

1 or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th Cir.2001). A
2 petition for habeas corpus should not be dismissed without leave to amend unless it appears that no
3 tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th
4 Cir. 1971). The Court will review the instant petition pursuant to its authority under Rule 4.

5 II. Failure to State a Claim Cognizable Under Federal Habeas Corpus

6 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of
7 1996 (AEDPA). The AEDPA imposes various requirements on all petitions for writ of habeas corpus
8 filed after the date of its enactment. Lindh v. Murphy, 521 U.S. 320 (1997); Jeffries v. Wood, 114
9 F.3d 1484, 1499 (9th Cir. 1997) (en banc). The instant petition was filed on November 21, 2016, and
10 thus, it is subject to the provisions of the AEDPA.

11 Petitioner alleges that he is an inmate of the California Department of Corrections and
12 Rehabilitation who is serving a sentence of ten years-to-life imposed in the Fresno County Superior
13 Court after his 1986 conviction for kidnapping with great bodily injury and robbery with use of a
14 firearm. (Doc. 1, p. 1). Petitioner does not challenge either his conviction or sentence; rather, he
15 challenges the 2013 decision of the California Board of Parole Hearings (“BPH”) finding him
16 unsuitable for parole. He claims the seven year parole denial is disproportionate compared to other
17 inmates similarly situated. He further claims the factors relied on by the BPH were unsupported.

18 Petitioner’s claims concern the decision of the BPH. These claims are foreclosed by the
19 Supreme Court’s decision in Swarthout v. Cooke, 562 U.S. 216 (2011). In Swarthout, the Supreme
20 Court held that the federal habeas court’s inquiry into whether a prisoner who has been denied parole
21 received due process is limited to determining whether the prisoner “was allowed an opportunity to be
22 heard and was provided a statement of the reasons why parole was denied.” Id., (citing Greenholtz v.
23 Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979)). Petitioner does not contend
24 he was denied these procedural due process guarantees. According to the Supreme Court, this is “the
25 beginning and the end of the federal habeas courts’ inquiry into whether [the prisoner] received due
26 process.” Swarthout, 562 U.S. at 220. “‘The Constitution,’ [the Supreme Court] held, ‘does not
27 require more.’” Id., (quoting Greenholtz, 442 U.S. at 16). Therefore, Petitioner’s challenges to the
28 Board’s denial of parole fail to present cognizable federal claims for relief and the petition should be

1 dismissed.

2 **ORDER**

3 Accordingly, the Clerk of the Court is **DIRECTED** to assign a United States District Judge to
4 this case.

5 **RECOMMENDATION**

6 For the foregoing reasons, the Court **RECOMMENDS** that the instant petition for writ of
7 habeas corpus (Doc. 1) be **DISMISSED** for failure to state a claim upon which federal habeas relief
8 can be granted.

9 This Findings and Recommendation is submitted to the United States District Court Judge
10 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
11 Local Rules of Practice for the United States District Court, Eastern District of California.
12 Within thirty days after being served with a copy, Petitioner may file written objections with the
13 Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
14 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §
15 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive
16 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17
18 IT IS SO ORDERED.

19 Dated: December 14, 2016

/s/ Jennifer L. Thurston
20 UNITED STATES MAGISTRATE JUDGE