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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

ARNOLD COLLINS,	)	Case No. EDCV 11-1336-JFW (MLG)
Petitioner,	)	
v.	)	ORDER DENYING CERTIFICATE OF
	)	APPEALABILITY
DOMINGO URIBE, WARDEN,	)	
Respondent.	)	

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17 Rule 11 of the Rules Governing Section 2254 Cases in the United  
18 States District Courts requires the district court to issue or deny  
19 a certificate of appealability ("COA") when it enters a final order  
20 adverse to the petitioner. Because jurists of reason would not find  
21 it debatable whether this Court was correct in its ruling dismissing  
22 the petition as successive under 28 U.S.C. § 2244(b)(3)(a), a COA is  
23 denied.

24 Before Petitioner may appeal the Court's decision dismissing  
25 his petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R.  
26 App. P. 22(b). The Court must either issue a COA indicating which  
27 issues satisfy the required showing or provide reasons why such a  
28 certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App.

1 P. 22(b).

2 The court determines whether to issue or deny a COA pursuant to  
3 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);  
4 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c).  
5 Ordinarily, a COA may be issued only where the petitioner has made  
6 a "substantial showing of the denial of a constitutional right." 28  
7 U.S.C. § 2253 (c) (2); *Miller-El*, 537 U.S. at 330. Where, as here, the  
8 district court denies a habeas petition on procedural grounds,  
9 without reaching the prisoner's underlying constitutional claim, a  
10 COA should issue when the prisoner shows, at least, that jurists of  
11 reason would find it debatable whether the petition states a valid  
12 claim of the denial of a constitutional right and that jurists of  
13 reason would find it debatable whether the district court was correct  
14 in its procedural ruling. *Slack*, 529 U.S. at 484, *See also Miller-*  
15 *El*, 537 U.S. at 338.

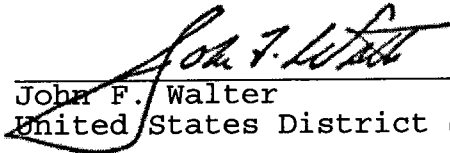
16 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the  
17 court noted that this amounts to a "modest standard". (Quoting  
18 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,  
19 the standard for granting a COA has been characterized as  
20 "relatively low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir.  
21 2004). A COA should issue when the claims presented are "adequate  
22 to deserve encouragement to proceed further." *Slack*, 529 U.S. at  
23 483-84, (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see*  
24 *also Silva*, 279 F.3d at 833. If reasonable jurists could "debate"  
25 whether the petition could be resolved in a different manner, then  
26 the COA should issue. *Miller-El*, 537 U.S. at 330.

27 Under this standard of review, a COA will be denied. In  
28 dismissing this petition for writ of habeas corpus, this Court found


1 that the petition was challenging the same conviction and sentence  
2 which was the subject of an earlier petition that was denied on the  
3 merits. Petitioner cannot make a colorable claim that jurists of  
4 reason would find debatable or wrong the decision dismissing the  
5 petition as successive.

6 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a  
7 certificate of appealability.

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9 Dated: September 28, 2011

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13 John F. Walter  
14 United States District Judge

15 Presented By:

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18 Marc L. Goldman  
19 United States Magistrate Judge

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