IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| RAUL CALDERON, | ) | 4:13CV3030 |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | **MEMORANDUM AND ORDER** |
| | ) | |
| ROBERT P. HOUSTON, | ) | |
| | ) | |
| Defendant. | ) | |

This matter is before the court on Plaintiff Raul Calderon's ("Plaintiff") Motion for Appointment of Counsel (Filing No. 7), Motion for Preliminary Injunction (Filing No. 10), and Motion for Summons (Filing No. 13).

**A. Motion for Appointment of Counsel**

Plaintiff requests the appointment of counsel. The court cannot routinely appoint counsel in civil cases. In *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996), the Eighth Circuit Court of Appeals explained that "[i]ndigent civil litigants do not have a constitutional or statutory right to appointed counsel. . . . The trial court has broad discretion to decide whether both the plaintiff and the court will benefit from the appointment of counsel." *Id.* (quotation and citation omitted). No such benefit is apparent here. Therefore, Plaintiff's request for the appointment of counsel will be denied.

**B. Motion for Preliminary Injunction**

Plaintiff asks the court to order Defendant to release him from custody. However, Plaintiff's Motion seeks relief that is not available to him in this action. Claims relating to the validity of an individual's incarceration may not be brought in a civil rights case. As set forth by the Supreme Court in *Preiser v. Rodriguez*, 411

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U.S. 475 (1973) and *Heck v. Humphrey*, 512 U.S. 477 (1994), if success on the merits of a civil rights claim would unnecessarily implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use 42 U.S.C. 1983 to cast doubt on the legality of his conviction or confinement. *See Heck*, 512 U.S. at 486-87. Accordingly, the court will deny Plaintiff's Motion for Preliminary Injunction.

### C. Motion for Summons

Plaintiff has not paid the initial partial filing fee in this matter, and this matter will not proceed until he does so. Therefore, the court will deny Plaintiff's Motion for Summons.

IT IS THEREFORE ORDERED that: Plaintiff's Motion for Appointment of Counsel (Filing No. 7), Motion for Preliminary Injunction (Filing No. 10), and Motion for Summons (Filing No. 13) are denied.

DATED this 22nd day of February, 2013.

BY THE COURT:

*s/ John M. Gerrard*
United States District Judge

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