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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER KELLY WELLS,  
Petitioner,  
v.  
JOE A. LIZARRAGA,  
Respondent.

No. 2:16-cv-2807 WBS AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a motion requesting that the court correct the filing date of his notice of appeal or grant relief from potential default. ECF No. 43.

On July 19, 2022, the court received petitioner’s application for a certificate of appealability, which was dated July 9, 2022, and was construed as a notice of appeal. ECF No. 39. Petitioner has now filed a motion in which he avers that he followed proper prison legal mail procedures and submitted a notice of appeal for mailing on either May 12 or 13, 2022, and attaches a copy of the notice. Id. at 2, 4, 5. It does not appear that the court ever received petitioner’s notice of appeal, which differs from his application for a certificate of appealability. Petitioner requests that the court find his notice of appeal was timely filed. Respondent will be required to respond to the motion.

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1           Accordingly, IT IS HEREBY ORDERED that within twenty-one days of the service of  
2 this order, respondent shall file a response to petitioner's motion. Petitioner may file a reply  
3 within fourteen days of the service of the response.

4 DATED: August 9, 2022

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6 ALLISON CLAIRE  
7 UNITED STATES MAGISTRATE JUDGE  
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