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

ANDREW S. AUSTIN,  
Petitioner,  
v.  
RICHARD SUBIA, Warden,  
Respondent.

No. C 07-5620 MHP (PR)

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY; DENYING  
MOTION FOR THE APPOINTMENT  
OF COUNSEL; GRANTING  
MOTION TO PROCEED IN FORMA  
PAUPERIS**

(Docket Nos. 16, 17 & 18)

The Court has denied Petitioner’s petition for a writ of habeas corpus on the merits. Petitioner has now filed a request for a certificate of appealability (Docket No. 16). Petitioner has not shown, however, “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, the request for a certificate of appealability is hereby DENIED.

The Clerk shall forward this order, along with the case file, to the United States Court of Appeals for the Ninth Circuit, from which Petitioner may also seek a certificate of appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

Petitioner’s motion for the appointment of counsel (Docket No. 17) is DENIED. Petitioner may request counsel from the United States Court of Appeals for the Ninth Circuit. Petitioner’s motion to proceed in forma pauperis (Docket No. 18) is GRANTED.

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This order terminates Docket Nos. 16, 17 & 18.

**IT IS SO ORDERED.**

DATED: 8/13/2009

  
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Marilyn Hall Patel  
United States District Judge