

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On November 7, 2007, Petitioner filed a notice of appeal. He has subsequently requested a certificate of appealability. The controlling statute, 28 U.S.C. § 2253, provides as follows:

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a

1 person charged with a criminal offense against the United States, or to test the validity  
2 of such person's detention pending removal proceedings.

2 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal  
3 may not be taken to the court of appeals from--

3 (A) the final order in a habeas corpus proceeding in which the detention complained  
4 of arises out of process issued by a State court; or

4 (B) the final order in a proceeding under section 2255.

5 (2) A certificate of appealability may issue under paragraph (1) only if the applicant  
6 has made a substantial showing of the denial of a constitutional right.

6 (3) The certificate of appealability under paragraph (1) shall indicate which specific  
7 issue or issues satisfy the showing required by paragraph (2).

8 In the present case, the court finds that Petitioner has failed to carry his burden of  
9 making a substantial showing of the denial of a constitutional right. Specifically, the court  
10 notes that a motion to dismiss is pending in this case, and no final, appealable order has been  
11 entered by the court. Accordingly, Petitioner's requests for a certificate of appealability are  
12 HEREBY DENIED.

13 IT IS SO ORDERED.

14 **Dated: February 5, 2008**

15 **/s/ Lawrence J. O'Neill**

16 **UNITED STATES DISTRICT JUDGE**

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