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**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Richard M. Quilopras,	NO. C 05-04516 JW
Petitioner,	<b>ORDER DENYING CERTIFICATE OF</b>
v.	<b>APPEALABILITY</b>
James A. Yates, Warden,	
Respondent.	

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On December 18, 2009, the Court denied Petitioner Richard Quilopras’ Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and judgment was entered accordingly. (See Docket Item Nos. 25-26.) Presently before the Court is Petitioner’s Notice of Appeal and Request for Certificate of Appealability and Appointment of Counsel. (hereafter, “Request,” Docket Item No. 27.)<sup>1</sup>

Upon the filing of a notice of appeal and a request for a Certificate of Appealability (“COA”), the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. 28 U.S.C. § 2253(c)(3)). If no express request is made for a COA, the notice of appeal shall be deemed to constitute a request for a certificate. See *id.* A judge shall grant a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The

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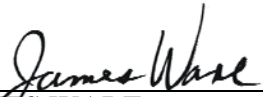
<sup>1</sup> Petitioner “requests the Ninth Circuit appoint counsel to assist him” with his appeal. (Request at 1.) Since Petitioner directs this request at the Ninth Circuit rather than this Court, the Court does not address this request.

1 certificate must indicate which issues satisfy this standard, and the court of appeals is limited to  
2 considering only those claims. See Hiivala v. Wood, 195 F.3d 1098, 1103 (9th Cir. 1999); Fuller v.  
3 Roe, 182 F.3d 699, 702-03 (9th Cir. 1999). “Where a district court has rejected the constitutional  
4 claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must  
5 demonstrate that reasonable jurists would find the district court’s assessment of the constitutional  
6 claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

7         Since the Court denied Petitioner’s claims on the merits, Petitioner must demonstrate that  
8 reasonable jurists would find the Court’s assessment of the constitutional claims debatable or wrong.  
9 Upon review of the Request, the Court finds that Petitioner has not made the required showing.  
10 Rather, the Request merely states that “reasonable jurists could differ as to the issues raised in the  
11 petition.” (Request at 1.) Thus, the Court finds that issuance of a certificate of appealability is not  
12 warranted.

13         Accordingly, the Court DENIES Petitioner’s Request for a Certificate of Appealability.

14  
15 Dated: February 17, 2010

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Gerald August Engler [Gerald.Engler@doj.ca.gov](mailto:Gerald.Engler@doj.ca.gov)  
3 Jeremy Friedlander [Jeremy.Friedlander@doj.ca.gov](mailto:Jeremy.Friedlander@doj.ca.gov)  
4 Peggy S. Ruffra [peggy.ruffra@doj.ca.gov](mailto:peggy.ruffra@doj.ca.gov)

5 **Dated: February 17, 2010**

**Richard W. Wieking, Clerk**

6 **By:           /s/ JW Chambers**  
7 **Elizabeth Garcia**  
8 **Courtroom Deputy**

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