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

GABRIEL RUDY CORTEZ,)	No. C 12-03819 EJD (PR)
)	
Petitioner,)	ORDER DENYING LEAVE TO
)	PROCEED <i>IN FORMA PAUPERIS</i> ;
vs.)	DIRECTING PETITIONER TO PAY
)	FILING FEE; DENYING MOTION
)	FOR APPOINTMENT OF
GREG D. LEWIS, Warden,)	COUNSEL AND MOTION FOR
)	EVIDENTIARY HEARING
Respondent.)	
)	(Docket Nos. 2, 3 & 4)

Petitioner, a California inmate, seeks petition in pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 2.) The motion is DENIED because Petitioner has not shown an adequate level of poverty as the average monthly deposit in his account was \$23.67 and the average monthly balance in his account was \$113.38, for the six-months preceding the filing of this petition.

Petitioner has filed a motion for appointment of counsel. (Docket No. 3.) The Sixth Amendment’s right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Unless an evidentiary hearing is required, the decision to appoint counsel is within the discretion of the district court. See Knaubert, 791 F.2d at 728; Bashor v.

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Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). An evidentiary hearing does not appear necessary at this time, and there are no exceptional circumstances to warrant appointment of counsel. Accordingly, Petitioner's motion is DENIED. This denial is without prejudice to the Court's sua sponte reconsideration should the Court later find an evidentiary hearing necessary following consideration of the merits of Petitioner's claims.

Petitioner's motion for an evidentiary hearing, (Docket No. 4), is DENIED as premature. The Court will sua sponte consider whether an evidentiary hearing is appropriate after an initial review of the petition.

Petitioner must pay the \$5.00 filing fee **within thirty (30) days** of the date of this order or face dismissal of this action for failure to pay the filing fee.

This order terminates Docket Nos. 2, 3 and 4.

DATED: 10/5/2012 
EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GABRIEL RUDY CORTEZ,
Petitioner,

Case Number: CV12-03819 EJD

CERTIFICATE OF SERVICE

v.

GREG LEWIS, Warden,
Respondent.

_____/

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

That on 10/9/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gabriel Rudy Cortez J-76501
Pelican Bay State Prison
P. O. Box 7500
Crescent City, Ca 95532

Dated: 10/9/2012

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk