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

RAUL GARZA,  
Plaintiff,  
v.  
S. HARMON, et al.,  
Defendants.

1:18-cv-00140-LJO-GSA-PC  
**ORDER DISREGARDING MOTION FOR  
CERTIFICATE OF APPEALABILITY  
(ECF No. 18.)**

**I. BACKGROUND**

Plaintiff, Raul Garza (“Plaintiff”), is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983.

On March 8, 2018, the court dismissed this action, without prejudice, based on Plaintiff’s failure to exhaust administrative remedies before filing suit, and judgment was entered. (ECF Nos. 14, 15.) On April 25, 2018, Plaintiff filed a motion for a certificate of appealability. (ECF No. 18.)

**II. RULE 22 OF THE FEDERAL RULES OF APPELLATE PROCEDURE**

Rule 22 of the Federal Rules of Appellate Procedure requires that an applicant who files a notice of appeal *in a habeas proceeding* must obtain a certificate of appealability under 28 U.S.C. § 2253(c), or a statement why a certificate should not issue, from the district judge who rendered judgment in the action. Fed. R. App. P. 22(b) (emphasis added).

1 Here, Plaintiff requests a certificate of appealability for the Ninth Circuit Court of  
2 Appeals. However, because an appeal in this case would concern a civil rights action under §  
3 1983 and not a habeas proceeding, Rule 22 is not applicable. Therefore, Plaintiff's motion for a  
4 certificate of appealability shall be disregarded.

5 **III. CONCLUSION**

6 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for a  
7 certificate of appealability, filed on April 25, 2019, is DISREGARDED.

8  
9 IT IS SO ORDERED.

10 Dated: April 29, 2019

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE