

1

2

3

4

5

UNITED STATES DISTRICT COURT

6

DISTRICT OF NEVADA

7

8 JOHN JOEY MARKS,

9 Petitioner,

2:17-cv-01413-JCM-PAL

10 vs.

ORDER11 BRIAN WILLIAMS, *et al.*,

12 Respondents.

13 _____/

14

15 This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by
16 John Joey Marks, a Nevada prisoner. Marks initiated this action on May 16, 2017, by filing an
17 application to proceed *in forma pauperis* (ECF No. 1), along with his habeas corpus petition
18 (attached to application to proceed *in forma pauperis* at ECF No. 1-1), and a motion for appointment
19 of counsel (ECF No. 2).

20 The financial information submitted with Marks' application to proceed *in forma pauperis*
21 indicates that he is unable to pay the filing fee for this action. Therefore, the *in forma pauperis*
22 application will be granted, and he will not be required to pay the filing fee.

23 The court has examined Marks' petition, pursuant to Rule 4 of the Rules Governing Section
24 2254 Cases in the United States District Courts, and determines that it merits service upon the
25 respondents. Respondents will not be required to respond to the petition at this time, however, as the
26 court anticipates that, with counsel, Marks will likely file an amended petition.

1 The court will grant Marks' motion for appointment of counsel. "Indigent state prisoners
2 applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances of a
3 particular case indicate that appointed counsel is necessary to prevent due process violations."
4 *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640
5 (9th Cir. 1970) (per curiam)). The court may, however, appoint counsel at any stage of the
6 proceedings "if the interests of justice so require." See 18 U.S.C. § 3006A; see also Rule 8(c), Rules
7 Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. Appointment of counsel appears to be in the
8 interests of justice in this case; Marks states that he cannot read or write. The court will appoint
9 counsel to represent Marks in this action.

10 **IT IS THEREFORE ORDERED** that petitioner's Application to Proceed *In Forma*
11 *Pauperis* (ECF No. 1) is **GRANTED**. Petitioner is granted leave to proceed *in forma pauperis*.
12 Petitioner will not be required to pay the filing fee for this action.

13 **IT IS FURTHER ORDERED** that the clerk of the court shall separately file the petition for
14 writ of habeas corpus, which is currently attached to the *in forma pauperis* application, at ECF No.
15 1-1.

16 **IT IS FURTHER ORDERED** that the clerk of the court shall add Adam Paul Laxalt,
17 Attorney General of the State of Nevada, as counsel for respondents.

18 **IT IS FURTHER ORDERED** that the clerk of the court shall electronically serve upon
19 respondents a copy of the petition for writ of habeas corpus, and a copy of this order.

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

23 **IT IS FURTHER ORDERED** that petitioner's Motion for Appointment of Counsel (ECF
24 No. 2) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD) is appointed to
25 represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict of interest or
26

1 other reason, then alternate counsel will be appointed. In either case, counsel will represent the
2 petitioner in all federal-court proceedings relating to this matter, unless allowed to withdraw.

3 **IT IS FURTHER ORDERED** that the clerk of the court shall electronically serve upon the
4 FPD a copy of this order, together with a copy of the petition for writ of habeas corpus.

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

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

10
11 Dated June 1, 2017.

12
13 
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26