

DATED: September 22, 2016\_

The Clerk serve copies of this Order on the parties. 4.

Additionally, for the reasons stated in the Report and Recommendation and above, the Court finds that Petitioner has not shown that "jurists of reason would find it debatable whether": (1) "the petition states a valid claim of the denial of a constitutional right"; and (2) "the district court was correct in its procedural ruling." See Slack v. McDaniel, 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a certificate of appealability.

Nor is Petitioner entitled to an evidentiary hearing. See Cullen v. Pinholster, 563 U.S. 170, 181-82 (2011) (AEDPA "requires an examination of the state courtdecision 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.").

5. James Otens

HON. S. JAMES OTERO UNITED STATES DISTRICT JUDGE