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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JEFFERSON SISON,	)	Civil No. 09-cv-1185-BEN (WVG)
	)	
Petitioner,	)	ORDER DENYING ISSUANCE OF A
	)	CERTIFICATE OF APPEALABILITY
v.	)	
	)	
LARRY SMALL, Warden.	)	
	)	
Respondent.	)	
_____	)	

*Pro se* Petitioner Jefferson Sison filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The Magistrate Judge recommended denying the petition. The Report and Recommendation was adopted on November 18, 2010. On November 30, 2010, Petitioner filed a notice of appeal. He has not requested a certificate of appealability for any of the claims presented in his Petition. “[I]f the prisoner neglects to request a certificate of appealability before going forward, the court of appeals can grant him one *sua sponte*.” *Hayward v. Marshall*, 603 F.3d 546, 554 (9th Cir. 2010) (en banc, abrogated on other grounds by *Swarthout v. Cooke*, 502 U.S. \_\_\_, 2011 WL 197627 (Jan. 24, 2011) (per curiam). Here, however, the case has been remanded for the limited purpose of granting or denying the certificate. *See* Order of March 2, 2011, Appeal No. 10-57045.

1 **Legal Standard**

2 A certificate of appealability is authorized, “if the applicant has made a substantial showing of  
3 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this standard, Petitioner must  
4 show that the issues are debatable among reasonable jurists or that the questions are adequate to deserve  
5 encouragement to proceed further. *Hayward*, 603 F.3d at 553. The showing necessitates something  
6 above “the absence of frivolity.” *Id.*

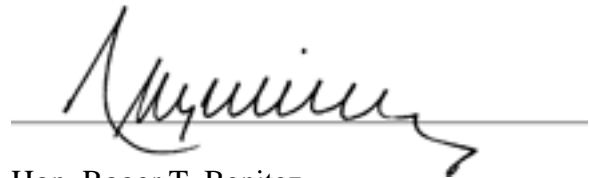
7 **Discussion**

8 This Court has considered the issues raised by Petitioner with respect to whether they satisfy the  
9 standard for issuance of a certificate of appealability, and determines that none meet that standard.

10 **Conclusion**

11 Based upon the foregoing, the Court hereby denies the issuance of a certificate of appealability.

12 DATED: March 3, 2011

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15 Hon. Roger T. Benitez

16 United States District Judge