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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALICIA HANNA,

Petitioner,

v.

M. LATTIMORE,

Respondent.

) 1:10-cv-00745-AWI-JLT HC

) ORDER DENYING WITHOUT PREJUDICE  
) PETITIONER’S MOTION FOR ISSUANCE OF  
) CERTIFICATE OF APPEALABILITY (Doc. 4)

Petitioner is a state prisoner proceeding pro se with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The petition was filed on April 29, 2010. (Doc. 1). Along with the petition, Petitioner filed the instant motion denominated by Petitioner as an “Application for Certificate of Appealability.” (Doc. 4).

After conducting a preliminary review of the Petition, the Court, on July 21, 2010, ordered Respondent to file a response within sixty days. (Doc. 11). The response is presently due on or before September 23, 2010. The case is presently proceeding according to the briefing schedule issued by the Court and is not ripe for a decision on the merits at this time.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal district court’s denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a

1 certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

- 2 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,  
3 the final order shall be subject to review, on appeal, by the court of appeals for the circuit in  
4 which the proceeding is held.  
5 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a  
6 warrant to remove to another district or place for commitment or trial a person charged with a  
7 criminal offense against the United States, or to test the validity of such person's detention  
8 pending removal proceedings.  
9 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not  
10 be taken to the court of appeals from--  
11 (A) the final order in a habeas corpus proceeding in which the detention  
12 complained of arises out of process issued by a State court; or  
13 (B) the final order in a proceeding under section 2255.  
14 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made  
15 a substantial showing of the denial of a constitutional right.  
16 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or  
17 issues satisfy the showing required by paragraph (2).

18 Here, no “final order” has been issued since, as mentioned previously, the case is not ripe for  
19 a decision on the merits at this time. Accordingly, Petitioner’s motion for issuance of a certificate of  
20 appealability is premature and will therefore be denied without prejudice to renew the request at the  
21 appropriate time.

22 For the foregoing reasons, it is HEREBY ORDERED that Petitioner’s motion for issuance of  
23 a certificate of appealability (Doc. 4), is DENIED without prejudice as PREMATURE.

24 IT IS SO ORDERED.

25 Dated: September 9, 2010

26 /s/ Jennifer L. Thurston  
27 UNITED STATES MAGISTRATE JUDGE  
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