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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
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9 GARY RAYMOND XAVIER,

No. C 08-3299 MHP (pr)

10 Petitioner,

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

11 v.

12 MIKE EVANS, Warden,

13 Respondent.
14 _____/

15 Petitioner has filed a notice of appeal, which the court construes as also requesting a
16 certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The request for
17 a certificate of appealability is DENIED because petitioner has not made "a substantial
18 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has not
19 demonstrated that "reasonable jurists would find the district court's assessment of the
20 constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

21 The clerk shall forward to the court of appeals the case file with this order. See
22 United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

23 IT IS SO ORDERED.

24 DATED: June 15, 2009

25 
26 Marilyn Hall Patel
27 United States District Judge
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