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

THOMAS L. GOFF,

Petitioner,

No. 2:11-cv-3410 WBS GGH P

vs.

M. SALINAS, Warden,

Respondent.

ORDER

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Petitioner has requested the appointment of counsel. Because petitioner has filed an appeal of this court’s judgment, this court no longer has jurisdiction to entertain petitioner’s motion for appointment of counsel. See Pope v. Savings Bank of Puget Sound, 850 F.2d 1345, 1346 (9th Cir. 1988) (“Filing of the ... notice of appeal divested the district court of further jurisdiction over the case.”) Accordingly, the March 13, 2013 motion for appointment of counsel will be denied without prejudice to its filing before the proper court.<sup>1</sup>

Petitioner has timely filed a notice of appeal of this court's March 1, 2013 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).

<sup>1</sup> Under Federal Rule of Civil Procedure 62.1(2), this court is permitted to deny this motion filed after an appeal has been docketed and is pending.

1 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
2 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
3 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues  
4 satisfy the required showing or must state the reasons why such a certificate should not issue.  
5 Fed. R. App. P. 22(b).

6 Accordingly, IT IS ORDERED that:

7 1. For the reasons set forth in the magistrate judge’s February 1, 2013 findings  
8 and recommendations, petitioner has not made a substantial showing of the denial of a  
9 constitutional right. Accordingly, the court declines to issue a certificate of appealability in this  
10 action.

11 2. Petitioner’s March 13, 2013 motion for appointment of counsel (Docket No.  
12 38) is denied without prejudice to its renewal before the court of appeals.

13 DATED: March 29, 2013

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15 WILLIAM B. SHUBB  
16 UNITED STATES DISTRICT JUDGE

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