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7	UNITED STATES DISTRICT COURT
8	CENTRAL DISTRICT OF CALIFORNIA
9	WESTERN DIVISION
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11	ENRIQUE MONTOYA,) No. ED CV 12-00526-JAK (VBK)
12) Petitioner,) ORDER ACCEPTING FINDINGS AND) RECOMMENDATIONS OF UNITED STATES
13	v.) MAGISTRATE JUDGE
14	F. X. CHAVEZ,
15	Respondent.)
16)
17	Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition
18	for Writ of Habeas Corpus ("Petition"), the records and files herein,
19	and the Report and Recommendation of the United States Magistrate
20	Judge ("Report"). Further, the Court has engaged in <u>de novo</u> review of
21	those portions of the Report to which Petitioner has objected.
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1	IT IS ORDERED that: (1) the Court accepts the findings and
2	recommendations of the Magistrate Judge, and (2) the Court declines to
3	issue a Certificate of Appealability ("COA"). 1
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5	DATED: December 3, 2012
6	JOHN A. KRONSTADT 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 denial of a constitutional right." Here, the Court has accepted the
17	Magistrate Judge's finding and conclusion that the Petition is time- barred. Thus, the Court's determination of whether a Certificate of
18	Appealability should issue here is governed by the Supreme Court's decision in <u>Slack v. McDaniel</u> , 529 U.S. 473, 120 S. Ct. 1595 (2000),
19	where the Supreme Court held that, "[w]hen the district court denies a habeas petition on procedural grounds without reaching the
20	prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it
21	debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it
22	debatable whether the district court was correct in its procedural ruling." 529 U.S. at 484. As the Supreme Court further explained:
23	"Section 2253 mandates that both showings be made before the
24	court of appeals may entertain the appeal. Each component of the § 2253(c) showing is part of a threshold inquiry, and
25	a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the
26	issue whose answer is more apparent from the record and arguments." <u>Id</u> . at 485.
27	Here, the Court finds that Petitioner has failed to make the requisite showing that "jurists of reason would find it debatable

requisite showing that "jurists of reason would find it debatak whether the district court was correct in its procedural ruling."