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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 **PABLO AGRIO,**

Petitioner,

vs.

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13 **JOHN MARSHALL, Warden, et al.,**

Respondents.

CASE NO. 09cv2712-WMc

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

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15 On July 13, 2011, this Court entered judgment denying petitioner's writ of habeas corpus.  
16 [Doc. No. 16.] After reviewing the record, the Court finds good cause to deny a certificate of  
17 appealability.

18 Rule 11 of the Federal Rules Governing Section 2254 Cases states, "[t]he district court  
19 must issue or deny a certificate of appealability when it enters a final order adverse to the  
20 applicant." A certificate of appealability should be issued only where the petition presents "a  
21 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet this  
22 threshold showing, Petitioner must show: (1) the issues are debatable among jurists of reason, (2) a  
23 court could resolve the issues in a different manner, or (3) the questions are adequate to deserve  
24 encouragement to proceed further. *Lambright v. Stewart*, 220 F.3d 1022, 1024-25 (9th Cir. 2000)  
25 (citing *Slack v. McDaniel*, 529 U.S. 473 (2000); *Barefoot v. Estelle*, 463 U.S. 880 (1983)).

26 Here, the Court finds the issues are not debatable among jurists of reason, nor could the  
27 issues be resolved in a different manner. The Supreme Court's holding in *Swarthout v. Cooke*, 131  
28 S. Ct. 859 (2011) places Agrio's claims beyond reasonable debate or alternative resolution because

1 Agrio raised only substantive, as opposed to procedural, challenges to his parole hearing. Likewise,  
2 the questions presented here do not deserve encouragement to proceed further. Accordingly, the  
3 Court **DENIES** a certificate of appealability.

4 **IT IS SO ORDERED.**

5 Date: August 23, 2011

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8 Hon. William McCurine, Jr.  
9 U.S. Magistrate Judge  
10 United States District Court

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