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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOYD HALL,	)	No. C 05-4426 MMC (PR)
	)	
Petitioner,	)	<b>ORDER DENYING PETITION</b>
vs.	)	<b>FOR WRIT OF HABEAS</b>
	)	<b>CORPUS</b>
A.P. KANE, Warden, et al.,	)	
	)	
Respondent.	)	
_____	)	

**INTRODUCTION**

Petitioner Boyd Hall, a California state prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges a decision by the Board of Prison Terms (“Board”) finding him unsuitable for parole. The Court directed respondent to show cause why petitioner’s cognizable claims should not be granted. Respondent has filed an answer addressing the merits of the petition, and petitioner has filed a traverse. Having reviewed the briefs and the underlying record, the Court concludes that petitioner is not entitled to relief based on the claims presented and will deny the petition.

**BACKGROUND**

In 1987, a San Bernardino Superior Court jury convicted petitioner of second-degree murder, see Cal. Pen. Code § 187, and assault with a firearm, see id. § 245(a)(2), with an enhancement for the use of a firearm, see id. § 12022.5. (Ans. Ex. 1 (Abstract of Judgment) at

1 3). The trial court sentenced petitioner to fifteen years-to-life, plus five years, in state prison.  
2 (Id. Ex. 3 (Parole Hearing Transcript 5/20/03) at 1.) In May 2003, the Board, for the second  
3 time, found petitioner unsuitable for parole, on the ground he “would pose an unreasonable risk  
4 of danger to society and a threat to public safety if released at [that] time.” (Id. at 13, 40.)

5 The facts of the commitment offense on which the Board relied are as follows.<sup>1</sup> On the  
6 evening of November 13, 1985, Betty and Vernon Harold were getting into their car when  
7 petitioner approached Betty Harold, placed a gun at her side, and said, “Raise up the seat.”<sup>2</sup>  
8 Petitioner then attempted to enter the vehicle, stating, “You’re going to drive me down the hill.”  
9 Vernon Harold told petitioner that he would not give petitioner a ride. Petitioner then took out a  
10 knife and held it to Betty’s side, at which point she told her husband petitioner had a knife and a  
11 gun. Vernon and petitioner began yelling at each other and Vernon ran to his wife’s side of the  
12 car and struggled with petitioner. As the two men struggled, Betty escaped, and, as she escaped,  
13 she heard a gunshot. She heard a second gunshot as she reached the door of the restaurant she  
14 and Vernon had left a few minutes before. Betty turned around and saw her husband on the  
15 ground and petitioner run off, firing the gun twice as he ran. (Id. Ex. 2 (Probation Department  
16 Report 8/28/87) at 2–3; Ex. 3 at 6–7.)

17 At the parole hearing, the Board reviewed petitioner’s record, including the  
18 circumstances of the commitment offense, his psychological report, his behavior while in prison,  
19 the opinions of law enforcement, and his parole plans. At the conclusion of the hearing the  
20 Board found petitioner “continues to be a threat to others.” (Id. Ex. 3 at 42.) In reaching its  
21 decision the Board found the “offense was carried out in an especially cruel and vicious manner”  
22 and that multiple victims were attacked, injured, and killed in the same incident. (Id. Ex. 3 at  
23 40.) The Board also considered the psychologist’s report, which indicated petitioner had

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25 <sup>1</sup> Petitioner concedes the above summary is “basically true in fact”; the one exception he  
notes is that “[t]here were three shots fired not four.” (Pet. Ex. C at 1.)

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27 <sup>2</sup> According to a statement written by Betty Harold and read to the Board by Debbie  
Lantz, the Harolds’ daughter, petitioner had asked the Harolds for a ride earlier in the evening.  
28 The Harolds refused and went to have dinner. Petitioner approached the Harolds again as they  
left the restaurant and were getting into their car. Although her daughter read the statement,  
Betty Harold was present at the hearing as well. (Ans. Ex. 3 at 37–38.)

