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

GERALDO OJITO  
  
vs.  
  
KEN CLARK, Warden ,  
  
Petitioner,  
  
Respondent.

CASE NO. 09cv2918 JM(POR)  
  
ORDER ADOPTING REPORT AND  
RECOMMENDATION; DENYING  
CERTIFICATE OF  
APPEALABILITY


Having carefully considered Magistrate Judge Porter’s thorough and thoughtful Report and Recommendation (“R & R”) regarding the denial of the petition for writ of habeas corpus, the record before the court, the absence of any objections to the R & R, and applicable authorities, the court adopts the R & R in its entirety and denies the petition for writ of habeas corpus.

Upon review of the record, the court also concludes that Petitioner fails to make a substantial showing of the denial of a constitutional right. Accordingly, any request for a certificate of appealability is denied. See 28 U.S.C. §2253(c)(2).

In sum, the court adopts the R & R in its entirety, denies the petition for writ of habeas corpus, denies a certificate of appealability and instructs the Clerk of Court to close the file.

**IT IS SO ORDERED.**

DATED: October 25, 2011

  
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Hon. Jeffrey T. Miller  
United States District Judge

cc: All parties