

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, )  
)  
Plaintiff-Respondent. )  
)  
v. )  
)  
JORGE MANUEL ARGUELLES- )  
BRISENO, )  
)  
Defendant-Movant. )  
\_\_\_\_\_)

Case No. 4:10-CV-371-BLW  
1:08-CR-220-BLW

**ORDER RE CERTIFICATE  
OF APPEALABILITY**

The Court previously denied Jorge Manuel Arguelles-Briseno’s Motion Pursuant to 28 U.S.C. § 2255. *See Order*, Dkt. 36. Arguelles-Briseno then filed a Motion for Certificate of Appealability and a Notice of Appeal. *See* Dkts. 38, 39. Having considered the motion and the record in this case, the Court will deny the motion for a certificate of appealability.

**CERTIFICATE OF APPEALABILITY**

**A. Standard of Law**

A § 2255 movant cannot appeal from the denial or dismissal of his § 2255 motion unless he has first obtained a certificate of appealability. 28 U.S.C.

**Order re: Certificate of Appealability - 1**

§ 2253(c); Fed. R. App. P. 22(b). A certificate of appealability will issue only when a movant has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To satisfy this standard when the court has dismissed a § 2255 motion (or claims within a § 2255 motion) on procedural grounds, the movant must show that reasonable jurists would find debatable (1) whether the court was correct in its procedural ruling, and (2) whether the motion states a valid claim of the denial of a constitutional right. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the court has denied a § 2255 motion or claims within the motion on the merits, the movant must show that reasonable jurists would find the court's decision on the merits to be debatable or wrong. *Id.*; *Allen v. Ornoski*, 435 F.3d 946, 951 (9th Cir. 2006).

After carefully considering the record and the relevant case law, the Court finds that reasonable jurists would not find the Court’s determinations regarding Arguelles-Briseno’s claims to be debatable or wrong. Accordingly, the Court will deny the motion for a certificate of appealability shall be denied as to all issues.

### **ORDER**

The Motion for Certificate of Appealability (Dkt. 38) is **DENIED**.

Arguelles-Briseno is advised that he may still request a certificate of appealability from the Ninth Circuit Court of Appeals pursuant to Federal Rule of Appellate

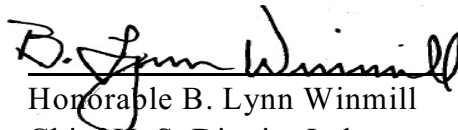
**Order re: Certificate of Appealability - 2**

Procedure 22(b) and Local Ninth Circuit Rule 22-1.

**IT IS FURTHER ORDERED** that the Clerk of Court shall forward a copy of this Order to the Ninth Circuit. The district court's file in this case is available for review online at [www.id.uscourts.gov](http://www.id.uscourts.gov).



DATED: **January 16, 2013**

  
Honorable B. Lynn Winmill  
Chief U. S. District Judge