


1 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A
2 petitioner satisfies this standard by showing that jurists of reason could disagree
3 with the district court’s resolution of his constitutional claims or that jurists could
4 conclude the issues presented are adequate to deserve encouragement to proceed
5 further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*,
6 529 U.S. 473, 484 (2000)). Gray does not have to show “that he should prevail on
7 the merits. He has already failed in that endeavor.” *Lambright v. Stewart*, 220
8 F.3d 1022, 1025 (9th Cir. 2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4
9 (1983)).

10 Having reviewed the Second Amended Petition, the Court concludes that the
11 issues are not debatable among jurists of reason and they do not deserve
12 encouragement to proceed further. Accordingly, the Court declines to issue a COA.
13 Gray’s request is denied.

14 **IT IS SO ORDERED.**

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16 DATED: June 27, 2013


HON. ROGER T. BENITEZ
United States District Court Judge

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