

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 JERRY CROSS,
9 Petitioner, 2:17-cv-00290-JCM-VCF
10 vs. **ORDER**
11 BRIAN WILLIAMS, SR., *et al.*,
12 Respondents.

15 In this habeas corpus case, the court has ordered the petitioner, Nevada prisoner Jerry Cross,
16 to either pay the \$5 filing fee or file a new and complete application to proceed *in forma pauperis*,
17 including the required financial certificate, by March 24, 2017. *See* Order entered February 6, 2017
18 (ECF No. 3). Upon a motion by Cross, the court subsequently extended that deadline to April 28,
19 2017. *See* Order entered March 10, 2017 (ECF No. 6). Cross did not pay the filing fee or file a new
20 application to proceed *in forma pauperis* by April 28, 2017.

21 Rather, on March 9, 2017, Cross filed a motion for appointment of counsel (ECF No. 5). The
22 Court will grant Cross' motion for appointment of counsel. "Indigent state prisoners applying for
23 habeas corpus relief are not entitled to appointed counsel unless the circumstances of a particular
24 case indicate that appointed counsel is necessary to prevent due process violations." *Chaney v.*
25 *Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir.
26 1970) (per curiam)). The court may, however, appoint counsel at any stage of the proceedings "if the

1 interests of justice so require.” See 18 U.S.C. § 3006A; see also Rule 8(c), Rules Governing § 2254
2 Cases; *Chaney*, 801 F.2d at 1196. Cross states that he has a learning disability, mental illness, and
3 short term memory loss, and he indicates that he has limited ability to read and write. It appears that
4 Cross will not be able to adequately present his case without counsel. Therefore, the Court finds that
5 appointment of counsel is in the interests of justice.

6 Therefore, the court will suspend the requirement that Cross pay the filing fee or file a new
7 application to proceed *in forma pauperis*. The court will order the original petition in this case
8 served upon respondents, will direct respondents to appear, but will not require any further action on
9 the part of respondents at this time.

10 **IT IS THEREFORE ORDERED** that petitioner's Ex Parte Request for Appointment of
11 Counsel (ECF No. 5) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD)
12 is appointed to represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict
13 of interest or other reason, then alternate counsel will be appointed. In either case, counsel will
14 represent the petitioner in all federal-court proceedings relating to this matter, unless allowed to
15 withdraw.

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon the
17 FPD a copy of this order, together with a copy of the petitioner's petition for writ of habeas corpus
18 (ECF No. 1-1).

19 **IT IS FURTHER ORDERED** that the FPD shall have **20 days** from the date of entry of this
20 order to file a notice of appearance, or to indicate to the Court its inability to represent the petitioner
21 in this case.

22 **IT IS FURTHER ORDERED** that the time for petitioner to pay the filing fee for this action,
23 or file a new application to proceed *in forma pauperis* is extended. The court will set a new deadline
24 in that regard after counsel appear for the petitioner and the respondents.

25 **IT IS FURTHER ORDERED** that the Clerk of the Court shall add Adam Paul Laxalt,
26 Attorney General of the State of Nevada, as counsel for respondents.

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon
2 respondents a copy of the petition for writ of habeas corpus (ECF No. 1-1), and a copy of this order.

3 **IT IS FURTHER ORDERED** that respondents shall have **20 days** from the date on which
4 the petition is served upon them to appear in this action. Respondents will not be required to
5 respond to the habeas petition at this time.

6 **IT IS FURTHER ORDERED** that the court will establish a schedule for further
7 proceedings after counsel appear for the petitioner and the respondents.

8
9 Dated May 17, 2017.

10
11 
12

13 UNITED STATES DISTRICT JUDGE

14
15
16
17
18
19
20
21
22
23
24
25
26