

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARMONDO GIBB ORTEGA,  
Petitioner,  
v.  
JOHN W. HAVILAND, Warden,  
Respondent.

No. 09-02556 CW  
ORDER GRANTING,  
IN PART,  
CERTIFICATE OF  
APPEALABILITY  
(Docket Number 9)

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Petitioner Armondo Gibb Ortega has filed a Notice of Appeal and a request for a certificate of appealability of two of the three claims raised in his petition for a writ of habeas corpus. Pursuant to 28 U.S.C. § 2253(c)(1)(A), an appeal of the final order in a habeas corpus proceeding may not proceed unless a certificate of appealability is issued. A certificate of appealability may issue only if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); see also, Slack v. McDaniel, 529 U.S. 473, 483 (2000) (certificate of appealability may issue if petitioner shows "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right . . ."). The certificate of appealability must specify which issue or issues satisfies the showing required by § 2253(c)(2). See 28 U.S.C. § 2253(c)(3).

1           The Court certifies in accordance with 28 U.S.C. § 2253 that  
2 Petitioner has made a substantial showing of the denial of a  
3 constitutional right in regard to his first claim: denial of his  
4 Sixth Amendment right to counsel. However, for the reasons set  
5 forth in the order denying the petition, Petitioner has not made a  
6 substantial showing of the denial of a constitutional right in  
7 regard to his second claim: that he was penalized for exercising  
8 his right to trial. Petitioner does not seek a certificate of  
9 appealability on his third claim. Accordingly, the certificate of  
10 appealability is granted, in part.

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IT IS SO ORDERED.

Dated: August 25, 2010



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CLAUDIA WILKEN  
United States District Judge