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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAGARY R. XAVIER,  
Petitioner,

v.

RAYMOND JOHNSON, Warden,  
Respondent.

Case No. 20-06210 EJD (PR)

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

(Docket No. 17)

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. On May 6, 2021, the Court set a briefing schedule on the cognizable claims, directing Respondent to file an answer or dispositive motion within sixty days of the order. Dkt. No. 12. Respondent's answer is currently due no later than August 6, 2021. Petitioner has filed a motion for appointment of counsel. Dkt. No. 16.

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. Id.; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). Here, an evidentiary hearing does not appear to be

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necessary at this stage of the proceedings, and Petitioner’s circumstances are not so exceptional to warrant appointment of counsel. Accordingly, Petitioner’s motion for appointment of counsel is **DENIED** without prejudice to the Court’s sua sponte reconsideration should an evidentiary hearing be necessary to review the merits of Petitioner’s claims.

This order terminates Docket No. 17.

**IT IS SO ORDERED.**

Dated: July 15, 2021



EDWARD J. DAVILA  
United States District Judge