


1 case. *See Cullen v. Pinholster*, 131 S.Ct. 1388, 1398 (2011); *Schriro v. Landrigan*,
2 550 U.S. 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations
3 or otherwise precludes habeas relief, a district court is not required to hold an
4 evidentiary hearing.”).

5 Additionally, for the reasons stated in the Report and Recommendation, the
6 Court finds that Petitioner has not made a substantial showing of the denial of a
7 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
8 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
9 appealability.

10 Accordingly, having made a *de novo* determination of those portions of the
11 Report and Recommendation to which objection was made, IT IS ORDERED
12 THAT:

- 13 1. Petitioner’s request for an evidentiary hearing is denied.
- 14 2. Judgment shall be entered dismissing the action with prejudice.
- 15 3. The Clerk shall serve copies of this Order and the Judgment herein on
16 the parties.
- 17 4. A Certificate of Appealability is denied.

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20 DATED: October 6, 2011



HON. JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

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