

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 Marcus D. BRICENO,

4 Plaintiff,

5 v.

6 Blake WILLIAMS, et al.,

7 Defendants.

Case No.: 16-cv-1665-JAH-AGS

**ORDER DENYING MOTION FOR
APPOINTED COUNSEL (ECF 105)**

8
9 For the fourth time, plaintiff Marcus Briceno seeks appointed counsel. The last three
10 times, he sought counsel because of medical issues that he alleged interfered with his ability
11 to litigate his case and being “unlearned” in “the matters of law.” (*See* ECF 40, at 1.) This
12 time, he argues that his “PTSD-Anxiety-Depression” is “not allowing [him] to move on
13 with [his] case.” (ECF 105, at 1.)

14 “Generally, a person has no right to counsel in civil actions.” *Palmer v. Valdez*,
15 560 F.3d 965, 970 (9th Cir. 2009). Even under the statutory authority to recruit civil
16 counsel, the Court cannot force attorneys to represent an indigent civil litigant. *See Mallard*
17 *v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 310 (1989) (holding that the relevant
18 statute—28 U.S.C. § 1915—“does not authorize the federal courts to make coercive
19 appointments of counsel”). But “a court may under ‘exceptional circumstances’ appoint
20 counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer*, 560 F.3d
21 at 970 (citation omitted). “When determining whether exceptional circumstances exist, a
22 court must consider the likelihood of success on the merits as well as the ability of the
23 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
24 involved.” *Id.* (citation and quotation marks omitted).

25 Briceno attached over 200 pages of medical records to his fourth motion to support
26 his claim that his mental impairments are exceptional circumstances justifying appointment
27 of counsel. (*See generally* ECF 105.) “[I]ncapacitating mental disability may be grounds
28 for appointment of counsel in some cases,” but “[t]here must be a nexus between the mental

1 disorder and the plaintiff’s ability to articulate his claims.” *Thompson v. Paramo*,
2 No. 16CV951-MMA (BGS), 2018 WL 4357993, at *2 (S.D. Cal. Sept. 13, 2018).

3 Briceno’s medical records show some recent acute problems resulting from anxiety
4 and mourning the loss of several family members. (*See, e.g.*, ECF 105, at 12 (February
5 2021 note placing Briceno on suicide watch because of “[i]neffective individual coping
6 relating to situational crisis”); *id.* at 36 (February 2021 note mentioning “recent death in
7 the family, suicidal ideations, and homicidal ideations”); *id.* at 41 (December 2020 note
8 mentioning that he had “flipp[ed] out” after missing a court date and felt “hopeless,
9 depressed, anxious, and paranoid”); *id.* at 45 (February 2021 complaint about hearing
10 voices and lack of sleep); *id.* at 49 (September 2020 note about being “stressed out”); *id.*
11 at 54 (June 2020 note about being under “attack[]” by correctional officers and related
12 nightmares); *id.* at 61 (February 2021 note relating “deaths of numerous family members
13 that occurred in January,” fear that his father was “dying,” nightmares and sleeping
14 problems, and “auditory hallucinations”); *id.* at 64 (October 2020 note: “mental health is
15 alright but he is stressed out” and “quite paranoid”); *but see id.* at 56 (March 2021 note
16 “den[ying] any distressing mental health symptoms”); *id.* at 40 (March 2021 note citing a
17 complaint that he’d “always” had “auditory hallucinations,” but noting no “other mental
18 health concerns”); *id.* at 42 (March 2021 note that Briceno reported being “alright” and
19 refused mental-health treatment).) But virtually all the mental-health assessments
20 mentioned he was capable of concrete thought, had linear thought processes, and had
21 “limited,” “fair,” or “good” insight and judgment. (*See, e.g.*, ECF 105, at 51, 52, 55, 56,
22 57, 61, 62, 63, 67, 69; *but see id.* at 64 (“poor” “judgment and insight” in October 2020).)

23 Although it is clear that Briceno suffers from mental-health problems and suffered
24 an acute outbreak recently after family members passed, those issues do not rise to the
25 exceptional level necessary to justify the appointment of counsel. Additionally, there does
26 not appear to be a nexus between those issues and Briceno’s ability to litigate this case. In
27 late 2020, Briceno filed two summary-judgment responses, setting out his positions clearly
28 and attaching evidence. And those responses were somewhat successful, as the motion for

1 summary judgment was partially denied. (*See generally* ECF 96); *Thompson*, 2018 WL
2 4537993, at *1 (“When a pro se plaintiff shows he understands basic litigation procedure
3 and is able to articulate his claims, he does not demonstrate exceptional circumstances to
4 warrant appointing counsel.”).

5 Turning to the last two factors—the likelihood of success on the merits and the
6 complexity of the case—neither weigh heavily in favor of finding exceptional
7 circumstances. The likelihood of success on the merits remains unclear, even at this point,
8 since the most recent orders from the Court have reduced the case to a single issue which
9 will come down to whether the factfinder believes Briceno or Officer Williams. (*See*
10 ECF 96, at 20 (“Accordingly, viewing the facts regarding the punch or punches to his head
11 after he was taken to the ground by Williams in the light most favorable to Plaintiff, the
12 Court finds Plaintiff has sufficiently produced evidence to satisfy both prongs of the
13 qualified immunity analysis as to this Fourth Amendment excessive force claim.”); *see*
14 *also* ECF 107, at 5 (denying a motion to reconsider the same).) But it is now clear that this
15 case is, like most excessive-force claims, a simple he said/he said situation, and is certainly
16 not complex. *See Price v. Kamer*, 993 F. Supp. 1295, 1298 (C.D. Cal. 1997) (“With rare
17 exceptions, excessive force cases are simple, rather than complex cases. Excessive force
18 cases almost always involve very few events which happened over a very short time span.
19 There tend to be relatively few witnesses, and the dispositive disputes almost always
20 involve the credibility of witnesses.” (emphasis omitted)). Again, Briceno has so far
21 represented himself ably, and each of his filings have been clear and capably supported. So
22 Briceno has failed to show exceptional circumstances. The motion for appointment of
23 counsel is therefore **DENIED**.

24 Dated: June 4, 2021

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26 _____
27 Hon. Andrew G. Schopler
28 United States Magistrate Judge