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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GEORGE HINSON,	1:11-cv-01206-AWI-SMS (HC)
Petitioner,	
v.	FINDINGS AND RECOMMENDATION REGARDING PETITION FOR WRIT OF HABEAS CORPUS
JAMES D. HARTLEY,	[Doc. 1]
Respondent.	

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Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on July 21, 2011. Petitioner attached a copy of the September 21, 2009, decision of the California Board of Parole Hearings. Petitioner claims the California courts unreasonably determined that there was some evidence he posed a current risk of danger to the public if released.

On August 10, 2011, the Court issued an order to show cause why the petition should not be dismissed for lack of jurisdiction. Petitioner filed a response on September 12, 2011.

**DISCUSSION**

Because California’s statutory parole scheme guarantees that prisoners will not be denied parole absent some evidence of present dangerousness, the Ninth Circuit Court of Appeals held that California law creates a liberty interest in parole that may be enforced under the Due Process Clause. Hayward v. Marshall, 602 F.3d 546, 561-563 (9th Cir. 2010); Pearson v. Muntz, 606

1 F.3d 606, 608-609 (9th Cir. 2010); Cooke v. Solis, 606 F.3d 1206, 1213 (2010), *rev'd*, Swarthout  
2 v. Cooke, \_\_\_ U.S. \_\_\_, 131 S.Ct. 859 (2011). The Ninth Circuit instructed reviewing federal  
3 district courts to determine whether California's application of California's "some evidence" rule  
4 was unreasonable or was based on an unreasonable determination of the facts in light of the  
5 evidence. Hayward v. Marshall, 603 F.3d at 563; Pearson v. Muntz, 606 F.3d at 608.

6 On January 24, 2011, the Supreme Court issued a *per curiam* opinion in Swarthout v.  
7 Cooke, \_\_\_ U.S. \_\_\_, 131 S.Ct. 859 (2011). In Swarthout, the Supreme Court held that "the  
8 responsibility for assuring that the constitutionally adequate procedures governing California's  
9 parole system are properly applied rests with California courts, and is no part of the Ninth  
10 Circuit's business." Id. at 863. The federal habeas court's inquiry into whether a prisoner denied  
11 parole received due process is limited to determining whether the prisoner "was allowed an  
12 opportunity to be heard and was provided a statement of the reasons why parole was denied." Id.  
13 at 862, *citing*, Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16  
14 (1979). Review of the instant case reveals Petitioner was present at his parole hearing, was given  
15 an opportunity to be heard, and was provided a statement of reasons for the parole board's  
16 decision. (See ECF No. 6, Ex. A.) Per the Supreme Court, this is "the beginning and the end of  
17 the federal habeas courts' inquiry into whether [the prisoner] received due process." Swarthout,  
18 131 S.Ct. at 862. "The Constitution does not require more [process]." Greenholtz, 442 U.S. at  
19 16. Therefore, the instant petition does not present cognizable claims for relief and should be  
20 denied.

21 Petitioner argues that the Supreme Court's decision in Swarthout was contrary to other  
22 controlling federal law and asks this Court to reconsider or not follow its holding. This Court is  
23 bound to follow the holdings issued by the United States Supreme Court. See Hutto v. Davis,  
24 454 U.S. 370, 375 (1982).

#### 25 **RECOMMENDATION**

26 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas  
27 corpus be DENIED with prejudice.

28 This Findings and Recommendation is submitted to the assigned United States District

1 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the  
2 Local Rules of Practice for the United States District Court, Eastern District of California.  
3 Within thirty (30) days after date of service of this Findings and Recommendation, any party may  
4 file written objections with the Court and serve a copy on all parties. Such a document should be  
5 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the  
6 Objections shall be served and filed within fourteen (14) days after date of service of the  
7 Objections. The Finding and Recommendation will then be submitted to the District Court for  
8 review of the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are  
9 advised that failure to file objections within the specified time may waive the right to appeal the  
10 Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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13 IT IS SO ORDERED.

14 **Dated:** September 22, 2011

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE