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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICK ALAN PETROVICH,
Petitioner,

v.

KELLY SANTORO, Warden,
Respondent.

1:15-cv-01546 MJS HC
**ORDER DENYING, WITHOUT PREJUDICE,
MOTION FOR EVIDENTIARY HEARING**
(Doc. 18)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 27, 2016, Petitioner moved the Court for an evidentiary hearing. (ECF No. 18.) Petitioner does not specify therein what evidence he seeks to be produced. Instead, he requests the hearing “if need be” to set forth relevant facts in support of his petition.

This Court, in reviewing Petitioner's claims and determining if the state court decision was reasonable, may only rely upon the record before the state court. See Cullen v. Pinholster, 131 S. Ct. 1388, 1398 (2011) (“We now hold that review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits.”). As such, further discovery or consideration of new evidence is not warranted as the Court may not examine evidence not before the state court in its initial

1 review of Petitioner's claims. If, upon substantive review of the petition, the Court
2 determines that discovery is necessary, it will provide Petitioner the opportunity to obtain
3 same and, if appropriate, schedule an evidentiary hearing.

4 It is hereby ordered that Petitioner's motion for an evidentiary hearing be DENIED
5 without prejudice.

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7 IT IS SO ORDERED.

8 Dated: March 6, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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