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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSE M. GALLEGOS,	}	NO. CV 11-5195 GW (FMO)
Petitioner,	}	
v.	}	ORDER DENYING CERTIFICATE OF
LELAND MCEWEN, Warden,	}	APPEALABILITY
Respondent.	}	

Contemporaneously with the filing of this Order, Judgment has been entered dismissing the Petition for Writ of Habeas Corpus in this action. Under the Antiterrorism and Effective Death Penalty Act, a state prisoner seeking to appeal a district court’s final order in a habeas corpus proceeding must obtain a Certificate of Appealability (“COA”) from the district judge or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” *Id.* at § 2253(c)(2); accord *Williams v. Calderon*, 83 F.3d 281, 286 (9th Cir.), *cert. denied*, 517 U.S. 1183 (1996). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-EI v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029, 1034 (2003); *see also Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S.Ct. 1595, 1603-04 (2000).

1 When a district court has dismissed a petition on procedural grounds, the reviewing court
2 should apply a two-step analysis, and a COA should issue if the petitioner can show both: (1) “that
3 jurists of reason would find it debatable whether the district court was correct in its procedural
4 ruling[;]” and (2) “that jurists of reason would find it debatable whether the petition states a valid
5 claim of the denial of a constitutional right[.]” Slack, 529 U.S. at 478, 120 S.Ct. at 1600-01.

6 The Court dismissed the Petition with prejudice because the Petition is time-barred under
7 28 U.S.C. § 2244(d). The Petition was filed over six months after the expiration of the statute of
8 limitations. Given the fact that the Petition was clearly untimely, petitioner cannot make the
9 requisite showing “that jurists of reason would find it debatable whether the district court was
10 correct in its procedural ruling.” Slack, 529 U.S. at 478, 120 S.Ct. at 1600-01.

11 Based on the foregoing, IT IS ORDERED that a Certificate of Appealability is **denied**.

12 DATED: July 11, 2012.



14 GEORGE H. WU
15 UNITED STATES DISTRICT JUDGE
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