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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNY STEWARD,

Plaintiff,

v.

LYNCH, et al.,

Defendants.

No. 2:18-cv-1227 KJM KJN P

<u>ORDER</u>

On June 16, 2021, plaintiff filed a document styled, "Request for Certificate of Appealability." (ECF No. 49.) However, certificates of appealability are not applicable in civil rights cases. 28 U.S.C. § 2253. Rather, they may be requested only in petitions for writ of habeas corpus under 28 U.S.C. § 2254 or motions to vacate or set aside federal sentences under 28 U.S.C. § 2255. Therefore, plaintiff's request for certificate of appealability is improperly filed.

Moreover, this civil rights action was terminated on July 29, 2020, at plaintiff's request. Thus, to the extent he wishes to file an appeal, such request is untimely. An appeal "from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4." Fed. R. App. P. 3(a)(1). The notice of appeal "must be filed with the district clerk within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A). However, the district court may extend the time to file a notice of appeal if "a party so moves no later than 30 days after the time prescribed by this Rule 4(a)

## expires," and "shows excusable neglect or good cause." Fed. R. App. P. 4(a)(5)(A). "No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later." Fed. R. App. P. 4(a)(5)(C). Here, to the extent plaintiff is attempting to appeal the July 29, 2020 dismissal, such request is untimely, and this court is without authority to extend such deadline. Fed. R. App. P. 4(a)(5)(C). Accordingly, IT IS HEREBY ORDERED that plaintiff's request (ECF No. 49) is denied. Dated: August 3, 2021 UNITED STATES MAGISTRATE JUDGE /stew1227.coad

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