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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MOSHE ISAAC STEIN,

Petitioner,

No. CIV S-05-1592 GEB KJM P

vs.

GERALD BENITO,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's January 21, 2010 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

For the reasons set forth in the magistrate judge’s September 23, 2009 findings and recommendations and the December 8, 2009 order denying a stay, petitioner has not made a

1 substantial showing of the denial of a constitutional right. Accordingly, a certificate of
2 appealability should not issue in this action.

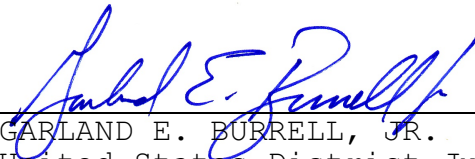
3 Petitioner has also requested the appointment of counsel. There currently exists
4 no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105
5 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of
6 counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R.
7 Governing § 2254 Cases. In the present case, the court does not find that the interests of justice
8 would be served by the appointment of counsel at the present time.

9 IT IS THEREFORE ORDERED that:

10 1. Petitioner’s request for the issuance of a certificate of appealability (docket no.
11 49) is denied; and

12 2. Petitioner’s motion for the appointment of counsel (docket no. 50) is denied.

13 Dated: April 11, 2010

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GARLAND E. BURRELL, JR.
United States District Judge