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

THEODIS NATHANIEL BROWN

vs.

LARRY SMALL, Warden ,

Petitioner,

Respondent.

CASE NO. 10cv0552 JM(AJB)

ORDER ADOPTING REPORT AND
RECOMMENDATION; DENYING
CERTIFICATE OF
APPEALABILITY

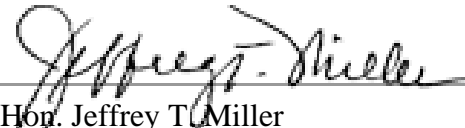
Having carefully considered Magistrate Judge Battaglia’s thorough and thoughtful Report and Recommendation (“R & R”) regarding the denial of the petition for writ of habeas corpus, the record before the court, the absence of any objections to the R & R, and applicable authorities, the court adopts the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

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 R & R is adopted in its entirety and the petition for writ of habeas corpus is denied. The Clerk of Court is instructed to close the file.

IT IS SO ORDERED.

DATED: March 14, 2011



Hon. Jeffrey T. Miller
United States District Judge

cc: All parties