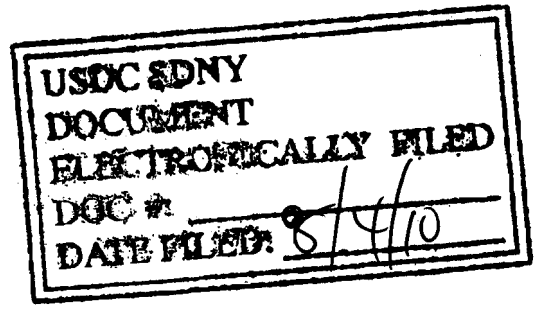


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
PEDRO JUAN TAVARES, :  
 :  
 Plaintiff, :  
 :  
 -v- :  
 :  
 CITY OF NEW YORK; MISS DAVIS, Warden; :  
 MR. ANDREW, Deputy Warden of Program; :  
 MR. McCOVAN, Assistant Deputy Warden; :  
 MR. VOUGHN, Captain; MISS GLOVER, :  
 Captain; MR. DeFILECE, Corrections :  
 Officer; :  
 :  
 Defendants. :  
----- x

09 Civ. 3499 (JSR)

MEMORANDUM ORDER



JED S. RAKOFF, U.S.D.J.

On March 12, 2010, the Honorable James C. Francis IV, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned matter recommending that the Court grant the motion of the City of New York and Warden Davis (the "Moving Defendants") to dismiss the claims against these defendants with prejudice.<sup>1</sup> On March 24, 2010 plaintiff Pedro Tavares timely filed objections, to which the Moving Defendants responded. Accordingly, the Court has reviewed the motion and the underlying record de novo.

Having done so, and finding petitioner's objections to be without merit, the Court finds itself in complete agreement with Judge Francis' excellent Report and hereby adopts its reasoning by reference. Accordingly, the Court dismisses the petition, with prejudice. In addition, because petitioner has not made a

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<sup>1</sup> The other defendants in this case have not been served.

substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.

Dated: New York, NY  
August 3, 2010

  
JED S. RAKOFF, U.S.D.J.