1 participated in therapy, that he had “developed some understanding and insight into the crime,”  
2 and that his likelihood of committing violence was estimated to be no higher than that of an  
3 average person in the community. (Id. at 17-18.) Additionally, the Board acknowledged that  
4 petitioner had committed very few disciplinary infractions while in prison, the last one having  
5 occurred in 1989, that he had no prior criminal history or history of drug or alcohol abuse,<sup>3</sup> that  
6 he had completed his AA degree while in prison, and that he had acquired data entry and  
7 computer refurbishing skills and completed vocational x-ray technician training. (Id. at 14,  
8 15–16, 17.) As for his parole plans, the Board found petitioner had many offers of places to live,  
9 but no offers of employment. (Id. at 18–19.) The Board heard from the San Bernardino District  
10 Attorney’s Office, which stated its opposition to petitioner’s parole. (Id. at 25.) The Board also  
11 heard from Betty Harold and Debbie Lantz, the Harolds’ daughter, both of whom strongly  
12 opposed petitioner’s release. (Id. at 34–39.) After a full hearing, at which all of the above  
13 factors were considered, the Board found petitioner unsuitable for parole, based on the  
14 “especially cruel and vicious” nature of the commitment offense, (id. at 40), the “inconclusive”  
15 nature of the psychologist’s report (id. at 41), the opposition of law enforcement to his release,  
16 and his lack of adequate parole plans (id.).

17 In response to the Board’s decision, petitioner filed state habeas petitions, all later  
18 denied, in the California Superior Court, Court of Appeal, and Supreme Court. (Pet. at 4–5.) In  
19 2005, petitioner filed the instant federal petition. As grounds for federal habeas relief, petitioner  
20 alleges that (1) the Board’s finding of unsuitability was not supported by sufficient evidence, in  
21 violation of his right to due process; and (2) the Board has a policy of denying parole, which  
22 violates petitioner’s due process rights. (See Order to Show Cause at 2.)

## 23 DISCUSSION

### 24 A. Standard of Review

25 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in  
26 custody pursuant to the judgment of a State court only on the ground that he is in custody in  
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28 Petitioner did, however, attend Alcoholics Anonymous meetings for one year in prison. (Pet.  
Ex. B at 2.)

1 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose  
2 v. Hodges, 423 U.S. 19, 21 (1975).

3 A district court may not grant a petition challenging a state conviction or sentence on the  
4 basis of a claim that was reviewed on the merits in state court unless the state court’s  
5 adjudication of the claim: “(1) resulted in a decision that was contrary to, or involved an  
6 unreasonable application of, clearly established Federal law, as determined by the Supreme  
7 Court of the United States; or (2) resulted in a decision that was based on an unreasonable  
8 determination of the facts in light of the evidence presented in the State court proceeding.” 28  
9 U.S.C. § 2254(d); Williams v. Taylor, 529 U.S. 362, 412–13 (2000). A federal court must  
10 presume the correctness of the state court’s factual findings. 28 U.S.C. § 2254(e)(1). Habeas  
11 relief is warranted only if the constitutional error at issue had a “substantial and injurious effect  
12 or influence in determining the jury’s verdict.” Penry v. Johnson, 532 U.S. 782, 796 (2001).

13 The state court decision implicated by 2254(d) is the “last reasoned decision” of the state  
14 court. See Ylst v. Nunnemaker, 501 U.S. 797, 803–04 (1991); Barker v. Fleming, 423 F.3d  
15 1085, 1091–92 (9th Cir. 2005). When there is no reasoned opinion from the highest state court  
16 to have considered the petitioner’s claims, the district court looks to the last reasoned state court  
17 opinion, which, in this case, is the Superior Court’s opinion denying the state petition for a writ  
18 of habeas corpus. (Ans Ex. 5); see Nunnemaker, 501 U.S. at 801–06; Shackleford v. Hubbard,  
19 234 F.3d 1072, 1079 n. 2 (9th Cir. 2000).

## 20 **B. Petitioner’s Claims**

### 21 **1. Sufficiency of the Evidence**

22 Petitioner alleges that the Board’s decision was based on insufficient evidence, depriving  
23 him of federal due process rights under the Fifth and Fourteenth Amendments.<sup>4</sup> (Pet. at 8–9.)  
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25 <sup>4</sup> Petitioner contends the Board’s continued sole reliance on the unchanging factor of the  
26 circumstances of the commitment offense can result in a violation of due process. (Pet. at 11.)  
27 While petitioner’s general proposition is supported by case law, see Biggs v. Terhune, 334 F.3d  
28 910, 916 (9th Cir. 2003), petitioner has not shown the Board violated his right to due process, as  
the Board, in petitioner’s case, did not rely solely on the circumstances of the commitment  
offense; rather, the Board relied on other relevant considerations as well. Moreover, while the  
circumstances of the commitment offense may, at some point, become irrelevant with respect to

1 As noted, the Board identified several reasons for its decision, including the circumstances of the  
2 commitment offense, the opposition of law enforcement to the granting of parole, and  
3 petitioner’s lack of adequate parole plans. (Ans. Ex. 3 at 40–41.)

4 The Board’s denial of parole complies with due process provided that there is “some  
5 evidence” to support its decision. As the Supreme Court has explained, a parole board’s  
6 decision deprives a prisoner of due process if the Board’s decision is not supported by “some  
7 evidence in the record,” or is “otherwise arbitrary.” See Sass v. California Bd. of Prison Terms,  
8 461 F.3d 1123, 1129 (9th Cir. 2006) (adopting “some evidence” standard for disciplinary  
9 hearings outlined in Superintendent v. Hill, 472 U.S. 445, 454–55 (1985)); see also McQuillion  
10 v. Duncan, 306 F.3d 895, 904 (9th Cir. 2002) (same). Additionally, the evidence underlying the  
11 Board’s decision must have “some indicia of reliability.” See McQuillion, 306 F.3d at 904.  
12 Accordingly, if the Board’s determination with respect to parole suitability is to satisfy due  
13 process, such determination must be supported by some evidence having some indicia of  
14 reliability. Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005); McQuillion, 306 F.3d at 904.

15 In assessing whether there is “some evidence” to support the Board’s denial of parole,  
16 this Court must consider the regulations that guide the Board in making its parole suitability  
17 determinations. Pursuant to such regulations, “[t]he panel shall first determine whether the life  
18 prisoner is suitable for release on parole[;] [r]egardless of the length of time served, a life  
19 prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the  
20 prisoner will pose an unreasonable risk of danger to society if released from prison.” 15 Cal.  
21 Code Regs. § 2402(a). Additionally, the regulations enumerate various circumstances tending to  
22 indicate whether or not an inmate is suitable for parole. Id., § 2402(c)–(d).<sup>5</sup> One circumstance

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24 a parole suitability determination, they constitute, at present, some evidence to support the  
25 Board’s decision.

26 <sup>5</sup> The circumstances tending to show an inmate’s unsuitability are: (1) the commitment  
27 offense was committed in an “especially heinous, atrocious or cruel manner;” (2) previous record  
28 of violence; (3) unstable social history; (4) sadistic sexual offenses; (5) psychological factors  
such as a “lengthy history of severe mental problems related to the offense;” and (6) prison  
misconduct. 15 Cal. Code Regs. § 2402(c). The circumstances tending to show suitability are:  
(1) no juvenile record; (2) stable social history; (3) signs of remorse; (4) commitment offense

1 tending to show an inmate’s unsuitability is that the crime was committed in an “especially  
2 heinous, atrocious or cruel manner.” Id., § 2402(c). Two factors that the parole authority may  
3 consider in determining whether such a circumstance exists are whether “[t]he offense was  
4 carried out in a manner that demonstrates an exceptionally callous disregard for human  
5 suffering,” and whether “[t]he motive for the crime is inexplicable or very trivial in relation to  
6 the offense.” Id., § 2402(c)(1)(D) & (E). In addition to these factors, the Board is to consider  
7 “all relevant, reliable information available.” Id., § 2402(b).

8 It is now established under California law that the task of the Board is to determine  
9 whether the prisoner would be a danger to society if he or she were paroled. See In re Lawrence,  
10 44 Cal. 4th 1181 (2008). Consequently, the constitutional “some evidence” requirement is that  
11 there exists some evidence that the prisoner constitutes such a danger, not simply that there  
12 exists some evidence of one or more of the factors listed in the regulations as considerations  
13 appropriate to the parole determination. Id. at 1205–06.

