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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROBERTO CARLOS CRUZ,)	No. SA CV 10-01509-GW (VBK)
)	
Petitioner,)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF UNITED STATES
v.)	MAGISTRATE JUDGE AS REVISED
)	
ANTHONY HEDGPETH,)	
)	
Respondent.)	
_____)	

Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition for Writ of Habeas Corpus ("Petition"), the records and files herein, and the Amended Report and Recommendation of the United States Magistrate Judge ("Amended Report"). The Court has made a de novo determination of the Amended Report.


The Court makes the following changes to the Amended Report:

- P. 18, Line 5: the correct year is 2006; and
- p. 18, line 28: the correct citation is House v. Bell, 547 U.S. at 538.

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1 **IT IS ORDERED** that: (1) the Court accepts the findings and
2 recommendations of the Magistrate Judge with the changes noted above,
3 and (2) the Court declines to issue a Certificate of Appealability
4 ("COA").¹

5
6 DATED: March 21, 2012



7 GEORGE H. WU
8 UNITED STATES DISTRICT JUDGE
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15 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
16 may issue "only if the applicant has made a substantial showing of the
17 denial of a constitutional right." Here, the Court has adopted the
18 Magistrate Judge's finding and conclusion that the Petition is time-
19 barred. Thus, the Court's determination of whether a Certificate of
20 Appealability should issue here is governed by the Supreme Court's
21 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),
22 where the Supreme Court held that, "[w]hen the district court denies
23 a habeas petition on procedural grounds without reaching the
24 prisoner's underlying constitutional claim, a COA should issue when
25 the prisoner shows, at least, that jurists of reason would find it
26 debatable whether the petition states a valid claim of the denial of
27 a constitutional right and that jurists of reason would find it
28 debatable whether the district court was correct in its procedural
ruling." 529 U.S. at 484. As the Supreme Court further explained:

"Section 2253 mandates that both showings be made before the
court of appeals may entertain the appeal. Each component
of the § 2253(c) showing is part of a threshold inquiry, and
a court may find that it can dispose of the application in
a fair and prompt manner if it proceeds first to resolve the
issue whose answer is more apparent from the record and
arguments." Id. at 485.

Here, the Court finds that Petitioner has failed to make the
requisite showing that "jurists of reason would find it debatable
whether the district court was correct in its procedural ruling."