

JUL 02 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE HUMBERTO MAGANA-TORRES,

Petitioner - Appellant,

v.

AMY MILLER,

Respondent - Appellee.

No. 12-16804

D.C. No. 2:10-cv-02669-WBS-
TJB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, Senior District Judge, Presiding

Submitted June 11, 2014**
San Francisco, California

Before: O'SCANNLAIN and BEA, Circuit Judges, and HAYES, District Judge.***

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

*** The Honorable William Q. Hayes, United States District Judge for the Southern District of California, sitting by designation.

Jose Humberto Magana-Torres, a California state prisoner, appeals the district court's denial of his petition for a writ of habeas corpus, challenging his conviction for several crimes, including home invasion and attempted murder. We dismiss.

None of the grounds for relief in Magana-Torres' Opening Brief are encompassed within the certificate of appealability issued by the district court. We construe Magana-Torres' Opening Brief as a motion to expand the certificate of appealability. *See* 9th Cir. R. 22-1(e); *see also Schneider v. McDaniel*, 674 F.3d 1144, 1155–56 (9th Cir. 2012). So construed, the motion is denied. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”). Accordingly, we dismiss the appeal for lack of jurisdiction. *See* 28 U.S.C. § 2253(c)(1); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (“[U]ntil a [certificate of appealability] has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners.”).

DISMISSED.