14 Here, the Court cannot say the state court was unreasonable in concluding there is some  
15 evidence to support the Board’s decision that petitioner would be a danger to society if released.<sup>6</sup>  
16 As to the circumstances of the commitment offense, some evidence exists to support the Board’s  
17 determination that the “offense was carried out in an especially cruel and vicious manner.”  
18 (Ans. Ex. 3 at 40.) In particular, the record shows that petitioner, without provocation,  
19 approached the Harolds, threatened them with a knife and a gun, and, as Vernon Harold tried to  
20 protect his wife, shot him to death. Based on this record of unpredicted and excessive violence,  
21 the Court finds some evidence exists to support the Board’s finding that the circumstances of the  
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25 was committed as a result of stress which built up over time; (5) Battered Woman Syndrome;  
26 (6) lack of criminal history; (7) age is such that it reduces the possibility of recidivism; (8) plans  
27 for future including development of marketable skills; and (9) institutional activities that indicate  
28 ability to function within the law. Id. § 2402(d).

<sup>6</sup> Although the transcript of the parole hearing provides a less than ideal record, given its repeated instances of “(inaudible),” there is sufficient evidence in the record to support the Board’s decision.

1 commitment offense indicate petitioner remained unsuitable for parole in 2003.<sup>7</sup> Further, in  
2 addition to the circumstances of the commitment offense, the Board considered petitioner’s lack  
3 of adequate parole plans, and the San Bernardino District Attorney’s opposition to parole. In  
4 sum, based on the above-described record, the Court finds some evidence exists to support the  
5 Board’s decision.

6       Accordingly, petitioner is not entitled to habeas relief on this claim.

7       2.       The Board’s Alleged Anti-Parole Policy

8       Petitioner also claims that the Board “has a current Anti-Parole Policy or Policy of  
9 Underinclusion or demonstrates a Policy of Systematic Bias against those that come before it,”  
10 granting “parole in only 1% of the cases.” (Pet. at 17.) Petitioner has provided no evidence,  
11 however, that the Board was operating under such a policy. In any event, even statistical data as  
12 to the rate of denial in other prisoners’ cases will not suffice to establish that the Board  
13 automatically denies parole, or that the Board otherwise improperly made its determination in  
14 petitioner’s case, as parole may have been properly denied after the Board’s individualized  
15 assessment of each of those cases. See Mosby v. Solis, 243 Fed. Appx. 246, 248 (9th Cir. 2007)  
16 (holding statistical denial rate insufficient to establish blanket policy to deny parole); see also  
17 Cosio v. Kane, No. C 05-1966 CRB (PR), 2007 WL 518599, at \*6 (N.D. Cal. Feb. 12, 2007)  
18 (holding reliance on statistical data of high percentage of parole denials provides no proof of  
19 Board’s systematic bias against parole where prisoner received individualized assessment of  
20 parole suitability); Morris, 2008 WL 4825927 at \*4–5 (holding petitioner failed to demonstrate  
21 predetermined outcome of parole hearing where Board provided “detailed rationale” for  
22 decision). Here, there is nothing to suggest, let alone support a finding, that the Board operated  
23 under an “anti-parole policy” in assessing petitioner’s suitability for parole. Rather, the Board  
24 gave a detailed explanation, based on the specific circumstances of petitioner’s case, for its

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26       <sup>7</sup> Petitioner also contends that the Board’s failure to use “its own uniformity matrix”  
27 violated his right to due process. (Pet. at 14.) Petitioner’s claim is without merit. First,  
28 petitioner has not shown the Board’s alleged failure to use a matrix constitutes a cognizable  
federal constitutional claim. Second, as petitioner concedes, “reference to the matrix is only  
compelled after there has been a suitability finding.” (Id. at 15); see In re Dannenberg, 34 Cal.  
4th 1069, 1071 (Cal. 2005). (Pet. at 15.)

1 finding that petitioner was unsuitable for parole. Based on this record, the Board's decision  
2 comports with due process.

3 Accordingly, petitioner is not entitled to habeas relief on this claim.

4 **CONCLUSION**


5 Because the record contains, at a minimum, some evidence to support the Board's finding  
6 that petitioner would present an unreasonable risk of danger to society if released, the Court  
7 finds the state court's determination was neither contrary to nor an unreasonable application of  
8 clearly established Supreme Court precedent, nor can the Court say it was based on an  
9 unreasonable determination of the facts.

10 Accordingly, the petition for writ of habeas corpus is hereby DENIED.

11 The Clerk shall enter judgment and close the file.

12 **IT IS SO ORDERED.**

13 DATED: December 23, 2008

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15 MAXINE M. CHESNEY  
16 United States District Judge  
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