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8                    **UNITED STATES DISTRICT COURT**

9                    **SOUTHERN DISTRICT OF CALIFORNIA**

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11    MARCOS EDUARDO MENDIOLA,                    CASE NO. 09cv1442-MMA(AJB)

12                                Plaintiff,

13             vs.                                **ORDER DENYING PETITIONER'S
                                                   APPLICATION FOR CERTIFICATE**
14                                                 **OF APPEALABILITY**
      JEANNE WOODFORD, Director of
15    Corrections, et al.,                         [Doc. No. 34]

16                                Defendant.

17            Petitioner Marcos Eduardo Mendiola, a state prisoner proceeding *pro se*, filed a petition for

18    writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Doc. No. 1] challenging his state court

19    convictions for first-degree murder with special circumstances and carjacking.  Respondent filed an

20    answer to the first amended petition [Doc. No. 12], and Petitioner filed a traverse [Doc. No. 18].

21    Subsequent to transfer from the Central District of California, the matter was referred to United

22    States Magistrate Anthony J. Battaglia for preparation of a Report and Recommendation pursuant to

23    28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.3.  On March 29, 2010, the undersigned adopted

24    the Report and Recommendation, denied the petition, and determined that a certificate of

25    appealability should not issue in this case.  The Court concluded that Petitioner did not make a

26    substantial showing of a the denial of a constitutional right and that reasonable jurists would not

27    disagree.  28 U.S.C. § 2253; Fed. R. App. P. 22(b).

28            Currently before the Court is Petitioner's application for a Certificate of Appealability,

                                                - 1 -                                    09cv1442

1   received and filed subsequent to the Court's March 29, 2010 order declining to issue a certificate.

2   Upon due consideration of Petitioner's present application, the Court finds no reason to amend its

3   prior order.  Therefore, for the reasons set forth in the Report and Recommendation and the Court's

4   March 29, 2010 order, Petitioner has not made a substantial showing of the denial of a constitutional

5   right.  Accordingly, a certificate of appealability should not issue in this action and Petitioner's

6   application is **DENIED**.

7       **IT IS SO ORDERED**.

8   DATED:  May 11, 2010

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Hon. Michael M. Anello
10  United States District Judge

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