

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JESUS SILVA,

Plaintiff,

vs.

NASARIA P. BARRERAS, *Chief
Medical Officer*; KHATRI, *Chief
Physician*; COLLINSWORTH, *Physician*;
HATCH, *Correctional Officer*; ALEXI,
Correctional Officer; JL NICHOLAS,
Correctional Counselor; JOAN TRACY,
Health Care Manager; Does1 through 3,

Defendants.

CASE NO. 09CV2193-(BGS)

**ORDER:
(1) DENYING PLAINTIFF’S
MOTION TO APPOINT
COUNSEL; (2) EXTENDING
TIME FOR SERVICE; (3)
DIRECTING CLERK TO SEND
PLAINTIFF CERTIFIED COPY
OF THE IN FORMA
PAUPERIS/SERVICE ORDER**

On April 28, 2010, Plaintiff Jesus Silva, a prisoner proceeding *pro se* and *In Forma Pauperis* (“IFP”) in this civil rights action, filed a motion to appoint counsel. (Doc. No. 10.) On May 4, 2010, this case was transferred to the undersigned. (Doc. No. 11.) On October 29, 2010, Judge Whelan accepted a letter from Plaintiff requesting that he receive a certified copy of the order granting him IFP status and directing the United States marshal to issue and serve process. (Doc. No. 13.) On January 13, 2011, Judge Whelan accepted another letter from Plaintiff that once again requested the certified copy of the IFP/Service Order. (Doc. No. 16.) It does not appear that the clerk was ever directed to mail Plaintiff a certified copy of the

1 Court's order granting his motion to proceed IFP and directing the U.S. Marshal to serve
2 process. The Court **GRANTS** Plaintiff's motion for the clerk to send him a certified copy of
3 the IFP order (Doc. No. 8). Additionally, for the reasons set forth below the Court **DENIES**
4 **WITHOUT PREJUDICE** Plaintiff's motion for appointment of counsel.

5 Plaintiff requests appointment of counsel for four reasons: (1) as a result of gunshot
6 wounds to the head he suffers from diminished mental capacity; (2) he has no experience in
7 pursuing legal matters; (3) the issues in the case are factually complex; and (4) he cannot
8 afford to secure his own counsel. (Doc. No. 10.)

9 "There is no constitutional right to appointed counsel in a § 1983 action." *Rand v.*
10 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Storseth v. Spellman*, 654 F.2d 1349,
11 1353 (9th Cir. 1981)); see also *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360,
12 1363 (9th Cir. 1994) ("[T]here is no absolute right to counsel in civil proceedings.") (citation
13 omitted). Thus, federal courts do not have the authority "to make coercive appointments of
14 counsel." *Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); see also *United*
15 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

16 Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to
17 "request" that an attorney represent indigent civil litigants upon a showing of "exceptional
18 circumstances." See *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir.
19 2004); *Rand*, 113 F.3d at 1525. "A finding of the exceptional circumstances of the plaintiff
20 seeking assistance requires at least an evaluation of the likelihood of the plaintiff's success on
21 the merits and an evaluation of the plaintiff's ability to articulate his claims 'in light of the
22 complexity of the legal issues involved.'" *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v.*
23 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); see also *Terrell v. Brewer*, 935 F.2d 1015,
24 1017 (9th Cir. 1991).

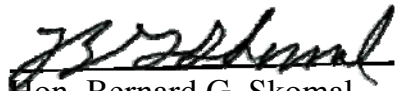
25 The Court denies Plaintiff's request without prejudice, as neither the interests of justice
26 nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*,
27 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017. Plaintiff has thus far been able
28 to articulate his claims, as the Court found that Plaintiff's complaint contains allegations

1 sufficient to survive the sua sponte screening required by 28 U.S.C. §§1915(e)(2) and
2 1915A(b). (See Doc. No. 8 at 3.) Furthermore, it does not appear that the legal issues involved
3 are complex. See *Wilborn v. Escalderon*, 789 F.3d 1328, 1331 (9th Cir. 1986) (noting that, “If
4 all that was required to establish successfully the complexity of the relevant issues was a
5 demonstration of the need for development of further facts, practically all cases would involve
6 complex legal issues.”).

7 In light of Plaintiff not receiving a certified copy of the IFP order, the Court, pursuant
8 to Fed. R. Civ. Pro. 4(m), will extend the time for service of the summons and complaint.
9 Plaintiff’s complaint was filed on March 8, 2010. (Doc. No. 6.) Therefore, the 120 days for
10 service under Rule 4(m) expired on July 6, 2010. Plaintiff shall have an additional 120 days
11 from the date of this order to serve Defendants.

12 **IT IS SO ORDERED.**

13
14 DATED: March 14, 2011

15 
16 Hon. Bernard G. Skomal
17 U.S. Magistrate Judge
18 United States District Court
19
20
21
22
23
24
25
26
27
28