

- 2. Judgment be entered dismissing this action with prejudice; and
- 3. The Clerk serve copies of this Order on the parties.
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Additionally, for the reasons stated in the Report and Recommendation, the
 Court finds that Petitioner has not made a substantial showing of the denial of a
 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
 appealability.

Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
131 S. Ct. 1388, 1398 (2011) (AEDPA "requires an examination of the state court
decision at the time it was made. It follows that the record under review is limited to
the record in existence at that same time *i.e.*, the record before the state court.").

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11	5/25/17	Dala S. Escher
12	DATED:	Wale B. Jescher
13		HON. DALE S. FISCHER UNITED STATES DISTRICT JUDGE
14		UNITED STATES DISTRICT JUDGE
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