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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 STEVEN GARY THOMAS,  
12 Petitioner,  
13 v.  
14 ERIC ARNOLD, Warden,  
15 Respondent.

Case No.: 3:16-cv-02986-WQH-NLS

**ORDER:**  
**(1) EXTENDING DEADLINE FOR**  
**PETITIONER TO FILE TRAVERSE;**  
**(2) DIRECTING CLERK OF COURT**  
**TO PROVIDE A SECOND COPY OF**  
**COURT’S JANUARY 23, 2017**  
**ORDER; AND**  
**(3) DENYING PETITIONER’S**  
**REQUEST FOR COUNSEL**

**(Dkt. No. 11)**

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21 **I. Petitioner’s Deadline to File a Traverse**

22 On April 5, 2017, Petitioner filed a letter stating he is aware that Respondent filed  
23 an Answer to the Petition. Petitioner states, however, that he has not received an “Order  
24 to Show Cause,” and thus has not received any direction from the Court regarding when  
25 his reply to Respondent’s Answer is due.

26 The Court has not issued any Order to Show Cause. The Court has, however,  
27 previously issued an Order that set forth deadlines, including Petitioner’s deadline to  
28 reply to Respondent’s Answer. In particular, on January 23, 2017, the Court issued an

1 Order setting Respondent's deadline to respond or move to dismiss the Petition by March  
2 27, 2017. (Dkt. No. 6.) That Order also set Petitioner's deadline to file his response, if  
3 any, by April 27, 2017. (Id.) The docket reflects that Petitioner was served with the  
4 Court's Order via U.S. Mail Service. However, because Petitioner apparently did not  
5 receive a copy of the Order, the Court will direct the Clerk of Court to provide another  
6 copy, and the Court will also provide a brief extension on Petitioner's deadline to file his  
7 Traverse to the Answer.

## 8 **II. Petitioner's Request for Counsel**

9 In a single sentence in his letter, Petitioner also asks the Court to appoint counsel  
10 in this matter "given the complexity of the issue." (Dkt. No. 6.)

11 The Sixth Amendment right to counsel does not extend to federal habeas corpus  
12 actions by state prisoners. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). But  
13 financially eligible habeas petitioners may obtain counsel whenever the court "determines  
14 that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B); *Terrovona v.*  
15 *Kincheloe*, 912 F.2d 1176, 1181 (9th Cir. 1990). The interests of justice require  
16 appointment of counsel when the court conducts an evidentiary hearing on the petition.  
17 *Id.* at 1177. When no evidentiary hearing is necessary, appointment of counsel is  
18 discretionary. *Id.* In the Ninth Circuit, indigent prisoners are not entitled to appointed  
19 counsel unless counsel is necessary to prevent due process violations. *Chaney*, 801 F.2d  
20 at 1196; *Terrovona*, 912 F.3d at 1181.

21 At this point the issues do not appear so complex such that Petitioner cannot  
22 litigate them. Also, it is not evident at this time that an evidentiary hearing is necessary.  
23 Under these circumstances, a district court does not abuse its discretion in denying a state  
24 prisoner's request for appointment of counsel.

## 25 **III. Conclusion**

26 For the foregoing reasons, the Court **ORDERS** that:

- 27 1. The Clerk of Court is directed to provide another copy of the Court's  
28 January 23, 2017 Order (Dkt. No. 6) along with this Order;

- 1           2. If Petitioner elects to file a Traverse to matters raised in the Answer, his  
2           Traverse deadline is extended from April 27, 2017 to **May 11, 2017**; and  
3           3. Petitioner's request for appointment of counsel is **DENIED**.

4           **IT IS SO ORDERED.**

5 Dated: April 11, 2017



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7           Hon. Nita L. Stormes  
8           United States Magistrate Judge  
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