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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Edwin Anthony Pellecier,	)	No. CV 05-159-TUC-FRZ (DTF)
Petitioner,	)	<b>ORDER</b>
vs.	)	
John Palosaari, et al.,	)	
Respondents.	)	

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Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Ferraro that recommends denying Petitioner’s motion for an evidentiary hearing and habeas petition filed pursuant to 28 U.S.C. §2254.<sup>1</sup> As Petitioner’s objections do not undermine the analysis and proper conclusion reached by Magistrate Judge Ferraro, Petitioner’s objections are rejected and the Report and Recommendation is adopted.

Rule 22(b) of the Federal Rules of Appellate Procedure provides that a petitioner cannot take an appeal unless a certificate of appealability has been issued by an appropriate judicial officer. Rule 11(a) of the Rules Governing Section 2254 Cases provides that the district judge must either issue or deny a certificate of appealability when it enters a final order

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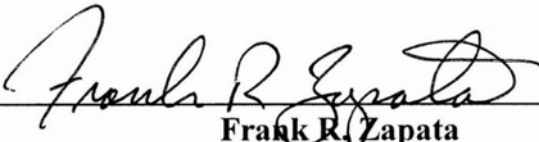
<sup>1</sup>The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

1 adverse to the petitioner. If a certificate is issued, the court must state the specific issue or  
2 issues that satisfy 28 U.S.C. § 2253(c)(2). Pursuant to 28 U.S.C. § 2253(c)(2), a COA may  
3 issue only when the petitioner "has made a substantial showing of the denial of a  
4 constitutional right." This showing can be established by demonstrating that "reasonable  
5 jurists could debate whether (or, for that matter, agree that) the petition should have been  
6 resolved in a different manner" or that the issues were "adequate to deserve encouragement  
7 to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court finds that  
8 reasonable jurists could debate the resolution of Grounds 1 through 12 of the Amended  
9 Petition, and a COA is therefore issued as to Grounds 1 through 12 of the Amended Petition.  
10 *See* Doc. 42 at pp. 5-17.

11 Accordingly, IT IS HEREBY ORDERED as follows:

- 12 (1) The Report and Recommendation (Doc. 73) is accepted and adopted.
- 13 (2) Petitioner's motion for an evidentiary hearing and §2254 habeas petition are denied and  
14 this case is dismissed with prejudice.
- 15 (3) A Certificate of Appealability shall issue as referenced above.
- 16 (4) The Clerk of the Court shall enter judgment accordingly and close the file in this matter.

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18 DATED this 26<sup>th</sup> day of March, 2013.

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22 Frank R. Zapata  
23 Senior United States District Judge  
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