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1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT FOR THE 6 7 EASTERN DISTRICT OF CALIFORNIA 8 RASHEEN D. FAIRLY, No. CV-F-10-1116 OWW (No. CR-F-95-5193 OWW) 10 ORDER DENYING CERTIFICATE OF 11 Petitioner, **APPEALABILITY** 12 vs. 13 UNITED STATES OF AMERICA, 14 15 Respondent. 16 17 Petitioner has timely filed a Notice of Appeal from the "Memorandum Decision and Order Deeming Petitioner's Petition for 18

Petitioner has timely filed a Notice of Appeal from the "Memorandum Decision and Order Deeming Petitioner's Petition for Relief from Judgment Under All Writs Act to Be Second or Successive Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255, Dismissing Deemed Section 2255 Motion for Lack of Jurisdiction, and Directing Clerk of Court to Enter Judgment for Respondent," filed on June 28, 2010 (Doc. 268).

No Certificate of Appealability shall issue in connection with Petitioner's appeal.

"'When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in the procedural ruling.'" United States v. Zuno-Arce, 339 F.3d 886, 889 (9th Cir.2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner has not made the required showing. Petitioner's underlying constitutional claim has been previously denied on the merits and jurists of reason would not find it debatable that Petitioner's instant motion is a second or successive Section 2255 motion for which Petitioner has not obtained prior authorization from the Ninth Circuit.

IT IS SO ORDERED.

Dated: August 10, 2010 /s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE