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

HECTOR CASTRO,)	1:07-CV-0871 AWI GSA HC
)	
Petitioner,)	ORDER DENYING CERTIFICATE
)	OF APPEALABILITY
v.)	
)	
DARRELL G. ADAMS, Warden,)	
)	
Respondent.)	
)	

Petitioner Hector Castro filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 concerning the California Board of Parole Hearings (hereinafter “Board”)’s denial of parole. On August 15, 2008, the court denied the petition, and found a certificate of appealability was not required to appeal the action. The United States Court of Appeals for the Ninth Circuit stayed the appeal. On May 24, 2010, the Ninth Circuit remanded the action to this court for the limited purpose of granting or denying a certificate of appealability.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute is 28 U.S.C. § 2253, which 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 person

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

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

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

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

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

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

12 If the court denies a Petitioner's petition, the court may only issue a certificate of appealability "if
13 jurists of reason could disagree with the district court's resolution of his constitutional claims or
14 that jurists could conclude the issues presented are adequate to deserve encouragement to
15 proceed further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000).

16 In this action, the court finds that reasonable jurists would not disagree with this court's
17 finding that there was sufficient evidence to deny parole. Based on the evidence indicating
18 future Petitioner's future danger, reasonable jurists would not disagree that the California court's
19 approval of the decision to reject parole was an unreasonable application of the California "some
20 evidence" requirement, or was "based on an unreasonable determination of the facts in light of
21 the evidence." See Hayward v. Marshall, 2010 WL 1664977, *11 (9th Cir. 2010).

22 Accordingly, the court hereby ORDERS that Petitioner's application for a certificate of
23 appealability is DENIED.

24 IT IS SO ORDERED.

25 Dated: May 26, 2010

26 /s/ Anthony W. Ishii
27 CHIEF UNITED STATES DISTRICT JUDGE