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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Irwin Guzman,

11 Petitioner,

12 v.

13 Spearman, Warden,

14 Respondent.

Case No.: 16-cv-2659-MMA-AGS

**ORDER DENYING MOTION FOR  
APPOINTED COUNSEL (Doc. 21);  
ORDER TO SHOW CAUSE;  
AND  
REPORT AND RECOMMENDATION  
ON GROUND SIX**

15  
16 Petitioner Irwin Guzman moves for appointed counsel to assist with his habeas  
17 corpus petition. For the reasons below, the Court denies this request, orders him to show  
18 cause for failing to exhaust Ground Five, and recommends dismissing Ground Six with  
19 leave to amend.

20 **A. Appointed Counsel**

21 Guzman requests appointed counsel because: he has “no legal training”; the case  
22 presents complex legal issues; he has attention deficit hyperactivity disorder and bipolar  
23 disorder; and he is a slower learner who needed assistance from a prison tutor to even write  
24 the current motion. (ECF No. 21, at 1, 4-5.) Also, he points out that as a child he was in  
25 special education class, and that it is “only a matter of time until I have no help from  
26 anyone[.]” (ECF No. 21, at 5.) “The Sixth Amendment right to counsel does not extend to  
27 habeas petitions, although some financially eligible petitioners may obtain counsel when  
28 “the interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B); Chaney v. Lewis, 801

1 F.2d 1191, 1196 (9th Cir. 1986); see also *Coleman v. Thompson*, 501 U.S. 722, 756–57  
2 (1991). To meet that standard, the case must suggest that “appointed counsel is necessary  
3 to prevent due process violations.” *Chaney*, 801 F.2d at 1196. Additionally, petitioners may  
4 receive appointed counsel if they have such limited education that they are incapable of  
5 presenting their claims. *Hawkins v. Bennett*, 423 F.2d 948, 950 (8th Cir. 1970).

6 The Court finds that Guzman’s due process rights are not in jeopardy here, and that  
7 he has proven himself to be sufficiently capable of pursuing habeas relief on his own.  
8 Notwithstanding his arguments to the contrary, his six grounds for relief are not unusually  
9 complicated. Guzman mentions that he needed a prison tutor’s aid to write the current  
10 motion (and that tutor may soon be leaving), but all of Guzman’s filings throughout this  
11 litigation have thus far been clearly and logically presented. Thus, the Court **DENIES** his  
12 request for appointed counsel at this time.

13 **B. Order to Show Cause for Failing to Exhaust Ground Five**

14 Guzman’s fifth ground for relief is that the “cumulative effect of the errors below  
15 rendered [his] trial fundamentally unfair in violation of his due process rights.” (ECF No. 1,  
16 at 14.) It appears Guzman never raised this claim in any state proceedings, and it was not  
17 mentioned in the state appellate court’s opinion. *People v. Garcia*, 199 Cal. Rptr. 3d 399  
18 (Cal. Ct. App. 4th Dist. 2016), rev. denied, (June 8, 2016). A prisoner must exhaust his  
19 state court remedies before filing a federal habeas petition by fairly presenting his claims  
20 to the state courts. 28 U.S.C. § 2554(b)(1); *Wooten v. Kirkland*, 540 F.3d 1019, 1025-26  
21 (9th Cir. 2008). Thus, the Court **ORDERS** Guzman to file a memorandum, by  
22 August 4, 2017, explaining why Ground Five should not be dismissed for failing to exhaust  
23 his state court remedies.

24 **C. Report and Recommendation Regarding Ground Six**

25 In Ground Six, Guzman seeks to “join in all arguments raised by the co-appellants  
26 that may accrue to his benefit.” (ECF No. 1, at 14.) Although such “beneficial joinder” is  
27 permitted in California state courts, “the Rules Governing Section 2254 Cases in the United  
28 States District Courts do not permit such joinder arguments.” *Hansen v. Johnson*,

1 No. 12CV1741 AJB (DHB), 2014 WL 1379275, at \*18 (S.D. Cal. Apr. 8, 2014). Even if  
2 this procedure were allowed in federal court, Guzman does not specify any co-appellant or  
3 case to which this court could even refer. Thus, this Court recommends **DISMISSING**  
4 Ground Six, but granting Guzman leave to amend his petition.

5 If the District Judge allows Guzman to file an amended petition, Guzman's new  
6 petition must include every single claim for which he can seek federal relief—whether the  
7 claim is new or old—without reference to any other person's filing, and he must set out the  
8 factual basis for each and every claim. Guzman is reminded that he may only include claims  
9 that are timely and exhausted, unless he can show good cause for failing to exhaust or for  
10 failing to timely bring the claims.

11 Upon being served with a copy of this report, the parties have 14 days to file any  
12 objections. Upon being served with any objections, the party receiving such objections has  
13 14 days to file any response. See Fed. R. Civ. P. 72(b)(2).

14 Dated: July 13, 2017

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16 Hon. Andrew G. Schopler  
17 United States Magistrate Judge  
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