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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VENCIL C. GREEN,  
Petitioner,  
v.  
J. LIZARAGA,  
Respondent.

No. 2:17-cv-704-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> He is serving an indeterminate life sentence and seeks a new parole suitability hearing on the grounds that he was denied due process at his October 14, 2015 parole suitability hearing, which resulted in a seven year denial of parole. *See* ECF No. 1.

Under Rule 4 of the Rules Governing Section 2254 Cases, the court is required to conduct a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. The court must summarily dismiss a petition if it “plainly appears . . . that the petitioner is not entitled to relief . . . .” The court has conducted the review required under Rule 4 and concludes that summary dismissal of the petition is required.

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<sup>1</sup> Petitioner has paid the filing fee.

1 A prisoner's claim which, if successful, would not necessarily lead to immediate or  
2 speedier release falls outside the "core of habeas corpus" and must be pursued in an action  
3 brought pursuant to 42 U.S.C. § 1983. *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016). Here,  
4 success on petitioner's claim could result in advancing the date of his next parole suitably  
5 hearing. It would not, however, necessarily lead to his immediate or speedier release. For this  
6 reason, the petition for a writ of habeas corpus must be summarily dismissed without prejudice to  
7 filing a new action pursuant to 42 U.S.C. § 1983.

8 Accordingly, IT IS HEREBY RECOMMENDED that petitioner's application for writ of  
9 habeas corpus be summarily dismissed.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
12 after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
15 shall be served and filed within fourteen days after service of the objections. Failure to file  
16 objections within the specified time may waive the right to appeal the District Court's order.  
17 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.  
18 1991). In his objections petitioner may address whether a certificate of appealability should issue  
19 in the event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing  
20 Section 2254 Cases in the United States District Courts (the district court must issue or deny a  
21 certificate of appealability when it enters a final order adverse to the applicant).

22 DATED: October 4, 2017.

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24 EDMUND F. BRENNAN  
25 UNITED STATES MAGISTRATE JUDGE  
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