| -GSA (HC) Ballare | d v. Hartley  | I  | Doc. 9 |
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| 7                 | UNITED STAT   | ES DISTRICT COURT  |        |
| 8                 | EASTERN DISTRICT OF CALIFORNIA  |  |        |
| 9                 |   |  |        |
| 10                | MOAT BALLARD,   | 1:11-CV-00189 AWI GSA HC                                   |        |
| 11                | Petitioner,   | FINDINGS AND RECOMMENDATION REGARDING PETITION FOR WRIT OF |        |
| 12                | V. ()   | HABEAS CORPUS  |        |
| 13                | J. D. HARTLEY, Warden,  |  |        |
| 14                | Respondent.   |  |        |
| 15                |   |  |        |
| 16                | Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus  |  |        |
| 17                | pursuant to 28 U.S.C. § 2254.   |  |        |
| 18                | On February 3, 2011, Petitioner filed the instant petition for writ of habeas corpus. Petitioner  |  |        |
| 19                | challenges the California court decisions upholding a July 27, 2009, decision of the California Board   |  |        |
| 20                | of Parole Hearings. Petitioner claims the California courts unreasonably determined that there was  |  |        |
| 21                | some evidence he posed a current risk of danger to the public if released.  |  |        |
| 22                | A. Preliminary Review of Petition   |  |        |
| 23                | Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:  |  |        |
| 24                | If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk             |  |        |
| 25<br>26          | to notify the petitioner.  The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a notition for writ of  |  |        |
| 27                | The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of   |  |        |
| 28                | habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9 <sup>th</sup> |  |        |
| 26                | distinss, of arter an answer to the petition has  | been med. <u>bee Herost v. Cook</u> , 200 F.3u 1039 (9     |        |
|                   | II  |  | 1      |

Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted. <u>Jarvis v. Nelson</u>, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

B. Failure to State a Cognizable Ground for Relief

In <u>Swarthout v. Cooke</u>, \_\_\_ U.S.\_\_\_, 131 S.Ct. 859, 2011 WL 197627 (2011), the Supreme Court stated that a federal habeas court's inquiry into whether a prisoner denied parole received due process is limited to determining whether the prisoner "was allowed an opportunity to be heard and was provided a statement of the reasons why parole was denied." <u>Id.</u>, at 862, *citing*, <u>Greenholtz v. Inmates of Neb. Penal and Correctional Complex</u>, 442 U.S. 1, 16 (1979). Review of the instant case reveals Petitioner was present at his parole hearing, was given an opportunity to be heard, and was provided a statement of reasons for the parole board's decision. (<u>See</u> Attachments to Petition.)

According to the Supreme Court, this is "the beginning and the end of the federal habeas courts' inquiry into whether [the prisoner] received due process." <u>Swarthout</u>, 131 S.Ct. at 862. "The Constitution does not require more [process]." <u>Greenholtz</u>, 442 U.S. at 16. Therefore, the instant petition does not present cognizable claims for relief, and no cognizable claim could be raised if leave to amend were granted. <u>Jarvis v. Nelson</u>, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971). The petition should be dismissed.

## RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas corpus be SUMMARILY DISMISSED with prejudice for failure to state a cognizable claim for relief.

This Findings and Recommendation is submitted to the Honorable Anthony W. Ishii, United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California.

Within thirty (30) days after date of service of this Findings and Recommendation, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the Objections shall be served and filed within fourteen (14) days after date of service of the Objections.

| 1  | The Finding and Recommendation will then be submitted to the District Court for review of the         |  |  |
|----|---|--|--|
| 2  | Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure |  |  |
| 3  | to file objections within the specified time may waive the right to appeal the Order of the District  |  |  |
| 4  | Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).   |  |  |
| 5  | IT IS SO ORDERED.   |  |  |
| 6  | Dated: May 23, 2011 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE                                 |  |  |
| 7  | ONTED STATES MAGISTRATE JODGE   |  |  |
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