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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

XAVIER LUMAR J'WEIAL,
Petitioner,
v.
JOE LIZARRAGA, Warden,
Respondent.

No. 1:16-cv-00044-AWI-SKO HC
**ORDER DENYING MOTION
FOR CERTIFICATE OF APPEAL
AS UNTIMELY**
(Doc. 40)

Petitioner Xavier Lumar J'Weial, a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, moves for a certificate of appealability. A party may appeal a judgment in a civil matter within 30 days after the entry of the judgment or order appealed from. F.R.App.P. 4(a)(1). Because final judgment has not been entered in the above-captioned case, the motion for a certificate of appeal is untimely.

The Court further notes that, as a matter of practice in this Court, the question of issuance of a certificate of appealability is typically addressed within the opinion or order adopting findings and recommendations.

The motion for certificate of appeal is hereby DENIED.

IT IS SO ORDERED.

Dated: November 14, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE