

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**NOV 5 1998**

**PATRICK FISHER**  
Clerk

STEVEN AYALA,

Petitioner - Appellant,

v.

ZAVARAS, Executive Director; GAIL  
NORTON, Attorney General of the  
State of Colorado,

Respondents - Appellees.

No. 98-1192  
(D.C. No. 98-D-67)  
(D. Colo.)

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**ORDER AND JUDGMENT\***

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Before **PORFILIO, KELLY, and HENRY**, Circuit Judges.\*\*

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Petitioner-Appellant Steven Ayala, a pro se litigant, seeks to appeal the district court's dismissal without prejudice of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254(b)(1). He has filed a motion for leave to proceed on appeal without prepayment of costs or fees and an application for a

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

certificate of appealability. He has also requested court-appointed counsel and seeks to supplement his pleadings.

We agree with the district court that Mr. Ayala has not demonstrated that he has exhausted state court remedies regarding his claims. See 28 U.S.C. § 2254(b)(1)(A); see also Demarest v. Price, 130 F.3d 922, 932 (10th Cir. 1997). Nor has he demonstrated futility. See 28 U.S.C. § 2254(b)(1)(B)(i) & (ii); see also Wallace v. Cody, 951 F.2d 1170, 1171 (10th Cir. 1991). Accordingly, all pending requests for relief, including his motion to proceed in forma pauperis and his request for court-appointed counsel are DENIED, and the appeal is DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge