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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 THOMAS D. BRALEY,

1:07-cv-01423-OWW-GSA-PC

12 Plaintiff,

ORDER DENYING REQUEST
FOR CERTIFICATE OF APPEALABILITY

13 vs.

(Doc. 21.)

14 WASCO STATE PRISON, et al.,

15 Defendants.
16 _____ /

17 Plaintiff is a state prisoner proceeding pro se with this civil rights action
18 pursuant to 42 U.S.C. § 1983. On August 17, 2009, Plaintiff filed a notice of appeal to the
19 Ninth Circuit Court of Appeals and a request for a certificate of appealability. (Docs. 21, 22.)

20 The requirement for the issuance of a certificate of appealability on appeal arises under
21 28 U.S.C. § 2253, which provides:

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

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

26 (B) the final order in a proceeding under section
27 2255.
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1 28 U.S.C. § 2253. Because § 2253 only applies to petitions for writ of habeas corpus, and
2 plaintiff is proceeding with a civil rights action under 42 U.S.C. § 1983, plaintiff's request for a
3 certificate of appealability shall be denied.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for a certificate of
5 appealability, filed on August 17, 2009, is DENIED.

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7 IT IS SO ORDERED.

8 **Dated: August 18, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE