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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LINO MANUEL PEREZ,)	1:08-CV-01701 JMD HC
)	
Petitioner,)	ORDER DENYING PETITIONER’S MOTION FOR
)	CERTIFICATE OF APPEALABILITY [Doc. 27]
v.)	
)	
THE STATE OF CALIFORNIA,)	
)	
Respondent.)	

Lino Manuel Perez (“Petitioner”) is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 28, 2010, Petitioner filed a motion for a certificate of appealability. Petitioner has filed notice of appeal pertaining to the Court’s March 1, 2010, order denying the petition for writ of habeas corpus. The controlling statute in determining whether to issue a certificate of appealability 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 charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
- (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

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

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

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

Initially, the Court notes that it has previously declined to issue a certificate of appealability in the March 1, 2010 order. Petitioner has failed to provide any additional arguments that would suggest such a decision was erroneous. In the present case, reasonable jurists would not find the Court's determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Petitioner has not made the required substantial showing of the denial of a constitutional right. Accordingly, the Court hereby ORDERS that Petitioner's request for a certificate of appealability is DENIED.

IT IS SO ORDERED.

Dated: April 16, 2010

/s/ John M. Dixon
UNITED STATES MAGISTRATE JUDGE