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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GUSTAVO GOMEZ,	)	Case No. CV 17-4087-DMG (JEM)
	)	
Petitioner,	)	
	)	ORDER SUMMARILY DISMISSING
v.	)	PETITION FOR WRIT OF HABEAS
	)	CORPUS AND DENYING CERTIFICATE
CALIFORNIA BOARD OF PAROLE,	)	OF APPEALABILITY
	)	
Respondent.	)	

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On April 11, 2017, in the United States District Court for the Southern District of Florida, Gustavo Gomez ("Petitioner"), filed a petition for writ of habeas corpus ("Petition"), in which he challenges the 2016 decision of the California Board of Parole Hearings ("Board") finding him unsuitable for parole. (See Petition at 6-22.)<sup>1</sup> On May 31, 2017, the case was transferred to this Court.

**DISCUSSION**

This Court has a duty to screen habeas corpus petitions. See Rules Governing § 2254 Cases in the United States District Courts, Rule 4 Advisory Committee Notes. Rule 4 requires a district court to examine a habeas corpus petition, and if it plainly appears from the face of the petition and any annexed exhibits that the petitioner is not entitled to relief,

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<sup>1</sup> The Court refers to the pages of the Petition as numbered by the CM/ECF system.

1 the judge shall make an order for summary dismissal of the petition. Id.; see also Local  
2 Rule 72-3.2.

3 Summary dismissal is appropriate in this case because the Supreme Court's decision  
4 in Swarthout v. Cooke, 562 U.S. 216 (2011), precludes habeas relief on Petitioner's claims.  
5 In Swarthout, the Supreme Court recognized that Board decisions are reviewed by  
6 California state courts under a standard of “whether ‘some evidence’ supports the  
7 conclusion that the inmate is unsuitable for parole because he or she currently is  
8 dangerous.” Id. at 217 (quoting In re Lawrence, 44 Cal.4th 1181, 1191 (2008)) (additional  
9 citation omitted). The Court also acknowledged as reasonable the Ninth Circuit holding that  
10 California law governing parole creates a cognizable liberty interest for purposes of  
11 analyzing a federal due process claim. Id. at 219-20 (citing Cooke v. Solis, 606 F.3d 1206,  
12 1213 (9th Cir. 2010)). However, the Court emphasized that any such interest is “a *state*  
13 interest created by California law”; there is no corresponding substantive right under the  
14 United States Constitution to conditional release before expiration of a valid sentence. Id. at  
15 220 (The Court also stated: “No opinion of ours supports converting California's ‘some  
16 evidence’ rule into a substantive federal requirement.”).

17 Therefore, regardless of the standard of judicial review applied by California state  
18 courts, the proper scope of federal habeas review in the context of a parole decision  
19 concerns only the constitutional question of whether fair and adequate procedures were  
20 employed for protection of the prisoner's state-created liberty interest. Id. (“When . . . a  
21 State creates a liberty interest, the Due Process Clause requires fair procedures for its  
22 vindication – and federal courts will review the application of those constitutionally required  
23 procedures.”); see also id. at 222 (“Because the only federal right at issue is procedural, the  
24 relevant inquiry is what process [the petitioner] received, not whether the state court  
25 decided the case correctly.”).

26 The Court reaffirmed that “[i]n the context of parole, we have held that the  
27 procedures required [by the Constitution] are minimal.” Id. at 220; see also Greenholtz v.  
28 Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 16 (1979) (adequate




**ORDER**

IT IS HEREBY ORDERED that: (1) the Petition is dismissed with prejudice; and  
(2) a certificate of appealability is denied.

IT IS SO ORDERED.

DATED: June 22, 2017

  
DOLLY M. GEE  
UNITED STATES DISTRICT JUDGE

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