clerk of the Court sent Petitioner a notice directing him to pay the requisite \$5.00 filing fee or to file a completed in forma pauperis (IFP) application. The Court cannot conduct an initial review of this matter until Petitioner either has paid the filing fee or completed an IFP application. See 28 U.S.C. § 1915(a) (a party is permitted to file a civil action in federal court without prepayment of fees or security if he makes affidavit that he is unable to pay such fees or give security therefor).

Petitioner has filed a request for an extension of time to pay the requisite \$5.00 filing fee in this action.

1           Accordingly, the Court grants Petitioner's request. No later  
2 than thirty (30) days from the date of this Order, Petitioner shall  
3 pay the \$5.00 filing fee and include with his payment a clear  
4 indication that it is for the above-referenced case number, C 11-  
5 01908 CW (PR). In the event that Petitioner is unable to pay the  
6 filing fee, he shall submit an IFP application, trust account  
7 statement and certificate of funds no later than thirty (30) days  
8 from the date of this Order. Failure to pay the filing fee or file  
9 the requisite documents within the thirty-day deadline shall result  
10 in dismissal of this action.

11           Petitioner also has filed a motion for appointment of counsel.  
12 The Sixth Amendment right to counsel does not apply in habeas  
13 corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th  
14 Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes  
15 a district court to appoint counsel to represent a habeas  
16 petitioner whenever "the court determines that the interests of  
17 justice so require" and such person is financially unable to obtain  
18 representation. The decision to appoint counsel is within the  
19 discretion of the district court. See Chaney v. Lewis, 801 F.2d  
20 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.  
21 Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made  
22 appointment of counsel the exception rather than the rule by  
23 limiting it to: (1) capital cases; (2) cases that turn on  
24 substantial and complex procedural, legal or mixed legal and  
25 factual questions; (3) cases involving uneducated or mentally or  
26 physically impaired petitioners; (4) cases likely to require the  
27 assistance of experts either in framing or in trying the claims;  
28 (5) cases in which petitioner is in no position to investigate

1 crucial facts; and (6) factually complex cases. See generally 1 J.  
2 Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure  
3 § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only  
4 when the circumstances of a particular case indicate that appointed  
5 counsel is necessary to prevent due process violations. See  
6 Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th  
7 Cir. 1965).

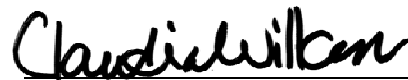
8 At this early stage of the proceedings the Court is unable to  
9 determine whether the appointment of counsel is mandated for  
10 Petitioner. The Court notes that Petitioner has presented his  
11 claims adequately in the petition, and no evidentiary hearing  
12 appears necessary. Accordingly, the interests of justice do not  
13 require appointment of counsel at this time, and Petitioner's  
14 request is DENIED. This denial is without prejudice. The Court  
15 may reconsider on its own motion and appoint counsel if the Court  
16 finds an evidentiary hearing is necessary following consideration  
17 of the merits of Petitioner's claims.

18 The Clerk of the Court shall send Petitioner a blank prisoner  
19 IFP application form along with his copy of this Order.

20 This Order terminates Docket nos. 2 and 3.

21 IT IS SO ORDERED.

22 Dated: 6/3/2011



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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

4 AMADO REYES TRUJILLO,

5 Plaintiff,

6 v.

7 RANDY GROUNDS et al,

8 Defendant.

Case Number: CV11-01908 CW

**CERTIFICATE OF SERVICE**

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

11 That on June 3, 2011, I SERVED a true and correct copy(ies) of the attached and a **blank**  
12 **prisoner IFP application**, by placing said copy(ies) in a postage paid envelope addressed to the  
13 person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said  
14 copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

15 Amado Reyes Trujillo V01212  
16 Correctional Training Facility  
17 P.O. Box 705  
18 Soledad, CA 93960-0705

19 Dated: June 3, 2011

20 Richard W. Wieking, Clerk  
21 By: Nikki Riley, Deputy Clerk  
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