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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ERIC JEFFREY COWAN,

12 Plaintiff,

13 v.

14 JOSIE GASTELO,

15 Defendants.

Case No.: 17cv1994-WQH-BLM

**ORDER**

16 HAYES, Judge:

17 The matter before the Court is the review of the Report and Recommendation (ECF  
18 No. 13) issued by the United States Magistrate Judge.

19 **I. BACKGROUND**

20 On August 31, 2018, the United States Magistrate Judge issued the Report and  
21 Recommendation concluding that the Petitioner was not entitled to relief on any grounds  
22 set forth in the Petition for Writ of Habeas Corpus and recommending that this court direct  
23 judgment be entered. (ECF No. 13).

24 On October 29, 2018, Petitioner filed objections to the Report and Recommendation.  
25 (ECF No. 16).

26 **II. LEGAL STANDARD**

27 The duties of the district court in connection with a report and recommendation of a  
28 magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §

636(b). The district judge must “make a de novo determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b).

### III. RULING OF THE COURT

After conducting a de novo review of the Report and Recommendation and considering the entire file, including Petitioner’s objections, the Court finds that the Report and Recommendation correctly determined that the Petition for Writ of Habeas Corpus should be denied. The Court adopts the Report and Recommendation in its entirety.

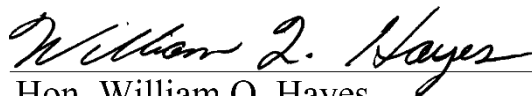
A certificate of appealability must be obtained by a petitioner in order to pursue an appeal from a final order in a § 2254 habeas corpus proceeding. *See* 28 U.S.C. § 2253(c)(1)(A); Fed R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”

A certificate of appealability should be issued only where the petition presents “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). It must appear that reasonable jurists could find the district court’s assessment of the petitioner’s constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court finds that Petitioner has raised non-frivolous arguments. The Court grants a certificate of appealability.

### IV. CONCLUSION

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 13) is adopted in its entirety and the Petition for Writ of Habeas Corpus (ECF No. 1) is denied. A certificate of appealability is GRANTED. The Clerk of the Court shall enter judgment for Respondent and against Petitioner and close the case.

Dated: November 27, 2018

  
Hon. William Q. Hayes  
United States District Court