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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 ALEJANDRO F. MICHEL, ) No. C 08-1724 JSW (PR)  
9 Petitioner, )  
10 vs. ) **ORDER DENYING**  
11 J. WALKER, Warden, ) **CERTIFICATE OF**  
12 Respondent. ) **APPEALABILITY**  
13 ) **(Docket no. 12)**  
14 )

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15 Petitioner, a prisoner of the State of California, filed a *pro se* petition for a writ of  
16 habeas corpus under 28 U.S.C. § 2254 . In an order dated March 17, 2009, this Court  
17 dismissed the petition as untimely (docket no. 10). Petitioner has filed a notice of appeal  
18 and a motion seeking a certificate of appealability (docket no. 10).

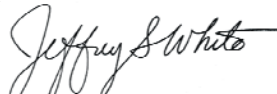
19 A judge shall grant a COA “only if the applicant has made a substantial showing  
20 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Determining whether a  
21 COA should issue where the petition was dismissed on procedural grounds has two  
22 components, one directed at the underlying constitutional claims and one directed at the  
23 district court’s procedural holding.” *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).  
24 “When the district court denies a habeas petition on procedural grounds without reaching  
25 the prisoner’s underlying constitutional claim, a COA should issue when the prisoner  
26 shows, at least, that jurists of reason would find it debatable whether the petition states a  
27 valid claim of the denial of a constitutional right and that jurists of reason would find it  
28 debatable whether the district court was correct in its procedural ruling.” *Id.* at 484; *see*  
*James v. Giles*, 221 F.3d 1074, 1077 (9th Cir. 2000). As each of these components is a

1 “threshold inquiry,” the federal court “may find that it can dispose of the application in a  
2 fair and prompt manner if it proceeds first to resolve the issue whose answer is more  
3 apparent from the record and arguments.” *Slack*, 529 U.S. at 485. Supreme Court  
4 jurisprudence “allows and encourages” federal courts to first resolve the procedural  
5 issue. *See id.*

6 Petitioner has not established that “jurists of reason would find it debatable  
7 whether the district court was correct in its procedural ruling.” *Id.* at 484. Accordingly,  
8 the request for a certificate of appealability is DENIED (docket no. 12). The Clerk of  
9 Court shall forward this order, along with the case file, to the United States Court of  
10 Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.  
11 1997).

12 IT IS SO ORDERED.

13 DATED: May 26, 2009

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16 JEFFREY S. WHITE  
17 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5  
6 ALEJANDRO F. MICHEL,

Case Number: CV08-01724 JSW

7 Plaintiff,

**CERTIFICATE OF SERVICE**

8 v.

9 WILLIAM T. SULLIVAN et al,


10 Defendant.  
11 \_\_\_\_\_/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on May 26, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
17 receptacle located in the Clerk's office.

18 Alejandro F. Michel  
19 T86169  
20 CSP-Sacramento  
P.O. Box 290066  
Represa, CA 95671

21  
22 Dated: May 26, 2009

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk