

1 **Motion for Appointment of Counsel**

2 Petitioner, in an application prepared by the Federal Defenders, requests the appointment of
3 counsel to assist him in prosecuting his Petition brought pursuant to 28 U.S.C. §2241 because he has
4 little legal experience, lacks the financial wherewithal to obtain representation, and, given the
5 complexity of the issues raised, cannot adequately address the issues raised in the Petition. The
6 Constitution provides no right to appointment of counsel in a civil case unless an indigent litigant may
7 lose her physical liberty if she loses the litigation. See Lassiter v. Dept. of Social Services, 452 U.S.
8 18, 25 (1981). Under 18 U.S.C. §3006A(a) and 28 U.S.C. § 1915(e)(1), however, district courts are
9 granted discretion to appoint counsel for indigent persons under “exceptional circumstances” or in the
10 “interests of justice.” See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of
11 exceptional circumstances requires an evaluation of both the ‘likelihood of success on the merits and
12 the ability of the plaintiff to articulate [his] claims pro se in light of the complexity of the legal issues
13 involved.’ Neither of these issues is dispositive and both must be viewed together before reaching a
14 decision.” Id. (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

15 In light of the legal and factual issues raised in the Petition, the court cannot adequately assess
16 the complexity of the issues or Petitioner’s ability to articulate his claims. In broad brush, Petitioner,
17 who does not challenge his removability, alleges that he was taken into immigration custody on
18 February 5, 2008 and that Respondents have failed to effectuate his removal within the presumptively
19 reasonable six month period of time identified in Zadvydas v. Davis, 533 U.S. 678, 689 (2001). The
20 Petition notes that India is one of the countries that the United States has listed as having had
21 “significant problems obtaining travel documents.” U.S. General Accounting Office, Immigration
22 Enforcement, at *21 (May 2004). Petitioner also represents that the Government claimed that the
23 reason that Petitioner had not been deported to India was due to his failure to provide the “the Indian
24 Consulate with an accurate address in India.” (Petition, Exh. A). The court concludes that an answer
25 to the Petition will provide the court with the factual and legal context required to assess Petitioner’s
26 motion for the appointment of counsel.

27 In sum, the court provisionally denies the motion for appointment of counsel. Following the
28 submission of the Government’s answer, Petitioner may again request appointment of counsel in light

1 of the factual record and legal arguments submitted by Respondents.

2 **Scheduling Order**


3 **1. RESPONDENT IS ORDERED** to file and serve an answer or other responsive pleading
4 to the Petition no later than April 17, 2009. The answer shall include any and all transcripts or other
5 documents relevant to the determination of the issues presented in the Petition.

6 **2. IT IS FURTHER ORDERED** that if Petitioner wishes to reply to the responsive pleading,
7 a traverse or other appropriate pleading must be filed and served no later than May 1, 2009. At that
8 time, unless otherwise notified by the court, the matter will be taken under submission without oral
9 argument pursuant to Local Rule 7.1(d)(1).

10 **3. IT IS FURTHER ORDERED** that the Clerk of Court shall serve a copy of this order and
11 the petition on the United States Attorney General or an authorized representative.

12 **IT IS SO ORDERED.**

13 DATED: March 19, 2009

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16 Hon. Jeffrey T. Miller
17 United States District Judge

18 cc: All parties

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