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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SAMUEL LEE MEDWAY,

Petitioner,

12 vs.

13 MATTHEW CATE; et al.,

14 Respondents.
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CASE NO. 10-cv-0276 BEN (BLM)

ORDER DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY
AS MOOT

[Docket No. 24]

17 Before the Court is Petitioner's motion for certificate of appealability ("Motion") filed on
18 December 8, 2010. (Docket No. 24). Effective December 1, 2009, this Court must issue or deny a
19 certificate of appealability when it enters a final order adverse to the applicant on a petition for writ
20 of habeas corpus. Rule 11 foll. 28 U.S.C. § 2254; 28 U.S.C. § 2253; Fed. R. App. P. 22(b). Based
21 thereon, on November 23, 2010, the Court entered an order denying Petitioner a certificate of
22 appealability. (Docket No. 22.) Accordingly, Petitioner's Motion is denied as moot.

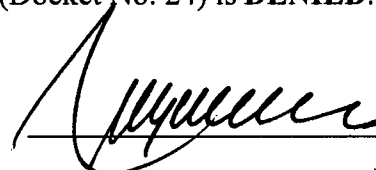
23 To the extent Petitioner's Motion can be construed as a motion for reconsideration, Petitioner's
24 Motion is likewise denied. A motion for reconsideration requires the moving party (here, Petitioner)
25 to show, among other things, "mistake, inadvertence, surprise, [] excusable neglect," or newly
26 discovered evidence. Fed. R. Civ. P. 60(b). "Reconsideration is appropriate if the district court (1)
27 is presented with newly discovered evidence, (2) committed clear error or the initial decision was
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1 manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J*,
2 *Multnomah Cnty. v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citing *All Hawaii Tours, Corp.*
3 *v. Polynesian Cultural Ctr.*, 116 F.R.D. 645, 648 (D. Haw. 1987), *rev'd on other grounds*, 855 F.2d
4 860 (9th Cir.1988)); *see also* CivLR 7.1.i.1 (a motion for reconsideration must set forth “what new or
5 different facts and circumstances are claimed to exist which did not exist, or were not shown, upon
6 such prior application.”). The Motion and record in the case is void of any argument or evidence
7 supporting these factors. Accordingly, to the extent the Motion can be construed as a motion for
8 reconsideration, the Motion is denied.

9 Petitioner’s motion for certificate of appealability (Docket No. 24) is **DENIED**.

10 **IT IS SO ORDERED.**

11 DATED: 2/29/2010



12 **Hon. Roger T. Benitez**
13 United States District Judge

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