

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 STEVEN W. ROSE,

12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA,

15 Defendant.
16 _____/

Case No. 1:08-cv-00681 LJO JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. 26)

17 Plaintiff is a state prisoner proceeding pro se and *in forma pauperis* with a civil rights action
18 pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant
19 to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On October 27, 2010, the magistrate judge filed
20 findings and recommendations which were served on Plaintiff and contained noticed that any
21 objections to the findings and recommendations were to be filed within twenty-one days. On
22 December 15, 2010, Plaintiff filed timely objections to the findings and recommendations.

23 In accordance with 28 U.S.C. 636(b)(1)(B) and Local Rule 302, the Court has conducted a
24 de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings
25 and recommendations to be supported by the record and proper analysis. The Court agrees with the
26 magistrate judge's recommendation that Plaintiff's facial challenges to California's parole
27 regulations under the First Amendment, the Religious Land Use and Institutionalized persons Act
28 ("RLUIPA"), the Sixth Amendment, and the Equal Protection Clause of the Fourteenth Amendment

1 lack merit. Moreover, to the extent that Plaintiff may state a cognizable as-applied due process claim
2 regarding his denial of parole in 2008, the Court finds that the magistrate judge properly dismissed
3 the amended complaint with leave to amend. Plaintiff may amend his pleadings to allege that the
4 parole board's decision to deny him parole in 2008 (which was allegedly based upon the board's
5 consideration of religious events, rehabilitation, and immutable factors, among other things) was not
6 supported by "some evidence of current dangerousness." Pearson v. Muntz, 606 F.3d 606, 611 (9th
7 Cir. 2010) (quoting Hayward v. Marshall, 603 F.3d 546, 569-70 (9th Cir. 2010)).

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations of the magistrate judge filed October 27, 2010,
10 are adopted in full;
- 11 2. Plaintiff's First Amendment claims are dismissed with prejudice for failure to state
12 a cognizable claim upon which relief may be granted;
- 13 3. Plaintiff's RLUIPA claims are dismissed with prejudice for failure to state a
14 cognizable claim upon which relief may be granted;
- 15 4. Plaintiff's Sixth Amendment claims are dismissed with prejudice for failure to state
16 a cognizable claim upon which relief may be granted;
- 17 5. Plaintiff's equal protection claims are dismissed with prejudice for failure to state a
18 cognizable claim upon which relief may be granted; and
- 19 6. The Board of Prison Hearings is dismissed from this action.

20 IT IS SO ORDERED.

21 **Dated: December 20, 2010**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE