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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SCOTT CHRISTOPHER ANZALONE, vs. LARRY SMALL, Defendant.	Plaintiff, Defendant.
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CASE NO. 08cv1496 JM(WVG)

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING
FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS;
DENYING CERTIFICATE OF
APPEALABILITY

On September 21, 2010 Magistrate Judge William V. Gallo entered a Report and Recommendation Denying First Amended Petition for Writ of Habeas Corpus (“R & R”). The R & R, expressly incorporated herein, thoroughly and thoughtfully analyzed Petitioner’s claims and recommended the denial of the Petition on the merits. Petitioner has filed objections to the R & R (“Objections”). Respondent did not file a reply to the Objections. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument.

In his Objections, Petitioner sets forth essentially the same arguments raised in the Petition and addressed in the R & R. Instead of responding to these arguments a second time, the court adopts the R & R in its entirety.

As of December 1, 2009, Rule 11 of the Rules following 28 U.S.C. § 2254 provides that: “The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on

1 whether a certificate should issue. If the court issues a certificate, the court must state the specific
2 issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a
3 certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals
4 under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the
5 time to appeal.”


6 Upon review of the record, the court concludes that Petitioner fails to make a substantial showing of
7 the denial of a constitutional right. Accordingly, the request for a certificate of appealability is denied.

8 See 28 U.S.C. §2253(c)(2).

9 In sum, the court adopts the R & R and denies a certificate of appealability.

10 **IT IS SO ORDERED.**

11 DATED: November 4, 2010

12 
13 Hon. Jeffrey T. Miller
United States District Judge

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