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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUSTO ESCALANTE,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>MARGARITA PEREZ, Chairman California Board of Prison Terms; et al.,</p> <p>Respondents - Appellees.</p>

No. 06-56270

D.C. No. CV-05-06679-R

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

California state prisoner Justo Escalante appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 2253,¹ and we affirm.

Escalante contends that the Board’s 2003 decision to deny him parole was not supported by “some evidence” and therefore violated his due process rights. The state court did not unreasonably conclude that some evidence supports the Board’s decision. *See* 28 U.S.C. § 2254(d); *see also Hayward v. Marshall*, 603 F.3d 546, 562-63 (9th Cir. 2010) (en banc).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the 2003 decision of the California Board of Prison Terms (“Board”) to deny parole violated due process.