UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN ALAN KELLEY,

Petitioner,

v.

JOE A. LIZARRAGA, Warden,

Respondent.

No. 2:16-cv-1088 MCE GGH

ORDER

Petitioner has filed a Motion to Invoke Discovery under Rule 6(a) of the Rules governing habeas cases in order to develop facts for presentation in an evidentiary hearing. This Rule requires Petitioner to make a showing of "good cause" for the discovery he seeks. After the Supreme Court's decision in Cullen v. Pinholster, 563 U.S. 170, 131 S.Ct. 1388 (2011) that showing of good cause must include a showing that the state court's decision was "AEDPA unreasonable." See Reed v. Kernan, 2007 W.L. 833306 *2 (E.D.Cal. Mar. 2007).

In order to make this showing the Petition itself must be addressed first as the initial review where the state courts have made an "adjudication on the merits" and the factual examination is, at this point, limited to the state court record. Coddington v. Cullen, 2011 WL 21118855 (E.D. Cal May 2011), *citing* Cullen, 131 S.Ct. at 1398; Pha v. Swarthout, 2015 WL 1787569 (E.D.Cal. April 2015) citing Runningeagle v. Ryan, 686 F.3d 758, 773-774 (9th Cir. 2012) (Pinholster governs discovery, expansion of the record and evidentiary hearings). If the

result of the habeas review is a finding that the state court findings are AEDPA unreasonable, either as a matter of law or deficient fact finding process, this would afford the Petitioner an opportunity to develop additional facts through discovery. Coddington, 2011 WL 21118855 at *5. Until this court has had an opportunity to conduct a thorough review of the potential merits of petitioner's claims, however, the court cannot determine whether there is a basis for granting discovery.

Accordingly, IT IS ORDERED that Petitioner's October 31, 2016 Motion for Discovery is denied without prejudice.

Dated: December 8, 2016

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE