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

MICHAEL A. JOHNSON,

v.

JOHN MARSHALL, Warden,

Respondent.

CASE NO. 09cv927 BTM(POR)

**ORDER ADOPTING REPORT &
RECOMMENDATION; GRANTING
MOTION TO DISMISS; DISMISSING
PETITION; AND DENYING
CERTIFICATE OF APPEALABILITY**

In a Report and Recommendation filed on January 16, 2010, Magistrate Judge Porter recommends that Respondent's Motion to Dismiss and Motion for Relief from Order be granted. No objections have been filed. The Court has reviewed the Petition for Writ of Habeas Corpus ("Petition") and relevant record and concludes that the Report and Recommendation correctly applies the relevant law to the record. Petitioner's habeas petition is barred as second or successive under 28 U.S.C. § 2244(b), because Petitioner previously challenged his September 9, 1996 conviction in a habeas petition that was dismissed with prejudice on September 21, 2001. See Slack v. McDaniel, 529 U.S. 473, 486-88 (2000). Petitioner has not obtained authorization from the Ninth Circuit Court of Appeals to file a second or successive petition as required by 28 U.S.C. § 2244(b)(3). Therefore, the Court orders:

1. The Report and Recommendation filed on January 16, 2010 is **ADOPTED** as

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the decision of this Court.

2. Respondent's Motion to Dismiss and Motion for Relief from Order are **GRANTED.**

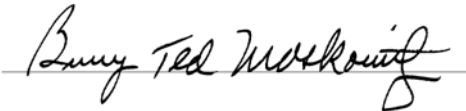
2. The Petition for Writ of Habeas Corpus is **DISMISSED.**

3. A Certificate of Appealability is **DENIED.**

4. The Clerk shall enter judgment dismissing the Petition and denying a Certificate of Appealability.

IT IS SO ORDERED.

DATED: March 1, 2010


Honorable Barry Ted Moskowitz
United States District Judge