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

JOSE HUMBERTO MAGANA-TORRES,  
Petitioner,  
v.  
KELLY HARRINGTON,  
Respondent.

No. 2:10-CV-2669-WBS-DMC-P

ORDER

Petitioner, a state prisoner proceeding pro se, brought this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Final judgment was entered on July 6, 2012 (ECF No. 32) and petitioner’s appeal from that judgment has been dismissed by the Ninth Circuit Court of Appeals for lack of jurisdiction (ECF No. 37) because petitioner raised issues not encompassed by the district court’s certificate of appealability and the appellate court declined to expand the certificate of appealability to encompass the issues raised by petitioner.

Thereafter, petitioner filed in this court a motion for relief from judgement, which the court denied on March 4, 2019 (ECF No. 42). Petitioner again appealed and the Ninth Circuit remanded the matter for the limited purpose of granting or denying a certificate of appealability as to the denial of relief from judgment (ECF No. 48). On April 8, 2019, the District Judge assigned to this case declined to issue a certificate of appealability.

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Pending before the court are: (1) petitioner's motion (ECF No. 43) for an extension of time to file a request for a certificate of appealability; and (2) petitioner's motion for leave to proceed in forma pauperis, presumably on appeal (ECF No. 50). Petitioner's motion for an extension of time is denied as moot because the court has declined to issue a certificate of appealability. Petitioner's motion for leave to proceed in forma pauperis is denied without prejudice to seeking relief as necessary in the appellate court.

IT IS SO ORDERED.

Dated: May 7, 2019



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DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE