

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

David D. Harris v. Dr. Michael Santos

No. 25-cv-284-JLS-DDL (S.D. Cal. Dec. 4, 2025) · No. 25-cv-284-JLS-DDL · Decided December 4, 2025

OPINION

Harris

PER CURIAM.

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6 UNITED STATES DISTRICT COURT

7 SOUTHERN DISTRICT OF CALIFORNIA

8 9 DAVID D. HARRIS, Case No.: 25-cv-284-JLS-DDL 10 Plaintiff,

ORDER DENYING PLAINTIFF’S

11 v. MOTION FOR APPOINTMENT OF

COUNSEL AND REQUEST FOR

12 DR. MICHAEL SANTOS,

PRODUCTION OF DOCUMENTS

13 Defendant. [Dkt. No. 28] 14 15 16 On November 28, 2025, Plaintiff filed a Motion for
Appointment of Counsel and 17 Request for Production of Documents. Dkt. No. 28.

18 I. APPOINTMENT OF COUNSEL

19 Plaintiff argues that counsel should be appointed because his TABE1 score is a 20 6.6 and he
suffers from auditory hallucinations and suicidal ideations. Id. at 2. 21 Plaintiff further argues that
he is in and out of mental hospitals throughout the state 22 of California and often mentally
incapacitated. Id. Plaintiff notes that he is currently 23 taking medication that causes him to sleep
for days at a time. Id. Plaintiff argues 24 that he will be prejudiced without the appointment of
counsel. Id. 25 26 1 “The TABE (Tests of Adult Basic Education) scores reflect an inmate’s 27
educational achievement level and are expressed in numbers reflecting grade level.” Martinez v.
Lawhorn, No. 1:21-CV-01602-JLT-CDB(PC), 2023 WL 28 1 A. Legal Standards 2

1. Appointment of Counsel

3 There is no absolute right to counsel in civil proceedings. Palmer v. Valdez, 4 560 F.3d 965, 970
(9th Cir. 2009). However, District Courts have discretion to 5 “request” that an attorney represent
indigent civil litigants upon a showing of 6 “exceptional circumstances.” See Terrell v. Brewer,
935 F.2d 1015, 1017 (9th Cir. 7 1991); Burns v. County of King, 883 F.2d 819, 823 (9th Cir.
1989).2 “That a pro se 8 litigant may be better served with the assistance of counsel is not the
test.” Okler 9 v. MCC IMU Prison, No. 3:18-cv-05458-RJB-TLF, 2019 WL 461143, at *1 (W.D.
10 Wash. Feb. 5, 2019). Instead, the Court “must determine whether . . . there is a 11 likelihood of

success on the merits” and whether “the prisoner is unable to 12 articulate his claims in light of the complexity of the legal issues involved.” *Cano* 13 v. Taylor, 739 F.3d 1214, 1219 (9th Cir. 2014). Neither factor is “dispositive” but 14 “must be considered cumulatively.” *Id.* 15 2. Competency 16 In *Allen v. Calderon*, 408 F.3d 1150, 1153-54 (9th Cir. 2005)3, the Ninth Circuit 17 Court of Appeals explained that a district court must hold a competency hearing 18 “when substantial evidence of incompetence is presented.” *Allen*, 408 F.3d at 19 1153. If a competency hearing is warranted, the Court may appoint counsel for 20 the limited purpose of representing the petitioner at the competency hearing. *Id.* 21 In determining whether Petitioner has presented “substantial evidence of 22 incompetence,” the Court may consider any appropriate evidence including sworn 23 24 2 All citations and internal quotation marks are omitted, and emphasis and 25 alterations added, unless otherwise noted. 26 3 While *Allen* was written in the context of a habeas case, it has been applied in 27 cases under section 1983. See *Vernon v. Larios*, No.23-cv-787-JO-MSB, 2023 WL 4412167 (S.D. Cal. July 7, 2023); see also *Dawes v. Ausbury, et al.*, No. 19- 28 1 declarations by the Petitioner/Plaintiff or other inmates, sworn declarations or 2 letters from treating or prison psychiatrists or psychologists, and relevant medical 3 records. *Allen*, 408 F.3d at 1151-53. 4 B. Discussion 5

1. Likelihood of Success

6 The Court first considers whether Plaintiff is likely to succeed on the merits of 7 his claim. Given the early stage of the proceedings, there is no basis upon which 8 the Court can predict Plaintiff’s success at trial. See *Campos v. K.U.S.I. News 9 Media*, No. 3:19-cv-01455-BAS-AGS, 2019 WL 4674290, at *2 (S.D. Cal. Sept. 24, 10 2019) (denying prisoner’s motion to appoint counsel where it “[was] simply too 11 soon to tell whether he will be likely to succeed on the merits of any potential 12 constitutional claim”). The Court therefore finds that this factor weighs against the 13 appointment of counsel. 14 2. Plaintiff’s Ability to Pursue His Claims 15 “When determining whether ‘exceptional circumstances’ exist, a court must 16 consider . . . the ability of the petitioner to articulate his claims pro se in light of the 17 complexity of the legal issues involved.” *Palmer*, 560 F.3d at 970. The Court has 18 reviewed all of the documents filed by Plaintiff in this case including the instant 19 motion, the complaint (Dkt. No. 1), a motion to proceed in forma pauperis and 20 prisoner trust fund account (Dkt. Nos. 2-3), an amended complaint (Dkt. No. 5), a 21 motion for preliminary injunction (Dkt. No. 8), five Notices of Change of Address 22 (Dkt. Nos. 17-18, 21, 22, 27), a request for extension of time (Dkt. No. 19), and a 23 motion to produce documents (Dkt. No. 22). From the Court’s review of these 24 documents, it is clear that Plaintiff is able to articulate the claims of his case without 25 legal assistance. Under such circumstances, a district court does not abuse its 26 discretion in denying a state prisoner’s request for appointment of counsel as it is 27 simply not warranted by the interests of justice. See *LaMere v. Risley*, 827 F.2d 28 622, 626 (9th Cir. 1987) (affirming district court’s denial of request for appointment 1 of counsel where pleadings demonstrated petitioner had “a good understanding of 2 the issues and the ability to present forcefully and coherently his

contentions”). 3 It is unclear if Plaintiff is requesting the appointment of counsel on the ground 4 that he is incompetent due to a mental illness or disability. Plaintiff has not 5 submitted the required “substantial evidence” of incompetence to warrant a 6 competency hearing. See *Galvan v. Montgomery*, No. 22-CV-00330-GPC-MMP, 7 2025 WL 2841993, at *3 (S.D. Cal., Oct. 7, 2025) (“An incapacitating mental 8 disability may be grounds for appointment of counsel in some cases, but a 9 [petitioner] making that argument must present substantial evidence of 10 incompetence.”); see also *Bogarin v. Hatton*, No. 16CV2793-BTM (BLM), 2018 WL 11 5111914, at *3 (S.D. Cal. Oct. 18, 2018) (“To the extent that Petitioner is requesting 12 the appointment of counsel due to a mental illness or disability, Petitioner has not 13 submitted the required ‘substantial evidence’ of incompetence to warrant a 14 competency hearing.”). While the exact parameters of “substantial evidence” 15 remain uncertain, the Ninth Circuit has made clear that “a history of serious mental 16 illness is not enough by itself to constitute substantial evidence of incompetence.” 17 *Galvan*, 2025 WL 2841993, at *2–3. Plaintiff does not allege that the mental illness 18 he suffers from prevents him from understanding and responding to court 19 orders. Additionally, the Court’s review of Plaintiff’s filings in this matter does not 20 support such a position. Accordingly, the Court finds there is no basis for a 21 competency hearing and therefore no need to appoint counsel to participate in that 22 hearing.

23 II. REQUEST FOR PRODUCTION OF DOCUMENTS

24 On October 27, 2025, Plaintiff filed a Motion for Production of Documents and 25 Additional Arguments that was entered onto the docket on October 31, 2025. Dkt.

26 No. 22.

27 On November 4, 2025, the Court issued an Order requiring Defendant to 28 respond to Plaintiff’s motion. Dkt. No. 23. On November 14, 2025, Defendant filed a Response to Plaintiff’s Motion for 2 || Production and Additional Arguments. Dkt. No. 24. 3 On November 24, 2025, the Court held a status conference. Dkt. No. 25. 4 || Plaintiff appeared on behalf of himself, and Nathan Marco Guerrero appeared on > || behalf of Defendant. /d. Following the conference, the Court granted leave for 6 || Plaintiff “to serve two requests for production: (1) documents sufficient to show the 7 || reasons why Dr. Santos took Mr. Harris off of morphine and (2) notes from Mr. 8 || Harris’s prior physician indicating why morphine was prescribed.” /d. The Court ? further stated that the requests would be deemed served on December 1, 2025 10 || and set a further Status Conference on January 7, 2026. Id. On November 26, 2025, the Court issued an Order Denying Plaintiff’s Motion 12 Production of Documents and Additional Arguments and noted that Plaintiff 13 || failed to state that he served discovery on Defendant and sought an order from the 14 || Court compelling Defendant to respond to that discovery or that Defendant failed 13 || to produce any properly requested documents. Dkt. No. 26. 16 In the instant motion, Plaintiff states his Requests for Production as 17 || described in the Court’s November 24, 2025 minute order. Dkt. No. 28 at 2-3. For 18 || the reasons discussed at the November 24 status conference, despite Plaintiff’s 19 failure to properly serve the requests pursuant to Federal Rule of Civil

Procedure 20 |34, the Court deems Plaintiff's requests served as of December 1, 2025. 21 ||
Defendant shall timely respond to Plaintiff's requests as provided in Rule 34. 22 |IT IS SO
ORDERED. 23 24 || Dated: December 4, 2025 ee ZL 25 Tb a“ 26 ‘Hon. DavidD.Leshner □□□
United States Magistrate Judge 28