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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TODD MITCHELL LEAVITT,
Petitioner,
vs.
JO GENTRY, et al.,
Respondents.

Case No. 2:16-cv-02755-RFB-GWF

ORDER

The court directed petitioner to show cause why this action should not be dismissed as a second or successive petition. Petitioner has filed a response (ECF No. 9). The court is not persuaded, and the court dismisses the action.

Petitioner needed to show this court one thing: That the court of appeals had authorized the filing of a second or successive petition. He did not show that he had received the authorization. Petitioner instead argues why the court should consider his second or successive petition. Even if those arguments had any merit under 28 U.S.C. § 2244(b)(2), petitioner needs to present those arguments to the court of appeals, not this court, under 28 U.S.C. § 2244(b)(3).

Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the court will not issue a certificate of appealability.

Petitioner's motion for appointment of counsel (ECF No. 2) is moot because the court is dismissing the action.

IT IS THEREFORE ORDERED that this action is **DISMISSED** as a second or successive petition. The clerk of the court shall enter judgment accordingly and close this action.

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IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (ECF No. 2) is **DENIED** as moot.

IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General for the State of Nevada, as counsel for respondents.

IT IS FURTHER ORDERED that the clerk shall electronically serve respondents with a copy of the petition and a copy of this order. No response by respondents is necessary.

DATED: August 2, 2017.



RICHARD F. BOULWARE, II
United States District Judge