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

JOSE LUIS RIVERA,

Petitioner,

No. 2:05-cv-2537 FCD JFM (HC)

vs.

JEANNE S. WOODFORD,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's December 9, 2009 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 certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

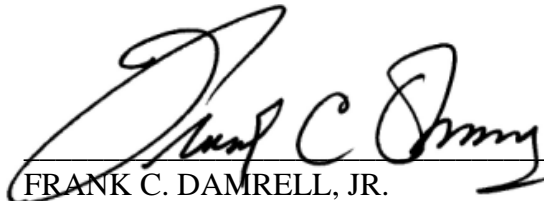
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

3 Petitioner has made a substantial showing of the denial of a constitutional right in  
4 the following issue presented in the instant petition: ineffective assistance of counsel.

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

7 DATED: January 11, 2010.

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9 FRANK C. DAMRELL, JR.  
10 UNITED STATES DISTRICT JUDGE

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26 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the  
standard 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.