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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALFREDO SEPULVEDA-IRIBE,
Plaintiff,
v.
ACOSTA, *et al.*,
Defendants.

Civil No. 10cv1417 JAH(BLM)

ORDER GRANTING PLAINTIFF’S
MOTION FOR ENLARGEMENT OF
TIME [DOC. # 30] AND
DENYING PLAINTIFF’S MOTION
FOR APPOINTMENT OF
COUNSEL [DOC. # 36]

Currently pending before the Court are plaintiff’s motions for enlargement of time and for appointment of counsel. *See* Docs. # 30, 36. For the reasons set forth below, this Court GRANTS plaintiff’s motion for enlargement of time and DENIES plaintiff’s motion for appointment of counsel.

1. Enlargement of Time

On January 2, 2015, plaintiff filed a motion seeking an enlargement of time to serve his summons and complaint upon defendant the United States as directed by this Court in its order filed December 15, 2014. *See* Docs. # 27, 30. According to plaintiff, as of the date of his submission, he was scheduled to be released from custody and deported to Mexico on December 30, 2014 and, thus, sought an extension of time to “get an address to get his mail from the court.” Doc. # 30 at 1. Then, on January 6, 2015, plaintiff submitted a document entitled “Nunc Pro Tunc Motion” in which he notified the Court that he had not yet been deported but still expected to be released and deported “in three days from this date.” Doc. # 32 at 1. In his motion seeking appointment of counsel,

1 filed on March 30, 2015, plaintiff states he was deported but has had some medical
2 conditions that apparently delayed him from continuing with the prosecution of this case.
3 *See* Doc. # 36. However, this Court notes that the discrepancy order allowing the filing
4 of plaintiff’s motion for appointment of counsel was returned as undeliverable to plaintiff
5 at the address on file. *See* Doc. # 37.

6 Based on these representations, this Court deems it appropriate to allow plaintiff
7 additional time to serve the United States as directed by this Court in its order filed on
8 December 17, 2014.

9 **2. Appointment of Counsel**

10 In his motion for appointment of counsel, plaintiff seeks appointment of counsel
11 “due to the fact that I was deported without my case being resolved within the time I was
12 in the United States ...” Doc. # 36 at 1. The Constitution provides no right to
13 appointment of counsel in a civil case unless an indigent litigant may lose his physical
14 liberty if he loses the litigation. Lassiter v. Dept. of Social Services, 452 U.S. 18, 25
15 (1981). Under 28 U.S.C. § 1915(e)(1), however, district courts are granted discretion to
16 appoint counsel for indigent persons under “exceptional circumstances.” Terrell v. Brewer,
17 935 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires
18 an evaluation of both the ‘likelihood of success on the merits and the ability of the
19 plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues
20 involved.’ Neither of these issues is dispositive and both must be viewed together before
21 reaching a decision.” Id. (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.
22 1986)).

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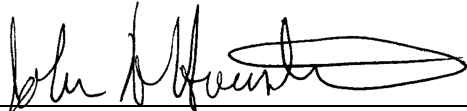
1 Here, it appears that plaintiff has a sufficient grasp of his case, the legal issues
2 involved, and is able to adequately articulate the basis of his complaint. Under these
3 circumstances, the Court **DENIES** plaintiff's request for appointment of counsel because
4 it is not warranted by the interests of justice. LaMere v. Risley, 827 F.2d 622, 626 (9th
5 Cir. 1987). This Court finds the mere fact plaintiff has been deported does not rise to the
6 level of exceptional circumstances warranting appointment of counsel.

7 **CONCLUSION AND ORDER**

8 Based on the foregoing, IT IS HEREBY ORDERED that;

- 9 1. Plaintiff's motion for enlargement of time [doc. # 30] is **GRANTED**.
10 Plaintiff shall serve the summons and complaint upon the United States as directed in this
11 Court's order filed on December 15, 2014 **no later than June 19, 2015**; and
12 2. Plaintiff's motion for appointment of counsel [doc. # 36] is **DENIED**.

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14 Dated: May 11, 2015

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17 JOHN A. HOUSTON
18 United States District Judge
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