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

RAUL NUNO,

Petitioner,

v.

MATTHEW CATE, Warden, et al.,

Respondents.

No. C 11-02446 SBA (PR)

**ORDER TO SHOW CAUSE; GRANTING
IN FORMA PAUPERIS STATUS; AND
DENYING PETITIONER'S MOTION
FOR APPOINTMENT OF COUNSEL**

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also seeks leave to proceed in forma pauperis. He has also filed a motion for appointment of counsel.

REQUEST FOR APPOINTMENT OF COUNSEL

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).

Courts have made appointment of counsel the exception rather than the rule by limiting it to:

1 (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and
2 factual questions; (3) cases involving uneducated or mentally or physically impaired petitioners; (4)
3 cases likely to require the assistance of experts either in framing or in trying the claims; (5) cases in
4 which petitioner is in no position to investigate crucial facts; and (6) factually complex cases. See
5 generally 1 J. Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure § 12.3b at 383-
6 86 (2d ed. 1994). Appointment is mandatory only when the circumstances of a particular case
7 indicate that appointed counsel is necessary to prevent due process violations. See Chaney, 801
8 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th Cir. 1965). Under the foregoing standard,
9 the Court finds that appointment of counsel is not warranted. Thus, Petitioner's motion for
10 appointment of counsel is DENIED.

11 **ORDER TO SHOW CAUSE**

12 It does not appear from the face of the petition that it is without merit. Good cause
13 appearing, the Court hereby issues the following orders:

- 14 1. Petitioner's application to proceed in forma pauperis is GRANTED.
- 15 2. The Clerk of the Court shall serve a copy of this Order and the petition and all
16 attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State
17 of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.
- 18 3. Respondent shall file with this Court and serve upon Petitioner, within **one-hundred**
19 **and twenty (120) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5
20 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
21 be issued. Respondent shall file with the Answer a copy of all portions of the relevant state records
22 that have been transcribed previously and that are relevant to a determination of the issues presented
23 by the petition.
- 24 4. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with
25 the Court and serving it on Respondent within **sixty (60) days** of his receipt of the Answer. Should
26 Petitioner fail to do so, the petition will be deemed submitted and ready for decision **sixty (60) days**
27 after the date Petitioner is served with Respondent's Answer.

1 5. Respondent may file with this Court and serve upon Petitioner, within **sixty (60) days**
2 of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an Answer, as set
3 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
4 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an
5 opposition or statement of non-opposition to the motion within **sixty (60) days** of receipt of the
6 motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen (15)**
7 **days** of receipt of any opposition.

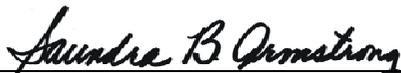
8 6. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
9 and Respondent informed of any change of address and must comply with the Court's orders in a
10 timely fashion. Petitioner must also serve on Respondent's counsel all communications with the
11 Court by mailing a true copy of the document to Respondent's counsel.

12 7. Extensions of time are not favored, though reasonable extensions will be granted.
13 Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline
14 sought to be extended.

15 8. This Order terminates Docket nos. 3 and 5.

16 IT IS SO ORDERED.

17 DATED: 6/13/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 RAUL NUNO,

5 Plaintiff,

6 v.

7 MATTHEW CATE et al,

8 Defendant.

Case Number: CV11-02446 SBA

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 15, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Raul Nuno F-86101
16 High Desert State Prison
17 P.O. Box 3030
18 Susanville, CA 96127

19 Dated: June 15, 2011

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk