

1 Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it
2 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson,
3 440 F.2d 13, 14 (9th Cir. 1971).

4 B. Failure to State a Cognizable Ground for Relief

5 In Swarthout v. Cooke, ___ U.S. ___, 131 S.Ct. 859, 2011 WL 197627 (2011), the Supreme
6 Court stated that a federal habeas court’s inquiry into whether a prisoner denied parole received due
7 process is limited to determining whether the prisoner “was allowed an opportunity to be heard and
8 was provided a statement of the reasons why parole was denied.” Id., at 862, *citing*, Greenholtz v.
9 Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979). Review of the instant case
10 reveals Petitioner was present at his parole hearing, was given an opportunity to be heard, and was
11 provided a statement of reasons for the parole board’s decision. (See Attachments to Petition.)
12 According to the Supreme Court, this is “the beginning and the end of the federal habeas courts’
13 inquiry into whether [the prisoner] received due process.” Swarthout, 131 S.Ct. at 862. “The
14 Constitution does not require more [process].” Greenholtz, 442 U.S. at 16. Therefore, the instant
15 petition does not present cognizable claims for relief, and no cognizable claim could be raised if
16 leave to amend were granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971). The petition should
17 be dismissed.

18 **RECOMMENDATION**

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

21 This Findings and Recommendation is submitted to the Honorable Anthony W. Ishii, United
22 States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule
23 304 of the Local Rules of Practice for the United States District Court, Eastern District of California.

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25 Within thirty (30) days after date of service of this Findings and Recommendation, any party
26 may file written objections with the Court and serve a copy on all parties. Such a document should
27 be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the
28 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

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