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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 LOC MINH NGUYEN,

11 Petitioner,

12 v.

13 WARDEN OF THE OTAY MESA
DETENTION FACILITY, et al.,

14 Respondents.
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Case No. 25-CV-2441-AGS

**RESPONSE REGARDING MOTION
FOR APPOINTMENT OF COUNSEL**

19 Respondents Warden of the Otay Mesa Detention Facility, *et al.*, respectfully
20 submit this response to Petitioner Loc Minh Nguyen's motion for appointment of
21 counsel.

22 "The sixth amendment right to counsel does not apply in habeas corpus actions."
23 *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). The Court, "therefore, must
24 focus on whether the denial of petitioner's motion for appointment of counsel amount[s]
25 to a denial of due process." *Id.* Petitioner has not made such a showing here.

26 Petitioner seeks appointment of counsel pursuant to 18 U.S.C. § 3006A, which
27 provides, in relevant part, that the Court may appoint counsel for "financially eligible"
28 individuals seeking habeas relief under 28 U.S.C. § 2241 if the Court "determines that

1 the interests of justice so require[.]” 18 U.S.C. § 3006A(a)(2)(B). “Appointment of
2 counsel pursuant to 18 U.S.C. § 3006A(a)(2)(B) is in the discretion of the district court
3 unless an evidentiary hearing is required.” *Dominguez v. Archambeault*, No. 20-CV-
4 1384 JLS (AHS), 2021 WL 3022459, at *1 (S.D. Cal. June 10, 2021) (citing *Terrovona*
5 *v. Kincheloe*, 912 F.2d 1176, 1181–82 (9th Cir. 1990)). “In deciding whether to appoint
6 counsel, the district court ‘must evaluate the likelihood of success on the merits as well
7 as the ability of the petitioner to articulate his claims pro se in light of the complexity
8 of the legal issues involved.’” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th
9 Cir. 1983)).

10 As a threshold matter, Respondent questions whether Petitioner has demonstrated
11 that he is financially eligible to receive Court-appointed legal representation. Financial
12 eligibility requires that Petitioner be “financially unable to obtain adequate
13 representation[.]” 18 U.S.C. § 3006A(a). Here, Petitioner simply contends that “I do not
14 think I can afford a lawyer” and that he does “not have any savings.” Declaration of
15 Loc Minh Nguyen at ¶ 9. This cursory statement is likely insufficient to demonstrate
16 Petitioner is unable to obtain adequate representation.

17 Further, in determining whether appointment of counsel is appropriate, the Court
18 must evaluate the likelihood of success on the merits. Petitioner contends that he will
19 likely succeed on the merits of his habeas petition. Specifically, Petitioner argues that
20 there is no significant likelihood of removal in the reasonably foreseeable future to
21 Vietnam because Vietnam will not issue Petitioner a travel document, and because
22 Petitioner has been in immigration custody for longer than the presumptively reasonable
23 six-month period. Motion for Appointment of Counsel at 3–5, 6–8. But as Respondents
24 will explain in greater detail in their forthcoming return to the petition, Petitioner is not
25 likely to succeed on the merits because based on declarations expected to be made by
26 Respondents, diligent efforts are being made to prepare a travel document package to
27 send to the Vietnamese embassy. Furthermore, Petitioner has been in ICE custody since
28 June 4, 2025, which is less than the presumptively reasonable period of detention under

1 *Zadvydas v. Davis*, 533 U.S. 678, 700–01 (2001). Petitioner cites numerous cases
 2 finding that the six-month presumptively reasonable period of detention does not reset
 3 after previous release, and that the period is counted in the aggregate. Motion for
 4 Appointment of Counsel at 7–8. Yet, no binding authority has been provided, and
 5 Respondents cannot find binding authority, holding that the six-month period is
 6 aggregated. At a minimum, the Court should defer ruling on Petitioner’s motion until
 7 after Respondents have filed their return, at which time the Court may be better
 8 positioned to determine whether Petitioner is likely to prevail on the merits.

