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28United States District Court
For the Northern District of CaliforniaIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIARONALD EDWARD SMITH,
Petitioner,
v.
CHARLES PLUMMER,
Respondent.

No. C-06-1637 MMC

**ORDER DENYING CERTIFICATE OF
APPEALABILITY; GRANTING REQUEST
TO PROCEED IN FORMA PAUPERIS;
DIRECTIONS TO CLERK**

Before the Court is petitioner's Notice of Appeal and Request to Proceed In Forma Pauperis, filed May 26, 2010.

The Court construes the Notice of Appeal as including a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b). See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) ("If no express request is made for a certificate of appealability, the notice of appeal shall be deemed to constitute a request for a certificate."). Petitioner has not shown, however, "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." See Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, the request for a certificate of appealability is hereby DENIED.

The Clerk shall forward this order, along with the case file, to the United States Court of Appeals for the Ninth Circuit, from which petitioner may also seek a certificate of

1 appealability. See Fed. R. App. P. 22(b)(1).

2 To the extent petitioner seeks leave to proceed in forma pauperis on appeal,
3 petitioner's request is hereby GRANTED, petitioner previously having been afforded leave
4 to proceed in forma pauperis and there being no showing that petitioner is now proceeding
5 in bad faith or is no longer entitled to proceed in forma pauperis. See Fed. R. App. P.
6 24(a)(3).

7 **IT IS SO ORDERED.**

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9 Dated: June 1, 2010

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11 MAXINE M. CHESNEY
12 United States District Judge

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