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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

7 LARISSA SCHUSTER,

8 Petitioner,

9 v.

10 DEBORAH K. JOHNSON,

11 Respondent.

Case No. 1:12-cv-01482-AWI-SAB-HC

ORDER GRANTING PETITIONER'S
REQUEST FOR WAIVER OF FEES ON
APPEAL

ORDER GRANTING PETITIONER'S
REQUEST FOR CERTIFICATE OF
APPEALABILITY

(ECF Nos. 61, 62)

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14 Petitioner Larissa Schuster is a state prisoner, represented by court-appointed counsel,
15 proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 28,
16 2016, the Court adopted the Magistrate Judge's Amended Findings and Recommendation and
17 dismissed the petition. (ECF No. 59). On March 30, 2016, Petitioner filed a notice of appeal and
18 requested that the Court issue a certificate of appealability. (ECF No. 61). Petitioner also
19 requested that counsel continue to be appointed on appeal and that any filing fees be waived due
20 to her indigent status. (ECF Nos. 61, 62).

21 **A. Request for Waiver of Fees on Appeal**

22 Counsel was appointed for Petitioner in this matter pursuant to 18 U.S.C. §
23 3006A(a)(2)(B) based on the interests of justice and Petitioner's indigency. (ECF No. 45). 18
24 U.S.C. § 3006A(d)(7) provides that a person for whom counsel has been appointed under §
25 3006A may file an appeal "without prepayment of fees and costs or security therefore, and
26 without filing the affidavit required by § 1915(a) of Title 28." Pursuant to § 3006A(d)(7),
27 Petitioner is entitled to appeal without prepayment of fees and costs. Petitioner's request for a
28 waiver of fees will be granted.

1 **B. Certificate of Appealability**

2 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
3 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.
4 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining
5 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

6 (a) In a habeas corpus proceeding or a proceeding under section
7 2255 before a district judge, the final order shall be subject to
8 review, on appeal, by the court of appeals for the circuit in which
9 the proceeding is held.

10 (b) There shall be no right of appeal from a final order in a
11 proceeding to test the validity of a warrant to remove to another
12 district or place for commitment or trial a person charged with a
13 criminal offense against the United States, or to test the validity of
14 such person’s detention pending removal proceedings.

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

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

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

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

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

28 If a court denies habeas relief on procedural grounds without reaching the underlying
constitutional claims, the court should issue a certificate of appealability if the petitioner shows
“[1] that jurists of reason would find it debatable whether the petition states a valid claim of the
denial of a constitutional right and [2] that jurists of reason would find it debatable whether the
district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).
This inquiry “has two components, one directed at the underlying constitutional claims and one
directed at the district court’s procedural holding.” Id. at 484–85.

In the present case, the Court finds that reasonable jurists would find it debateable

1 whether the petition states a valid claim of the denial of a constitutional right. The Court also
2 finds that reasonable jurists would find it debateable whether the petition should be dismissed as
3 untimely. Therefore, the Court will grant Petitioner's request for a certificate of appealability on
4 the following issue: whether some extraordinary circumstance prevented Petitioner from timely
5 filing her federal habeas petition such that equitable tolling is warranted.

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7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner's request for a waiver of fees on appeal is GRANTED; and
- 9 2. Petitioner's request for a certificate of appealability is GRANTED on the issue of
10 whether some extraordinary circumstance prevented Petitioner from timely filing her
11 federal habeas petition such that equitable tolling is warranted.

12 IT IS SO ORDERED.

13 Dated: April 5, 2016

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15 SENIOR DISTRICT JUDGE