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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EFRAIN CABALLERO,
Petitioner,
v.
LELAND MCEWEN, Warden,
Respondent.

Case No. CV 10-3316 FMO (JCG)
**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge’s Report and Recommendation, Petitioner’s Objections to the Report and Recommendation, and the remaining record, and has made a *de novo* determination.

Petitioner’s Objections reiterate the arguments made in the Petition and Answer, and lack merit for the reasons set forth in the Report and Recommendation.

Accordingly, IT IS ORDERED THAT:

- 1. The Report and Recommendation is approved and accepted;
- 2. Judgment be entered denying the Petition and dismissing this action with prejudice; and
- 3. The Clerk serve copies of this Order on the parties.

Additionally, for the reasons stated in the Report and Recommendation, the Court finds that Petitioner has not made a substantial showing of the denial of a

1 constitutional right. See 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
2 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
3 appealability.

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5 DATED: April 15, 2013

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7 _____/s/_____

8 HON. FERNANDO M. OLGUIN
9 UNITED STATES DISTRICT JUDGE
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