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

KEVIN CHARLES COLE,

Peitioner,

vs.

MATTHEW CATE, Secretary, et al.,

Respondents.

CASE NO. 09cv0653 - IEG (POR)

ORDER:

**(1) ADOPTING THE
MAGISTRATE JUDGE’S REPORT
AND RECOMMENDATION;**

**(2) DENYING THE PETITION
FOR WRIT OF HABEAS
CORPUS; and**

**(3) DENYING CERTIFICATE OF
APPEALABILITY**

[Doc. Nos. 1, 35]

Petitioner Kevin Charles Cole (“Petitioner”), a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his San Diego County Superior Court convictions. (Doc. No. 1.) Respondent Matthew Cate filed an Answer and Memorandum of Points and Authorities, and Petitioner filed a traverse.

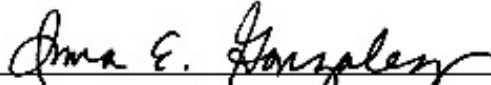
On October 21, 2010, Magistrate Judge Louisa S. Porter issued a Report and Recommendations recommending the Court deny the petition for writ of habeas corpus, and requiring any objections to be filed no later than November 16, 2010. (Doc. No. 35.) To date, Petitioner has not filed objections.

The Court **HEREBY ADOPTS** Magistrate Judge Porter’s well-reasoned Report and Recommendation in its entirety, and **DENIES** the petition for writ of habeas corpus. The Clerk of the Court shall close the case.

1 In addition, the Court sua sponte **DENIES** a certificate of appealability. A petitioner
2 complaining of detention arising from state court proceedings must obtain a certificate of appealability
3 to file an appeal of the final order in a federal habeas proceeding. 28 U.S.C. § 2253(c)(1)(A) (2007).
4 The district court may issue a certificate of appealability if the petitioner “has made a substantial
5 showing of the denial of a constitutional right.” *Id.* § 2253(c)(2). To make a “substantial showing,”
6 the petitioner must “demonstrat[e] that ‘reasonable jurists would find the district court’s assessment
7 of the constitutional claims debatable[.]’” *Beaty v. Stewart*, 303 F.3d 975, 984 (9th Cir. 2002)
8 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Here, Petitioner has not made a “substantial
9 showing” as to any of the claims raised by his petition, and therefore the Court declines to issue a
10 certificate of appealability.

11 **IT IS SO ORDERED.**

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13 **DATED: December 14, 2010**

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15 **IRMA E. GONZALEZ, Chief Judge**
16 **United States District Court**

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