

1 IN THE UNITED STATES DISTRICT COURT
 2
 3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4
 5 ANDREW HARVEY,

No. C 07-00204 SBA (PR)

6 Petitioner,

**ORDER DENYING REQUEST FOR
 CERTIFICATE OF APPEALABILITY AS
 UNNECESSARY; GRANTING REQUEST
 TO PROCEED IN FORMA PAUPERIS
 ON APPEAL**

7 v.

8 BEN CURRY, Warden,

9 Respondent.
 _____/

10
 11 Petitioner has filed a notice of appeal following this Court's denial of his habeas petition
 12 challenging as a violation of his constitutional rights the denial of parole by the California Board of
 13 Parole Hearings (Board).¹ The Court construes the notice of appeal as an application for a certificate
 14 of appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997); 28 U.S.C.
 15 § 2253(c)(3). He also moves for leave to proceed in forma pauperis on appeal.

16 Petitioner's request for a certificate of appealability is DENIED as unnecessary. The Ninth
 17 Circuit recently made clear that a state prisoner challenging the administrative decision by the Board
 18 to deny his request for parole need not obtain a certificate of appealability. See Rosas v. Nielsen,
 19 428 F.3d 1229, 1232 (9th Cir. 2005).

20 Good cause appearing, Petitioner's request for leave to proceed in forma pauperis on appeal
 21 is GRANTED.

22 The Clerk of the Court shall process the notice of appeal.

23 This Order terminates Docket no. 14.

24 IT IS SO ORDERED.

25 DATED: 4/29/09


 SAUNDRA BROWN ARMSTRONG
 United States District Judge

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 28 ¹ The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the
 Board of Parole Hearings. Cal. Penal Code § 5075(a).

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ANDREW HARVEY,
5 Plaintiff,

Case Number: CV07-00204 SBA

CERTIFICATE OF SERVICE

6 v.

7 BEN CURRY et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on April 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Andrew G. Harvey C-25646
16 Correctional Training Facility
17 P.O. Box 689
18 Soledad, CA 93960-0689

19 Dated: April 30, 2009

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk