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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DONALDO GALAZ,  
Petitioner,  
v.  
CHRISTIAN PFEIFFER,  
Respondent.

Case No. 1:23-cv-00468-CDB (HC)

FINDINGS AND RECOMMENDATION  
THAT THE PETITION FOR WRIT OF  
HABEAS CORPUS BE DISMISSED WITH  
PREJUDICE AND WITHOUT LEAVE TO  
AMEND

21-DAY DEADLINE

(Doc. 10)

Clerk of Court to Assign District Judge

Petitioner Donaldo Galaz (“Petitioner”) is a state prisoner proceeding *pro se* with a first amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 10). The petition seeks review of an adverse Board of Parole Hearings (“BPH”) decision in 2021. *Id.* Accordingly, for the foregoing reasons this court will recommend this action be dismissed.

**Preliminary Screening**

Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary review of each petition for writ of habeas corpus. *Pro se* habeas corpus petitions are to be liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, the Court must dismiss a petition “[i]f it plainly appears from the petition...that the petitioner is not entitled to relief.” Habeas Rule 4. Habeas Rule 2(c) requires that a petition 1) specify all grounds of relief

1 available to the Petitioner; 2) state the facts supporting each ground; and 3) state the relief  
2 requested. Notice pleading is not sufficient; rather, the petition must state facts that point to a real  
3 possibility of a constitutional error. *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (“Habeas Corpus  
4 Rule 2(c) is more demanding”). Allegations in a petition that are vague, conclusory, or palpably  
5 incredible are subject to summary dismissal. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir.  
6 1990). A petition for habeas corpus should not be dismissed without leave to amend unless it  
7 appears that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v.*  
8 *Nelson*, 440 F.2d 13, 14 (9th Cir. 1971) (per curiam).

9 **Procedural and Factual Background**

10 According to the Petition, in 1996, Petitioner was convicted in the Superior Court of Los  
11 Angeles County by jury trial, for conspiracy to commit murder, attempted murder, and shooting  
12 an inhabited dwelling, with enhancements for felon in possession of a firearm and two prior  
13 felony convictions. (Doc. 10 at 3). Petitioner was sentenced to serve a term of 85 years to life in  
14 prison with the possibility of parole. *Id.*

15 At some point, Petitioner was placed in Kern Valley State Prison, which is located in the  
16 Eastern District of California. *Id.* at 2. On March 12, 2021, Petitioner was granted a parole  
17 suitability hearing. *Id.* at 2, 4, 49-141. The BPH denied Petitioner parole and “deferred  
18 [Petitioner’s next] parole hearing for five years.” *Id.* at 4. On August 19, 2021, Petitioner  
19 petitioned the BPH for a review on the merits, which was denied on September 9, 2021. *Id.* at 16.

20 On March 10, 2022, Petitioner filed a petition to the Superior Court of California County  
21 of Los Angeles challenging the BPH’s parole decision. *Id.* at 191. On March 24, 2022, the  
22 Superior Court denied Petitioner’s petition. *Id.* The Superior Court noted despite Petitioner  
23 submitting only a partial transcript of the parole hearing and findings, that at least from the  
24 information contained therein, the board’s denial of parole was well supported and not arbitrary  
25 or capricious. *Id.* at 191-92.

26 It appears Petitioner filed a petition to the California Court of Appeals on April 13, 2022.  
27 *Id.* at 1, 14. Subsequently, the California Court of Appeals denied Petitioner’s petition. *Id.* at 25.  
28 At some point, Petitioner filed a petition to the Supreme Court of California. *Id.* at 25. The

1 Supreme Court of California denied his petition on September 14, 2022. *Id.* at 25, 194.

2 On February 27, 2023, Petitioner filed a habeas corpus petition to the Central District of  
3 California. (Doc. 1). On March 28, 2023, the Honorable Magistrate Judge Karen E. Scott  
4 deemed the better forum for this petition was the district where Petitioner is confined rather than  
5 the district where he was convicted and transferred this action to the Eastern District of  
6 California. (Doc. 5). On April 7, 2023, this Court conducted a preliminary review of the petition.  
7 (Doc. 8). The Court determined the petition was untimely, unexhausted and failed to state a  
8 cognizable habeas claim. *Id.* The petition was dismissed without prejudice and Petitioner was  
9 provided 30 days to file an amended petition and/or a 42 U.S.C. § 1983 complaint. *Id.* at 8-9.

10 On May 5, 2023, Petitioner filed a first amended petition. (Doc. 10). The petition asserts  
11 the same claims Petitioner advanced in his initial petition. *See generally* (Doc. 1); (Doc. 8 at 3);  
12 (Doc. 10 at 19-23, 27, 30-45). Specifically, Petitioner argues the BPH deprived him of due  
13 process and equal protection of the laws by denying him an impartial hearing, a fair and adequate  
14 parole suitability hearing, and that BPH failed to adhere to the statutes that govern it. (Doc. 10 at  
15 19-23, 27, 30-45).

### 16 **Discussion and Analysis**

17 Petitioner’s first amended petition still fails to state a cognizable federal habeas corpus  
18 claim. “The habeas statute unambiguously provides that a federal court may issue a writ of habeas  
19 corpus to a state prisoner ‘only on the grounds that he is in custody in violation of the  
20 Constitution or laws or treaties of the United States.’” *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010)  
21 (per curiam) (quoting 28 U.S.C. § 2254(a)). A claim falls within the “core of habeas corpus”  
22 when a prisoner challenges “the fact or duration of his confinement” and “seeks either immediate  
23 release from that confinement or shortening of its duration.” *Preiser v. Rodriguez*, 411 U.S. 475,  
24 489 (1973); *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). In contrast, if a favorable judgment for  
25 the petitioner would not “necessarily lead to his immediate or earlier release from confinement,”  
26 he may assert his claim only under 42 U.S.C. § 1983. *Nettles v. Grounds*, 830 F.3d 922, 935 (9th  
27 Cir. 2016) (*en banc*) (quoting *Preiser*, 411 U.S. at 487, and *Skinner v. Switzer*, 562 U.S. 521, 535  
28 n.13 (2011)).

1 Here, Petitioner seeks to challenge the BPH's decision to deny him parole. *See generally*  
2 (Doc. 10). Petitioner claims the BPH deprived him of due process and equal protection in  
3 violation of the United States and California Constitutions and California law. *Id.* at 19-23, 27,  
4 30-45. In *Swarthout v. Cooke*, the Supreme Court held that federal habeas jurisdiction does not  
5 extend to state parole decisions as long as minimum procedural protections are provided. 562  
6 U.S. 216, 220-21 (2011). A federal court's inquiry is limited to whether the prisoner was given  
7 the opportunity to be heard and received a statement of the reasons why parole was denied. *Id.* at  
8 221; *Miller v. Oregon Bd. Of Parole and Post-Prison Supervision*, 642 F.3d 711, 716 (9th Cir.  
9 2011).

10 Here, Petitioner was afforded the opportunity to attend a parole hearing and was provided  
11 a statement of reasons why his parole was denied. (Doc. 10 at 49-141). Further, Petitioner's  
12 substantive challenges to the parole board's decision are not cognizable in habeas. *Roberts v.*  
13 *Hartley*, 640 F.3d 1042, 1046 (9th Cir. 2011). Even had the BPH followed the laws Petitioner  
14 claims it ignored, Petitioner would not necessarily have received a favorable parole outcome.  
15 Under California law, the parole board must consider all relevant reliable information in  
16 determining suitability for parole, and "has the authority to deny parole on the basis of any  
17 grounds presently available to it." *Nettles*, 830 F.3d at 935 (citing *Ramirez v. Galaza*, 334 F.3d  
18 850, 859 (9th Cir. 2003)). Because success on Petitioner's claims would not necessarily lead to  
19 his immediate or earlier release from confinement, his claims do not fall within the core of habeas  
20 corpus and are not cognizable in federal habeas corpus.

21 As previously discussed, Petitioner's claims may be cognizable if raised in a civil rights  
22 action. (Doc. 8). Though the undersigned expresses no view regarding the merits of any such  
23 claim, Petitioner may file a claim pursuant to 42 U.S.C. § 1983 based on the allegations contained  
24 in the petition. The Court previously provided Petitioner with a blank copy of the form for his  
25 use in any such filing. (*See id.* and Doc. 8-2).

## 26 **Conclusion and Order**

27 Petitioner's first amended petition raises the same claims this Court rejected in his first  
28 petition and fails to state a cognizable habeas claim. Accordingly, it is HEREBY ORDERED:

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1. The Clerk of Court is DIRECTED to randomly assign a district judge to this action for the purposes of reviewing these findings and recommendations;

And IT IS HEREBY RECOMMENDED

1. The petition shall be DISMISSED without leave to amend for failure to state a habeas claim.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days of being served with these findings and recommendations, Petitioner may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Petitioner is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 22, 2023

  
UNITED STATES MAGISTRATE JUDGE