

1 Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus,
2 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
3 answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th Cir.2001). A petition for
4 habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim
5 for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).
6 The Court will review the instant petition pursuant to its authority under Rule 4.

7 II. Failure to State a Claim Cognizable Under Federal Habeas Corpus

8 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of
9 1996 (AEDPA). The AEDPA imposes various requirements on all petitions for writ of habeas corpus
10 filed after the date of its enactment. Lindh v. Murphy, 521 U.S. 320 (1997); Jeffries v. Wood, 114
11 F.3d 1484, 1499 (9th Cir. 1997) (en banc). The instant petition was filed on May 7, 2021, and thus, it
12 is subject to the provisions of the AEDPA.

13 Petitioner states that he is an inmate of the California Department of Corrections and
14 Rehabilitation serving a sentence of 25 years to life imposed by the Santa Barbara County Superior
15 Court following his 1995 conviction for first degree murder of his spouse. (Doc. 1 at 2.) Petitioner
16 does not challenge either his conviction or sentence; rather, he challenges the January 8, 2020,
17 decision of the California Board of Parole Hearings (“Board”) finding him unsuitable for parole. He
18 claims the Board’s decision is factually unsupported for a number of reasons, thereby depriving him of
19 his due process rights.

20 Petitioner’s claims concern the decision of the Board. These claims are foreclosed by the
21 Supreme Court’s decision in Swarthout v. Cooke, 562 U.S. 216 (2011). In Swarthout, the Supreme
22 Court held that the federal habeas court’s inquiry into whether a prisoner who has been denied parole
23 received due process is limited to determining whether the prisoner “was allowed an opportunity to be
24 heard and was provided a statement of the reasons why parole was denied.” Id., (citing Greenholtz v.
25 Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979)). Petitioner does not contend
26 he was denied these procedural due process guarantees, and a review of the record shows that he was
27 not. (Doc. 1 at 136-245.) According to the Supreme Court, this is “the beginning and the end of the
28 federal habeas courts’ inquiry into whether [the prisoner] received due process.” Swarthout, 562 U.S.

1 at 220. “‘The Constitution,’ [the Supreme Court] held, ‘does not require more.’” Id., (quoting
2 Greenholtz, 442 U.S. at 16). Therefore, Petitioner’s challenges to the Board’s denial of parole fail to
3 present cognizable federal claims for relief, and the petition should be dismissed.

4 **ORDER**

5 Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a United States District
6 Judge to this case.

7 **RECOMMENDATION**

8 For the foregoing reasons, the Court HEREBY RECOMMENDS that the instant petition for
9 writ of habeas corpus (Doc. 1) be SUMMARILY DISMISSED for failure to state a claim upon which
10 federal habeas relief can be granted.

11 This Findings and Recommendation is submitted to the United States District Court Judge
12 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
13 Local Rules of Practice for the United States District Court, Eastern District of California.

14 Within twenty-one (21) days after being served with a copy, Petitioner may file written objections
15 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
16 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §
17 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive
18 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 Dated: May 11, 2021

22 /s/ Sheila K. Obero
23 UNITED STATES MAGISTRATE JUDGE
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