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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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8 OMAR AYALA,

9 Petitioner,

2:17-cv-02093-RFB-VCF

10 vs.

11 JO GENTRY, *et al.*,

12 Respondents.

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15 This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by
16 Omar Ayala, a Nevada prisoner. On July 31, 2017, Ayala filed an application to proceed *in forma*
17 *pauperis* (ECF No. 1), along with his habeas corpus petition (attached to application to proceed *in*
18 *forma pauperis*, at ECF No. 1-1) and a motion for appointment of counsel (ECF No. 2).

19 In light of the information provided in the application to proceed *in forma pauperis*, the
20 Court finds that Ayala is able to pay the \$5 filing fee for this action. The Court will deny the
21 application to proceed *in forma pauperis*, but will not require Ayala to pay the filing fee until after
22 counsel appears for him.

23 The information provided in the application to proceed *in forma pauperis* also indicates that
24 Ayala cannot afford counsel. “Indigent state prisoners applying for habeas corpus relief are not
25 entitled to appointed counsel unless the circumstances of a particular case indicate that appointed
26 counsel is necessary to prevent due process violations.” *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th

1 Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam). The court may,
2 however, appoint counsel at any stage of the proceedings “if the interests of justice so require.” See
3 18 U.S.C. § 3006A; see also Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196.
4 In light of Ayala’s youth, the severity of the crimes involved in this case, Ayala’s sentence, and the
5 number and nature of the issues raised in state court regarding Ayala’s case, the Court finds that
6 appointment of counsel is in the interests of justice.

7 The Court has reviewed Ayala’s petition, pursuant to Rule 4 of the Rules Governing Section
8 2254 Cases in the United States District Courts, and determines that it merits service upon
9 respondents and a response by respondents. The court will order the petition in this case served upon
10 respondents, will direct respondents to appear, but will not require any further action on the part of
11 respondents at this time.

12 **IT IS THEREFORE ORDERED** that petitioner’s Application to Proceed *In Forma*
13 *Pauperis* (ECF No. 1) is **DENIED**.

14 **IT IS THEREFORE ORDERED** that petitioner’s Ex Parte Request for Appointment of
15 Counsel (ECF No. 2) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD)
16 is appointed to represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict
17 of interest or other reason, then alternate counsel will be appointed. In either case, counsel will
18 represent the petitioner in all federal-court proceedings relating to this matter, unless allowed to
19 withdraw.

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

23 **IT IS FURTHER ORDERED** that the FPD shall have **30 days** from the date of entry of this
24 order to file a notice of appearance, or to indicate to the Court its inability to represent the petitioner
25 in this case.

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

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

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

8 **IT IS FURTHER ORDERED** that respondents shall have **30 days** from the date on which
9 the petition is served upon them to appear in this action. Respondents will not be required to
10 respond to the habeas petition at this time.

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

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DATED this 7th day of August, 2017.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE