

1 **UNITED STATES DISTRICT COURT**  
2 **EASTERN DISTRICT OF CALIFORNIA**

3  
4 JOE RAMIREZ HERNANDEZ,

5 Petitioner,

6 v.

7 E. VALENZUELA,

8 Warden.

Case No. 1:13-CV-01934-LJO-SMS HC

ORDER DENYING REQUEST FOR  
CERTIFICATE OF APPEALABILITY  
AS UNTIMELY

(Doc. 5)

9  
10 Petitioner Joe Ramirez Hernandez is a state prisoner proceeding *pro se* and *in forma pauperis*  
11 with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 9, 2014, the  
12 Magistrate Judge filed findings and recommendations recommending that the District Court dismiss  
13 the petition as untimely. On February 12, 2014, Petitioner filed both objections to the findings and  
14 recommendations and a notice of interlocutory appeal.  
15

16 Pursuant to 28 U.S.C.A. § 2253 and F.R.A.P. 2253, the District Court may issue leave to  
17 appeal a final order in a habeas proceeding. Because the District Court has not yet issued its order  
18 adopting or rejecting the Magistrate Judge's findings and recommendations, no final order has yet  
19 issued in this matter and the notice of interlocutory appeal is premature.  
20

21 Accordingly, Petitioner's premature request for leave to file an interlocutory appeal is  
22 DENIED.

23  
24 IT IS SO ORDERED.

25 Dated: February 18, 2014

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE