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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DONALD GREEN,

12 Petitioner,

13 vs.

14 LARRY SMALL, Warden,

Respondent.

CASE NO. 08 CV 1803 JLS (BLM)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

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16 On September 17, 2008, Petitioner Donald Green filed the present petition for writ of habeas
17 corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On August 14, 2009, pursuant to 28 U.S.C. §
18 636(b)(1), Magistrate Judge Barbara Lynn Major issued a Report and Recommendation (“R&R”)
19 advising that the Court deny the petition. (Doc. No. 21.) On September 21, 2009, Petitioner filed
20 objections, (Doc. No. 24) and, having considered those objections and the R&R, the Court adopted
21 Magistrate Judge Major’s recommendation. (Doc. No. 26.) On March 24, 2010, Petitioner filed a
22 notice of appeal (Doc. No. 28).¹

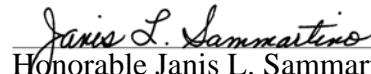
23 A certificate of appealability is authorized “if the applicant has made a substantial showing of
24 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by
25 demonstrating that jurists of reason could disagree with the district court’s resolution of his
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28 ¹ Petitioner noted that a certificate of appealability is not required to be filed for life prisoners
challenging parole denials, but this is incorrect. The Court, however, will interpret the notice of
appeal as a request for certificate of appealability.

1 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
2 encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack*
3 *v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of appealability
4 indicating which issues satisfy the required showing or (2) state why a certificate should not issue.
5 Fed. R. App. P. 22(b).

6 The Petition raised three legal issues, none of which merit certificate of appealability. The
7 Court finds that reasonable jurists would agree that the California conclusions were neither contrary
8 to nor an unreasonable application of clearly established federal law. Accordingly, the Court **DENIES**
9 certificate of appealability in this case.

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12 DATED: April 1, 2010


Honorable Janis L. Sammartino
United States District Judge