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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

PHILLIP ESPARZA,	)	No. CV 11-10568-DSF (VBK)
	)	
Petitioner,	)	ORDER ACCEPTING FINDINGS AND
	)	RECOMMENDATIONS OF UNITED STATES
v.	)	MAGISTRATE JUDGE
	)	
BITER, et al.,	)	
	)	
Respondents.	)	
_____	)	

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 Report and Recommendation of the United States Magistrate Judge ("Report").

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**IT IS ORDERED** that: (1) the Court accepts the findings and recommendations of the Magistrate Judge, except notes that the phrase "specific attempt to kill" at page 15 should be "specific intent to kill," and (2) the Court declines to issue a Certificate of Appealability ("COA").<sup>1</sup>

12/11/12



DATED: \_\_\_\_\_

\_\_\_\_\_  
DALE S. FISCHER  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Under 28 U.S.C. §2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that, to obtain a Certificate of Appealability under §2253(c), a habeas petitioner must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further'." Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S.Ct. 1595 (2000)(internal quotation marks omitted); see also Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029 (2003). After review of Petitioner's contentions, this Court concludes that Petitioner has not made a substantial showing of the denial of a constitutional right, as is required to support the issuance of a COA.

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