

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANGEL VILLALOBOS,	)	Civil No. 09-cv-363-L(MDD)
	)	
Petitioner,	)	<b>ORDER DENYING EX PARTE</b>
	)	<b>APPLICATION TO CONTINUE</b>
v.	)	<b>APPOINTMENT OF COUNSEL</b>
	)	<b>[DOC. 59]</b>
ROBERT HERNANDEZ,	)	
	)	
Respondent.	)	

Pending before the Court is Petitioner Angel Villalobos' *ex parte* application to continue appointment of counsel. (Doc. 59.) For the following reasons, the Court **DENIES** Petitioner's *ex parte* application.

**I. PROCEDURAL HISTORY**

On February 23, 2009, Petitioner, a state prisoner proceeding *pro se* and *in forma pauperis*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1.) On February 11, 2010, the Court rejected United States Magistrate Judge Anthony J. Battaglia's Report and Recommendations, and remanded on the issue of equitable tolling. (Doc. 18.) Consequently, Judge Battaglia appointed Federal Defenders of San Diego, Inc. to represent Petitioner for the limited purposes of a pre-evidentiary hearing conference and an evidentiary hearing. (Doc. 19.) James Fife and Janet Tung from the Federal Defenders of San Diego

1 appeared on behalf of Petitioner. (Docs. 24, 25.)

2 On October 15, 2010, Judge Battaglia held an evidentiary hearing and heard testimony  
3 from two witnesses. (Doc. 43.) Several days later, another evidentiary hearing was held and  
4 two more witnesses were called. (Doc. 44.)

5 Following the completion of the evidentiary hearings, Judge Battaglia issued another  
6 Report and Recommendation recommending that the Court deny Respondent Robert  
7 Hernandez's motion to dismiss.<sup>1</sup> On August 5, 2011, the Court adopted that Report and  
8 Recommendation, and denied Respondent's motion to dismiss. (Doc. 54.)

9 Shortly thereafter, James Fife and Janet Tung filed a Motion to Enlarge Briefing Schedule  
10 or Grant Leave to File a Post-Return, Amended Petition on behalf of Petitioner. (Doc. 56.)

11 Because counsel was appointed for the limited purpose of representing Petitioner at the  
12 evidentiary hearing, and because that purpose has been met, Judge Dembin issued an order  
13 finding that any further representation has not been authorized by the court. (Doc. 57.)  
14 Consequently, Judge Dembin presented three options to Petitioner's counsel: (1) seek further  
15 appointment from the Court; (2) advise the Court that they are proceeding *pro bono*; or (3)  
16 withdraw from the case. Petitioner's counsel selected the first option and now seeks further  
17 appointment from the Court. (Doc. 59.)

## 18 19 **II. DISCUSSION**

20 Under 18 U.S.C. § 3006A(a)(2)(B), the district court may appoint counsel to represent a  
21 habeas petitioner whenever "the court determines that the interests of justice so require," and  
22 such person is financially unable to obtain representation. The decision to appoint counsel is  
23 within the discretion of the district court. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986),  
24 *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986).

25 In this case, Petitioner requests continued appointment of counsel because of his limited  
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28 <sup>1</sup> In March 2011, United States Magistrate Judge Mitchell D. Dembin was assigned to this case while Judge Battaglia's Report and Recommendation was pending. (Doc. 53.)

1 knowledge of the English language and law, the issues involved are complex, and representation  
2 is needed to maintain procedural due process as set forth in *Knaubert*. However, Petitioner has  
3 extensively articulated his arguments and authority before the Court appointed counsel, and his  
4 claims are typical claims arising in a habeas petition and not especially complex. Additionally,  
5 though *Knaubert* articulated a three-factor test to determine the amount of process needed to  
6 protect a habeas petitioner's liberty interest, the Ninth Circuit added that though "[a] habeas  
7 petitioner's interest in release from illegal confinement undoubtedly is high . . . consideration of  
8 remaining factors leads to the conclusion that due process does not require appointment of  
9 counsel when an evidentiary hearing is not held." *Knaubert*, 791 F.2d at 729. Given that there  
10 is no impending evidentiary hearing, there is no threat that Petitioner's procedural-due-process  
11 rights will be denied. *See id.*


12 Accordingly, the Court concludes that this is not an exceptional case warranting  
13 continued representation, and that the interests of justice do not require further appointment of  
14 counsel at this time.

15  
16 **III. CONCLUSION & ORDER**

17 In light of the foregoing, the Court **DENIES WITHOUT PREJUDICE** Petitioner's *ex*  
18 *parte* application for appointment of counsel.

19  
20 **IT IS SO ORDERED.**

21  
22 DATED: October 3, 2011

23  
24   
M. James Lorenz  
United States District Court Judge

25 COPY TO:

26 HON. MITCHELL D. DEMBIN  
UNITED STATES MAGISTRATE JUDGE

27 ALL PARTIES/COUNSEL  
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