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

TRINA RENEE SANDERS,	)	
	)	No. CV-07-cv-154 RHW JPH
Petitioner,	)	
	)	ORDER DENYING ISSUANCE OF A
v.	)	CERTIFICATE OF APPEALABILITY
	)	(Ct. Rec. 38)
STATE OF CALIFORNIA,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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Petitioner is a state prisoner proceeding with appointed counsel and in forma pauperis with petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Ct. Rec. 1, amended at Ct. Rec. 22). The parties consented to a magistrate judge's jurisdiction. (Ct. Rec.8.)

On August 24, Petitioner filed a notice of appeal (Ct. Rec. 38) of the July 29, 2009, order denying the petition for a writ (Ct. Rec. 36). "If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals." Fed. R. App. P. 22(b)(3). A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his or her petition, and an appeal is only allowed in certain circumstances.

1 *Miller-El v. Cockrell*, 123 S.Ct. 1029, 1039 (2003). The  
2 controlling statute in determining whether to issue a certificate  
3 of appealabilty is 28 U.S.C. § 2253, which provides:

4  
5 (a) In a habeas corpus proceeding or a proceeding under  
6 section 2255 before a district judge, the final order shall  
7 be subject to review, on appeal, by the court of appeals for  
8 the circuit in which the proceeding is held.

9  
10 (b) There shall be no right of appeal from a final order in a  
11 proceeding to test the validity of a warrant to remove to  
12 another district or place for commitment or trial a person  
13 charged with a criminal offense against the United States, or  
14 to test the validity of such person's detention pending  
15 removal proceedings.

16  
17 (c) (1) Unless a circuit justice or judge issues a  
18 certificate of appealability, an appeal may not be taken  
19 to the court of appeals from-

20  
21 (A) the final order in a habeas corpus proceeding  
22 in which the detention complained of arises out of  
23 process issued by a State court; or

24 (B) the final order in a proceeding under section  
25 225.

26  
27 (2) A certificate of appealability may issue under  
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1 paragraph (1) only if the applicant has made a  
2 substantial showing of the denial of a constitutional  
3 right.

4  
5 (3) The certificate of appealability under paragraph (1)  
6 shall indicate which specific issue or issues satisfy the  
7 showing required by paragraph (2).

8  
9 28 U.S.C. § 2253.

10  
11 Therefore, final orders issued by a federal district court in  
12 habeas proceedings are reviewable by the circuit court of appeals.  
13 28 U.S.C. § 2253(a). In order to have final orders reviewed,  
14 Petitioner must obtain a certificate of appealability. 28 U.S.C. §  
15 2253(c). This court will issue a certificate of appealability  
16 when a petitioner makes a substantial showing of a the denial of a  
17 constitutional right. 28 U.S.C. § 2253(c)(2). To make a  
18 substantial showing, the Petitioner must establish that  
19 "reasonable jurists could debate whether (or, for that matter,  
20 agree that) the petition should have been resolved in a different  
21 manner or that the issues presented were 'adequate to deserve  
22 encouragement to proceed further.'" *Slack v. McDaniel*, 120 S.Ct.  
23 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880,  
24 893 (1983)).

25 In the present case, the Court finds that Petitioner has not  
26 made the required substantial showing of the denial of a  
27 constitutional right. It is not apparent that reasonable jurists  
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1 would differ on whether the petition should have been resolved in  
2 a different manner. Accordingly, the Court hereby **DENIES**  
3 Petitioner's request for issuance of a certificate of  
4 appealabilty.

5 **IT IS SO ORDERED.**

6 DATED this 25<sup>th</sup> day of August, 2009.

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s/ James P. Hutton

JAMES P. HUTTON

UNITED STATES MAGISTRATE JUDGE