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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 HUNG VIET VU,

No. 2:07-cv-00495-MCE-GGH P

12 Petitioner,

13 vs.

ORDER

14 RICHARD KIRKLAND, et al.,

15 Respondents.  
16 \_\_\_\_\_/

17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of  
18 this court's December 15, 2008, dismissal of his application for a writ of habeas corpus. Before  
19 petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c);  
20 Fed. R. App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
22 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
23 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues  
24 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

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1 A certificate of appealability should be granted for any issue that petitioner can  
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different  
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

5 Petitioner has made a substantial showing of the denial of a constitutional right in  
6 the following issue presented in the instant petition: Whether petitioner’s amended petition was  
7 not timely filed and cannot relate back to the original petition which failed to state any claim for  
8 relief.

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

11 Dated: February 2, 2009

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13 MORRISON C. ENGLAND, JR.  
14 UNITED STATES DISTRICT JUDGE  
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25 <sup>1</sup> 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.