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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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Louis Alfonso Melendez,

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No. CV-05-891-PHX-SMM

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Petitioner,

)

11

v.

)

**ORDER DENYING CERTIFICATE OF  
APPEALABILITY**

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Warden Greg Fizer,

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Respondent.

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On July 19, 2013, this Court denied Petitioner’s motion for Fed. R. Civ. P. 60(b) relief. (Doc. 38.) Subsequently, Petitioner’s noticed appeal from this Court’s ruling, NOA # 13-16776. (Doc. 39.) Pending before the Court is Petitioner’s motion for extension of time to request certificate of appealability (Doc. 40) and Petitioner’s application for certificate of appealability (Doc. 41).

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Rule 11(a) of the Rules Governing Section 2254 Cases provides that the district judge must either issue or deny a certificate of appealability (“COA”) when it enters a final order adverse to the applicant. If a certificate is issued, the court must state the specific issue or issues that satisfy 28 U.S.C. § 2253(c)(2). Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner “has made a substantial showing of the denial of a constitutional right.” This showing can be established by demonstrating 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 were “adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citing Barefoot v. Estelle,

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1 463 U.S. 880, 893 & n.4 (1983)).

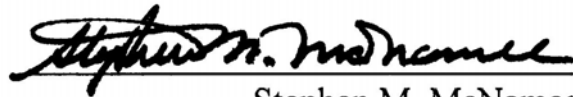
2 The Court finds that reasonable jurists could not debate its resolution of Petitioner's  
3 claims that he had a legitimate excuse to the procedural default of his ineffective assistance  
4 of counsel claims in state court. The question of whether the state court erred in finding  
5 those claims procedurally defaulted is not debatable among jurists of reason. Similarly, there  
6 are no debatable facts or legal authority to support that either Martinez v. Ryan, 132 S. Ct.  
7 1309 (2012) or Maples v. Thomas, 132 S. Ct. 912 (2012) excuse Petitioner's procedurally  
8 defaulted claims. (See Doc. 38.) Accordingly, the Court will decline to issue a COA.

9 Based on the foregoing,

10 **IT IS HEREBY ORDERED DENYING** Petitioner's application for certificate of  
11 appealability. (Doc. 41.) The Clerk of Court shall forward a copy of this Order to the Clerk  
12 of the Ninth Circuit Court of Appeals.

13 **IT IS FURTHER ORDERED GRANTING** Petitioner's motion for extension of  
14 time to request certificate of appealability. (Doc. 40.)

15 DATED this 30th day of September, 2013.

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18 Stephen M. McNamee  
19 Senior United States District Judge  
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