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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 HUSSEIN ADEN IBRAHIM,  
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HUSSEIN ADEN IBRAHIM, Petitioner, v. ROBERT FOX, WARDEN, Respondent.
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Case No.: 3:17-cv-00696-BEN-AGS  
**ORDER ISSUING CERTIFICATE  
OF APPEALABILITY**

17 Petitioner Hussein Aden Ibrahim, a state prisoner, commenced this action with the  
18 filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on April 5,  
19 2017. (Docket No. 1.) Subsequently, following review of Petitioner's First Amended  
20 Petition, Respondent's Motion to Dismiss, Petitioner's Opposition, and the lodgments,  
21 Magistrate Judge Andrew G. Schopler issued a thoughtful and thorough Report and  
22 Recommendation ("Report") recommending that the Motion be granted. (Docket No.  
23 13.) Objections to the Report were due by February 8, 2018. (*Id.*) Petitioner timely filed  
24 his objections to the Report. (Docket No. 14.)

25 On February 20, 2018, following review of the Report, the parties' briefings, and  
26 Petitioner's objections, this Court fully adopted the Report, granting Respondent's  
27 motion to dismiss. (Docket No. 15.) On March 21, 2018, Petitioner filed a motion for a  
28 certificate of appealability for the following issue. On March 22, 2018, Petitioner filed

1 his Notice of Appeal. (Docket No 17.) On April 10, 2018, the Ninth Circuit issued an  
2 order in Petitioner’s appeal remanding Petitioner’s case to this Court with instructions to  
3 issue or deny a certificate of appealability. (Docket No. 19.)

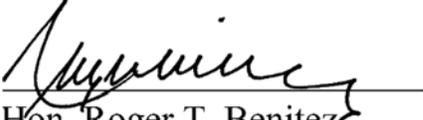
4 A certificate of appealability must be obtained by a petitioner in order to pursue an  
5 appeal from a final order in a section 2254 habeas corpus proceeding. 28 U.S.C. §  
6 2253(c)(1)(A); Fed. R. App. P. 22(b). A certificate of appealability should be issued only  
7 where the petition presents “a substantial showing of the denial of a constitutional right.”  
8 28 U.S.C. § 2253(c)(2). “[T]he district court shall indicate which specific issue or issues  
9 satisfy the standard for issuing a certificate, or state its reasons why a certificate should  
10 not be granted.” *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). A  
11 certificate should issue where the prisoner shows that jurists of reason would find it  
12 debatable whether the petition states a valid claim of the denial of a constitutional right,  
13 and whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*,  
14 529 U.S. 473, 484 (2000).

15 The Court finds that Petitioner has raised colorable, nonfrivolous arguments with  
16 respect to his contention that he filed a timely habeas petition. (*See* Docket No. 16-1.)  
17 Therefore, the Court issues a certificate of appealability on the sole issue of:

18 Whether Petitioner’s state habeas petition was timely filed such  
19 that the statute of limitations for his federal habeas petition was  
20 tolled until the California Supreme Court denied his state  
21 habeas petition on February 7, 2017?

22 **IT IS SO ORDERED.<sup>1</sup>**

23 Dated: April 10, 2018

24   
25 Hon. Roger T. Benitez  
26 United States District Judge

27  
28 <sup>1</sup> Because the Court has issued a certificate of appealability, Petitioner’s motion for  
certificate of appealability is denied as moot.