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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARCO MARROQUIN,

Petitioner,

No. C 08-3153 PJH (PR)

vs.

BEN CURRY, Warden,

Respondent.

**ORDER GRANTING
CERTIFICATE OF
APPEALABILITY**

United States District Court
For the Northern District of California

This is a habeas case under 28 U.S.C. § 2254 filed pro se by a state prisoner. The petition was directed to a denial of parole. The petition is denied in a contemporaneous order. A federal district court that denied a section 2254 habeas petition must grant or deny a certificate of appealability at the time of the denial. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. See *id.* § 2253(c)(3). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner's claims were that (1) his equal protection rights were violated when the State afforded more lenient treatment to a Swedish national than to him; (2) the Board's use of the "some evidence" standard violated his due process rights; and (3) there was not "some evidence" to support the decision.

1 A certificate of appealability is **GRANTED** on claim three. Jurists of reason might
2 find it debatable whether the circumstances of the offense and rather slight post-offense
3 evidence amounted to “some evidence.” A COA is **DENIED** as to the first two issues for
4 the reasons set out in the ruling.

5 Petitioner is advised that even though a COA has been granted, he still must file a
6 timely notice of appeal if he wishes to appeal. See Rule 11(b), Rules Governing § 2254
7 Cases.

8 **IT IS SO ORDERED.**

9 Dated: October 26, 2010.



PHYLLIS J. HAMILTON
United States District Judge

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