9 Next, Respondent questions whether Petitioner has demonstrated that he is
 10 unable to adequately articulate his claims. Petitioner asserts that he has no legal
 11 education or training and lacks free access to the internet while in custody. Motion for
 12 Appointment of Counsel at 8–9. The Honorable Andrew G. Schopler recently rejected
 13 similar arguments in *Randhawa v. Warden, et al.*, Case No. 25-cv-02444-AGS-BLM
 14 (S.D. Cal. Sept. 23, 2025), ECF No. 6. Judge Schopler reasoned:

15 Despite the “complexity of the law” and petitioner’s “status as a detained
 16 immigrant” . . . , petitioner has not yet established that due process requires
 17 appointed counsel here. Many “habeas petitioners” face a lack of “legal
 18 training,” “limited” access to “law library resources,” and an inability “to
 19 conduct a factual investigation,” none of which are “obstacles” that require
 20 “appointment of counsel in order to avoid due process violations.” *Roe v.*
 21 *Coursey*, 469 F. App’x 622, 624 (9th Cir. 2012). Also, at this early stage,
 it is not clear that an evidentiary hearing will be needed. Thus, the motion
 for appointment of counsel is denied without prejudice.

22 *See also, Alic v. Dep’t of Homeland Sec., et al.*, Case No. 25-cv-1749-AJB-BLM (S.D.
 23 Cal. Sept. 26, 2025), ECF No. 10 (denying without prejudice motion for appointment
 24 of counsel); *McSweeney v. Warden, et al.*, Case No. 25-cv-2488-RBM-DEB (S.D. Cal.
 25 Sept. 24, 2025), ECF 6 (same).

26 The question is not whether Petitioner would benefit from Court-appointed
 27 counsel, but rather whether denial of Petitioner’s motion would amount to a denial of
 28 due process. *See Knaubert*, 791 F.2d at 728. Due process is not violated whenever a

1 court declines to appoint counsel to an incarcerated habeas petitioner who lacks legal
2 education and who has limited access to legal resources. *See, e.g., Tsembaliuk v.*
3 *Beckhelm*, No. 22-CV-1270 JLS (JLB), 2022 WL 4229308, at *2 (S.D. Cal. Sept. 13,
4 2022) (denying motion for appointment of counsel where incarcerated petitioner
5 “doe[es] not know Law and would benefit [from] having legal representation”).

6 Finally, Petitioner’s speculation that he *may* need to review evidence, engage in
7 discovery, or participate in an evidentiary hearing (Motion for Appointment of Counsel
8 at 9–10) are insufficient to justify appointment of counsel at this time. As Judge
9 Schopler recognized in *Randhawa*, “at this early stage, it is not clear that an evidentiary
10 hearing will be needed.” *Randhawa v. Warden, et al.*, Case No. 25-cv-02444-AGS-
11 BLM (S.D. Cal. Sept. 23, 2025), ECF No. 6 at 2:14–15; *see also Cartwright v. San*
12 *Diego Sheriff’s Dep’t*, No. 22cv1002-LL-JLB, 2023 WL 5020841, at *1 (S.D. Cal. Feb.
13 3, 2023) (denying motion for appointment of counsel in part because, “at this early stage
14 of the proceedings, the Court is not in a position to determine whether an evidentiary
15 hearing will be required.”) (citing *Knaubert*, 791 F.2d at 728); *Tsembaliuk*, 2022 WL
16 4229308, at *2 (same); *Dominguez*, 2021 WL 3022459, at *1 (same). “[W]hen a district
17 court properly declines to hold an evidentiary hearing, the court’s denial of a motion to
18 appoint counsel at government expense does not amount to a denial of due process.”
19 *Knaubert*, 791 F.2d at 729–30.

20 The decision to appoint counsel is firmly within the Court’s discretion.
21 Respondent respectfully submits, however, that the record at this point does not
22 demonstrate that the interests of justice require appointment of counsel in this action.

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1 DATED: October 1, 2025

2 Respectfully submitted,

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4 United States Attorney

5 s/ Daniel D. Shin
6 DANIEL D. SHIN
7 Assistant United States Attorney
8 Attorney for Respondents
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