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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH A. JACKSON,  
Petitioner,  
v.  
ROBERT NEUSCHMID,  
Respondent.

No. 2:18-cv-2319-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> He claims that on August 17, 2017, the Board of Parole Hearings unlawfully denied him parole as a nonviolent offender in violation of his right to due process. *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> He 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 due process claim would not necessarily lead to his immediate or speedier  
5 release. At best, it could result in the advancement of his next nonviolent parole suitably hearing.  
6 For this reason alone, petitioner is not entitled to relief.

7 In addition, the due process claim lacks merit. California's parole statutes give rise to a  
8 liberty interest protected by the federal Due Process Clause. *Swarthout v. Cooke*, 562 U.S. 216,  
9 219 (2011). In California, a prisoner is entitled to release on parole unless there is "some  
10 evidence" of his current dangerousness. *In re Lawrence*, 44 Cal. 4th 1181, 1205-06, 1210 (2008);  
11 *In re Rosenkrantz*, 29 Cal. 4th 616, 651-53 (2009). However, the U.S. Supreme Court has made  
12 clear that "[n]o opinion of [theirs] supports converting California's 'some evidence' rule into a  
13 substantive federal requirement." *Swarthout*, 131 S. Ct. at 220-21. The Court specifically  
14 rejected the notion that there can be a valid claim under the Fourteenth Amendment for  
15 insufficiency of evidence presented, or relied upon, at a parole proceeding. *Id.* at 220-22. Rather,  
16 the protection afforded by the federal Due Process Clause to California parole decisions consists  
17 solely of the "minimum" procedural requirements, specifically, "an opportunity to be heard and  
18 . . . a statement of the reasons why parole was denied." *Id.* at 220. Here, the exhibits attached to  
19 the petition reveal that petitioner was given a statement of reasons as to why parole was denied  
20 and an opportunity to be heard with respect to that decision. ECF No. 1 at 28-29, 43. Thus,  
21 petitioner was afforded all the process he was due.

22 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly  
23 assign a United States District Judge to this action.

24 Further, IT IS HEREBY RECOMMENDED that petitioner's application for writ of  
25 habeas corpus be summarily dismissed.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
3 shall be served and filed within fourteen days after service of the objections. Failure to file  
4 objections within the specified time may waive the right to appeal the District Court’s order.  
5 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.  
6 1991). In his objections petitioner may address whether a certificate of appealability should issue  
7 in the event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing Section  
8 2254 Cases in the United States District Courts (the district court must issue or deny a certificate  
9 of appealability when it enters a final order adverse to the applicant).

10 DATED: November 26, 2018.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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