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

ALEJANDRO RANGEL GONZALEZ,

Petitioner,

No. CIV S-05-1954 LKK GGH P

vs.

D.L RUNNELS, WARDEN,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding with counsel has timely filed a notice of appeal of this court's August 24, 2009, dismissal 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 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

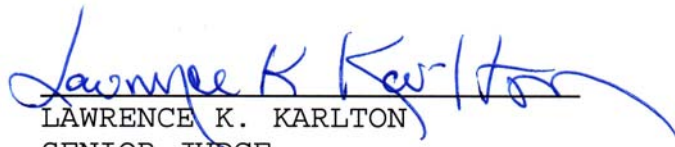
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issue presented in the instant petition: whether petitioner's due process rights were
4 violated by the trial court's refusal to instruct the jury on petitioner's theory of defense, that the
5 discharge of the firearm was grossly negligent, not intentional.

6 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
7 issued in the present action.

8 DATED: September 17, 2009.

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11 LAWRENCE K. KARLTON
12 SENIOR JUDGE
13 UNITED STATES DISTRICT COURT
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.